

December 1, 2015

Paul
Blikstad

REBUTTAL of Central Oregon Land Watch's Testimony of November 23, 2015

COMPREHENSIVE PLAN MAP AMENDMENT AND ZONE CHANGE
BEFORE THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

FILE #: 247-14-000456-ZC
FILE #: 247-14-000457-PA

APPLICANT/PROPERTY OWNER: Anthony J. Aceti
21235 Tumalo Place
Bend OR 97701
(541) 419-0858

REPRESENTATIVE: Pat Kliewer, MPA
60465 Sunridge Drive
Bend, OR 97702
(541) 617-0805

SOIL SCIENTIST: Roger Borine
Sage West, LLC
64770 Melinda Ct.
Bend, OR 97701

TRAFFIC ENGINEER: Gary Judd
Sage Engineering Associates LLC
60867 Windsor Drive
Bend, OR 97702

SUBJECT TAX LOTS: County Assessor's Map 161226C, Tax Lot 201 and
County Assessor's Map 161227D, Tax Lot 104.

SITE ADDRESS: 21235 Tumalo Place, Bend, OR 97701 for tax lot
161226C000201.
No Situs Address for 161227D000104.

SIZE OF PARCELS: Tax Lot 161227D000104 contains 1.33 acres.
Tax Lot 161226C000201 contains 20.26 acres.
The two parcels together contain 21.59 acres.

CURRENT ZONING: Tax Lots are zoned EFU-TRB, Exclusive Farm Use-
Tumalo/Redmond/Bend subzone. They are in the Highway 97
Corridor Landscape Management Combining Zone (LM) and are
designated Agriculture on the County Comprehensive Plan.

REQUEST: For the 21.58 acres, the Applicant requests a Comprehensive
Plan Map Amendment to re-designate the property from
Agriculture to Rural Industrial and a corresponding Zone Map
Amendment (Zone Change) to reassign the zoning from Exclusive
Farm Use Tumalo/Redmond/Bend Subzone (EFU-TRB) to Rural
Industrial Zone (R-I), and a goal exception.

From
Pat Kliewer and
Anthony J. Aceti

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Deschutes County CDD

The following information corrects the misinformation, wrong assumptions and mistaken conclusions in Central Oregon Landwatch's (COLW) written and oral testimony of November 23, 2015.

COLW submitted written testimony in opposition to the Application in June 2015. The Hearings Officer in this case considered and dismissed those ideas in her September 30, 2015 decision.

1. STATEMENT BY COLW, Page 1: "21.59 irrigated hay farm with 19.71 acres of water rights."

RESPONSE: This phrase has three mistakes. First, the two tax lots comprise 21.59 acres. However at least three acres are covered by structures, driveways, paved and graveled parking, loading, and truck maneuvering areas as well as a rock ledge that has never been cleared and cannot be cultivated. Second, the 21.59 acres are not a hay farm and have never been a hay farm. Third, there is a water right of 16 acres on Tax Lot 201. Tax lot 104 has no water right.

EXHIBIT 8 is the deed to Tax Lot 161227D000104. It contains 1.33 acres. It was created as a new tax lot by the County and deeded from the State of Oregon Department of Transportation to Aceti on July 6, 1998. It formerly was part of Tax Lot 161227D 00100, owned by Western Oregon Conference Association of Seventh-Day Adventists and deeded to ODOT on Oct. 29, 1997. Due to the realignment of Tumalo Road, Tumalo Road ended up being south of the small parcel instead of north and the land was no longer of value to the school. The owners were compensated for the loss of land and a new tax lot was created and deeded to ODOT. Being remnant land, it was deeded to Aceti, whose parcel was contiguous to it. This small parcel is covered by cinder rock, is urban soil and has been used for a truck turn around since 1998. It was previously the driveway and entrance for the Three Sisters Seventh Day Adventist Christian School south of Tumalo Road.

Tax Lot 161226C000201 contains 20.26 acres, which is partially covered with the 23,460 square foot barn, three paved and graveled driveways, loading and parking areas, fire hydrants, utilities, a product display area on a rock shelf, juniper trees, and unfarmable rock flows.

The applicant does not own the approach to the overpass that bisects his land and covers 2.33 acres. Aceti and Bruce Barrett (who still had a legal ownership interest in the property at the time) deeded the land in 1998 to ODOT. ODOT in turn deeded it to Deschutes County.

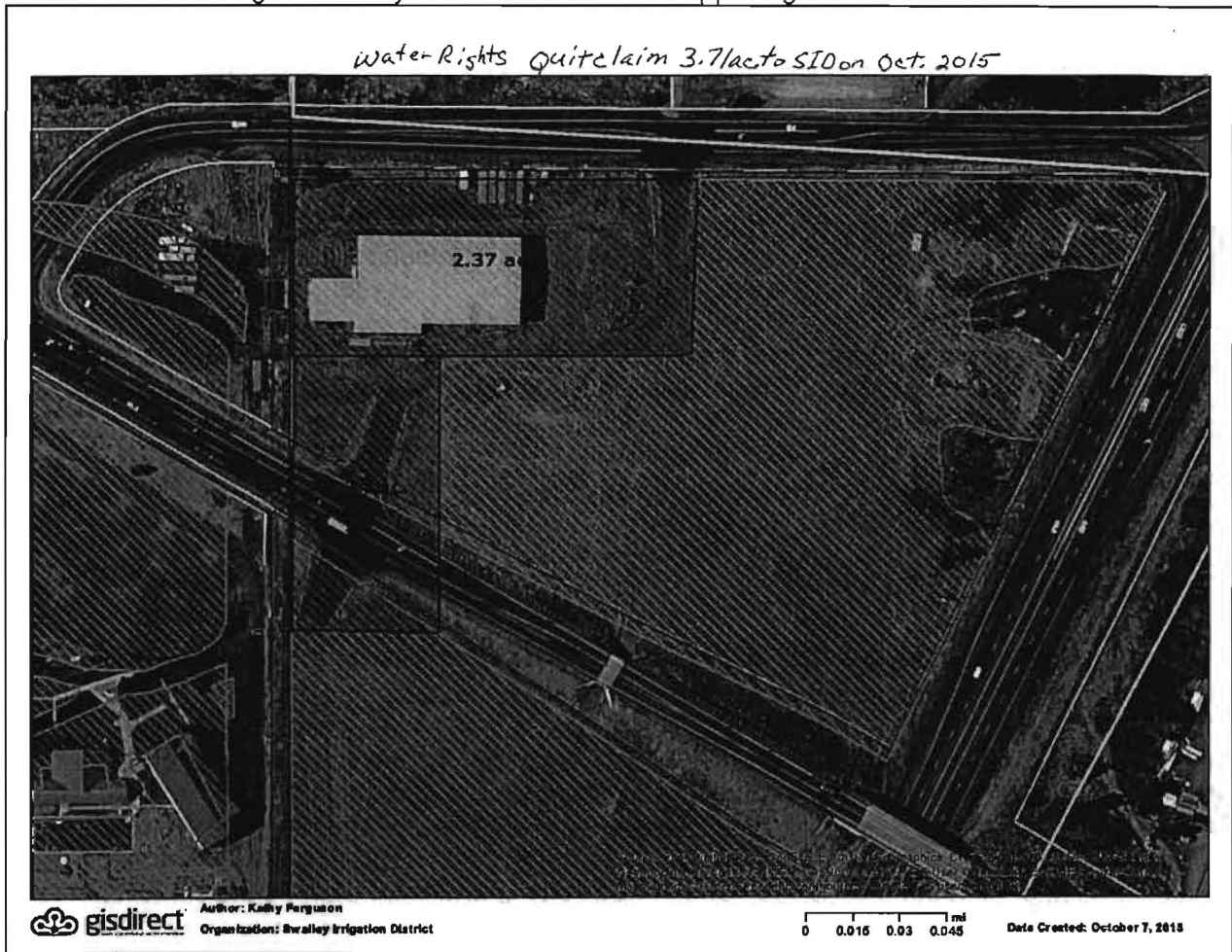
The water rights to the 2.33 acres under the approach to the overpass were given up to Swalley Irrigation District by ODOT.

Water rights for 3.71 acres under the barn, three driveways, loading and parking areas were given up in a quit claim deed to Swalley Irrigation District (SID) on October 28, 2015 as initiated by SID many years ago. Currently, the Applicant has 16 acres of water rights.

Swalley Irrigation District GIS staff prepared the following document that shows the location of 3.71 acres of water rights in the brown rectangular boxes that were recently removed from the subject parcel.

There is no water right under any road or overpass. They were removed by an agreement between Swalley ID and ODOT.

There is no water right on rocky areas such as in the upper right hand corner.



Water rights to all of the parcel were never awarded or purchased. Today Swalley has a map showing the exact locations of the water rights on the parcel. It is attached to the end of this rebuttal. Five acres of the parcel do not have water rights and never have had them.

The Hay Barn is the agribusiness that the Applicant has owned in two counties for 39 years. He custom farms land owned by others and farms his own land. He buys and sells hay and transports it within several counties for hay raisers and users. Simply put, the Hay Barn is a large hay brokerage and distribution business.

The Applicant and his step-father purchased 70 acres in Christmas Valley in 1976. As partners, they farmed that parcel and ran a hay trucking and brokerage business in Christmas Valley from 1976-1995. Aceti continued to farm the 70 acres in Christmas Valley until he sold it in 2014.

In 1995, he built a 23,460 square foot barn on the Deschutes Junction site for his business. The reason the property was suitable for his business was its central location and access to Highways 20 and 97 as well as to Prineville and the ability to maneuver double hay truck and trailers in and out of the property.

The following year, in 1996, Aceti received a permit for a second barn. As he was preparing to build it, the County notified him that ODOT would likely need the building site for the approach to the new overpass. The barn was never built. The Settlement Agreement between the County and Aceti, (**EXHIBIT 18**) preserved the Applicant's right to build a barn on at another location that met setback requirements.

STATEMENT BY COLW, Page 1: *"The subject property has been used by successive generations of farmers since 1905, including the applicant, to produce grass hay and other irrigated crops."*

RESPONSE: The entire statement is in error. Irrigation water was first applied to the subject parcel in 1968. (Email to the County from Suzanne Butterfield, Swalley Irrigation District regarding this application.)

From: Suzanne Butterfield [mailto:suzanne@swalley.com]
Sent: Friday, May 29, 2015 1:24 PM
To: Paul Blikstad
Subject: FW: Aceti

"Our files show that Swalley ID was the water purveyor of irrigation water to this property from 1968 to date."

Furthermore, the land was not farmed until 1968. After 1968, the unproductive parcel with extremely shallow soils was cultivated and irrigated sporadically for only 28 years, in total. The first 5 owners did not farm it. In fact, most owners were not farmers and bought it for land speculation or for its central location. The George and Vietta Barrett family was the first to irrigate it and attempt to farm it. Since 1968 the Barrétts sporadically planted the subject parcel in orchard grass along with their more productive Tax Lot 161227D01100. They never planted any other crop. They jointly planted a crop of orchard grass with Aceti one year, getting 3.5 pickup truck loads of hay bales. The following year, Aceti planted the southern part of the parcel and did not bother to harvest it because the crop was so poor. That was the last year it was "farmed".

Seven parties have owned the property. Two of them owned it less than a month.

FIGURE 11. PROPERTY OWNERSHIP TABLE

	Grantor (Seller)	Grantee (Buyer)	Date	Which land?
1.	United States President William Taft	James R. Low, a single man	Filed on December 16, 1903. Awarded Patent on Oct 14, 1909	Low received a five-year homestead patent to 160 acres, two rectangular 80-acre parcels side by side: West ½ of SW ¼ of Sec 26 and east ½ of the SE ¼ of Section 27 in Township 16 South of Range 12 East , Willamette Meridian.
1 b.	James R. Low	State of Oregon	Oct. 13, 1933	Low sold 6.73 acres in a strip of land 100 feet wide, 50 feet on each side of the proposed centerline of The Dalles-California Highway to construct the new highway. ODOT paid Low \$500.00
2.	James R. Low	William B. Crawford and Ada R. Crawford, husband and wife	April 8, 1943	Lowe sold his 160 acre homestead including 160 acres, excepting the 6.73 acres of land (153.27 acres) for the new Highway 97 to the Crawfords, together with water right in Deschutes Reclamation and Irrigation Company for 120 acres and 120 shares in stock in the corporation.
3.	William B. Crawford and Ada R. Crawford, husband and wife	William L. Morris and Beulah May Morris, husband and wife	March 24, 1947	Crawfords sold the same 160 acres, excepting the land for Highway 97. (153.27 acres) No mention of water right.
4.	William L. Morris and Beulah May Morris, husband and wife	Lester E. Walton and Jennie T. Walton, husband and wife	March 24, 1947	Morris sold the same 160 acres, excepting the land for Highway 97 (153.27 acres). No mention of water right.
5.	Lester E. Walton and Jennie T. Walton, husband and wife	Carroll Lawrence and Mary D. Lawrence, husband and wife	July 24, 1967	Waltons sold 25.2 acres in the SW ½ if Section 26 and in the SE ¼ of Section 27. Bounded on the east side by the "Dalles-California Highway # 97" and bounded on the northerly side by the south right-of- way line of the "Deschutes Tumalo State Secondary Highway" for 997.75 feet between the Highway 97 and the line between Sections 26 and 27, thence south along that section line for 1341 feet, thence east for 464.43 feet to the right-of- way of The Dalles-California Highway. Also deeds a 20 acre water right of Deschutes Reclamation and Irrigation Company.

6.	Carroll Lawrence and Mary D. Lawrence, husband and wife	George G. Barrett and Vietta A. Barrett, husband and wife	August 1, 1967	25.2 acres with 20 acre DRIC water right as above.
	Gerald M. Barrett, personal representative of the Estate of Vietta A. Barrett, Grantor	Stephen Greer, Trustee of the Vietta A. Barrett revocable family trust, Grantee	February 19, 1988	Correction deed referring to deed of Sept 27, 1984 setting up revocable trust. Three parcels including the 25.20 acre parcel "together with 20 acres of Central Oregon Irrigation District Water."
	Bruce Barrett and Gary Barrett	State of Oregon, ODOT	February 15, 1991	\$22,850.00 Book 231, page 81, 1.18 acre for widening of Highway 97 from two to four lanes. (24.02 acres remaining) Deed grants the right of ODOT to construct or otherwise provide at any future time a public frontage road or roads with the ability of property owner to apply for permit to access the frontage roads.
7.	George G. Barrett and Gary W. Barrett	Anthony J. Aceti	April 10, 1995	Approximately 24.02 acres in the NW ¼ of the SW ¼ of Section 26, T 16 S, R 12 E, W. M. No mention of water right. New easement of 40 feet on western property line for Barrett's egress and ingress from their parcel to the southwest, lot 161227D00100, a 1.23 acre easement on west side.

As outlined in **FIGURE 11** of the Application, and described in detail, the subject site was part of a 160 acre parcel between 1903 and 1967. The homesteader, James Low, selected the property in 1903 because his father had the homestead adjacent to it and it had the best transportation system at the time. See **FIGURE 9. DESCHUTES COUNTY SURVEYOR'S MAP OF HISTORIC AND CONTEMPORARY ROADS AT DESCHUTES JUNCTION** of the Application. James Low was not a farmer and farmed only 20 acres of the 160 acres during his 40 years of ownership. He cleared and farmed the 20 acres in the flood plain on the east side of Half Mile Lane. His father's (Benjamin Low) 1901 homestead was on the west side of Half Mile Lane. Homesteaders were required to cultivate a minimum of twenty acres of land to meet the requirements for their patent. Benjamin Low and James Low each cleared and planted the minimum acreage. Irrigation water was not available then.

James Low never cleared or cultivated the subject site. Swalley did not complete its irrigation system into the Deschutes Junction area until after the fall of 1912. James Low owned a Bend saloon after 1904 and it was his primary means of support and he helped build roads for the county. James Low owned his 160 acre homestead and lived in a box house on the spine ridge for 40 years. See **SECTION 13, PREVIOUS OWNERS** of the Application for more detailed information about the previous owners.

James Low sold the 160 acres minus the land he had sold to the State for the new US Highway 97 to Ada and William Crawford in 1943. The Crawfords lived in Bend and used the 153.27 acres with the new US Highway 97 crossing it to store logs and logging equipment on site due

to its central location with easy access to Sisters where his son worked for a logging company, to Prineville, to Bend and to Redmond. He also had other trucks and heavy equipment stored there. Earlier, Crawford owned the first stockyard in Bend and hauled freight with horse-drawn wagons. He was a sand and gravel contractor in the 1930s. He was not a farmer and did not have the 160 acres farmed.

William Morris, who did not live in the Bend area, was not a farmer, but rather was a salesman and a wood yard owner. He bought the 153.27 acres in 1947 on real estate speculation and resold it the same day to Lester and Jennie Walton.

Lester and Jennie Walton bought the 153.27 acres in 1947. Walton was a butcher and sharpened blades as his business. In retirement, he began raising Arabian horses and amassed over 700 acres in the Deschutes and Tumalo areas. The Waltons partitioned the least productive portion of the former Low Homestead into smaller parcels to resell on speculation. He was not a hay farmer and did not sell hay and did not irrigate the subject parcel.

The Waltons sold the 25.2 acres that included the subject property to Carroll and Mary Lawrence in 1967. The Lawrences sold the property a week later to George and Vieta Barrett.

George and Vieta Barrett bought the 25.2 acres in 1967 to add to surrounding parcels they had purchased in the immediate area that they called the Deschutes Ranch, looking for economy of scale for their ventures. They were the first ones to cultivate and irrigate the subject parcel. By 1970, the Barrett ranch extended east of Highway 97, covering 115 acres of Low's homestead But, finding the parcel unproductive and prohibitively rocky, they scraped the topsoil from the deeper areas and pushed it over to the areas with least soil, to make at least part of the land plowable. Today, the soils is too shallow for most farming equipment.

The parcel is located over 1,230 feet east and is uphill from the four irrigation ponds along Half Mile Lane.

The subject site is north of the rock spine and over 500 feet from the closest, but unused, irrigation pipe along the rock spine. The closest irrigation pond "the Lawrence Pond" is about 650 feet south of the subject site, but it is not used. A significant event occurred in 1991 that effects many of the surrounding parcels and the subject parcel to this day. The Lawrence Pond was reduced in size by 75% by the Highway 97 widening project in 1991. What remains of the pond is at the intersection of the spine ridge with Highway 97. Bringing water to the site from either pond required electric pumps. When the Barretts irrigated their land, they drew water from the Lawrence Pond.

The Barretts ran some cattle seasonally on the subject site as part of their larger operation, but abandoned the subject property. It had been fallow for years when the Applicant, Anthony Aceti, bought the 24.02 acres from the Barrett's sons on contract on April 10, 1995 for his hay brokerage and hay trucking business. The Barretts had not farmed their other parcels to the south and west for several years and were involved in other ventures.

In 1996, through an agreement, Aceti supplied Gary and Bruce Barrett with his big tractor and hay farm equipment that he hauled from Christmas Valley, so they could seed their parcels to orchard grass. In return, they applied fertilizer Aceti bought and disked the subject site. But being familiar with it, they did not rototill it because the soil was too shallow for the blades of the expensive equipment. Aceti hired Renee Guzman to seed a portion of his parcel. Aceti paid the Barretts to irrigate it with their wheel line. The resulting hay crop was so sparse and short that it was not marketable. The hay was difficult to form into even small bales. The Barretts

baled it and only 3.5 pickup truck loads of bales (3.5 tons total) were harvested off the 18 acres that were planted. (In a productive Central Oregon hay farm, in a typical year, about 5 tons per acre would be the normal yield.) Aceti's actual costs of producing the three and a half pickup loads of hay did not begin to repay his actual costs to produce the meager crop.

Therefore, the Application clearly demonstrates that the subject site was not cultivated for the first 64 years of ownership. (Historical record in local history books, Interview with James Low's nephew, Kenneth Lowe, Swalley Irrigation District records, biographical records of owners at the Des Chutes Historical Museum, Central Electric Company records, federal census records, aerial photos.)

The following facts make COLW's unfounded assertions impossible.

- Irrigation water was not available to the area from SID until September 1913. (National Archives)
- Electricity to pump water uphill was not available until 1946. (Central Electric Cooperative records.)
- Swalley Irrigation District first delivered water to the subject site in 1968. (Swalley ID)
- The parcel was farmed sporadically for about a 28 year period only.
- Only one of the owners since 1905 farmed or irrigated the land.
- Most of the owners were not farmers.
- Only two owners attempted to grow hay on the site: the Barretts and an Aceti/Barrett partnership. Both the Barretts and Aceti gave up farming the site.
- The only crop attempted was orchard grass.
- No orchard grass crop was successful.
- There is no record that shows any other crop was ever grown on site.

2. **STATEMENT BY COLW, Page 1.** *"According to the Bulletin, 'the only thing standing in the way of the \$3.9 million project in late 1996 was a hay farmer, who demanded extensive mitigation from Deschutes County and the state of Oregon to permit the continued integrated use of his farm to grow irrigated crops, specifically grass hay. Negotiations with the hay farmer continued for weeks, then months. The hay farmer would not settle with the county until the Board of Commissioners agreed to ensure that even after a new highway access road crossed his hay farm, the hay farmer's irrigated cropland would continue to function as an integrated whole.'"*

RESPONSE: This strongly- worded ("demanded", "extensive") and totally irrelevant and uninformed statement is mean spirited and a personal attack on the Applicant. It is not credible or factual and does not address any relevant criteria in this application. It is COLW's words and is not attributed to any party in the overpass and road realignment project. COLW's purpose of writing it appears to be character assassination of the Applicant.

The characterization of the property as irrigated cropland and as a productive hay farm was addressed above and is a completely false description.

Although it is not relevant to any criteria in this Application, it is important to respond to the allegations from COLW, about events that transpired 20 years ago.

It appears that COLW is uninformed of the usual, long, step-by-step process by the land acquisition team and appraisers at ODOT in these situations in which ODOT needs private

property for a new overpass. And, the process the county goes through when it needs land for new roads or to realign roads is a complicated one with clear procedures. Private property owners cannot demand anything. It is not a simple process, but it is a process ODOT goes through regularly and that has many requirements and guidelines. It is a rare situation if all of the adverse effects to the property owners are anticipated by governmental bodies or that the first offer for purchase or mitigation for adverse effects is accepted.

COLW can try to characterize the Applicant as a dishonest, unreasonable, greedy person with this testimony, but the community knows otherwise. Aceti's actions over the past 20 years that he has lived in Deschutes County speak much louder than COLW's hurtful words.

He is well known and his generosity is appreciated in this community. He has an excellent reputation as a businessman and as a citizen. He conducts his business with huge cattle and hay ranches covering thousands of acres and hobby farmers with a few goats on one acre, with a handshake.

County Commissioner Linda Swearingen was quoted by the Bulletin news editor, Barney Lerten on July 20, 1997, "Aceti provided property to the north for the new Tumalo Road alignment." He did not receive any money for it, giving it to the county. There are many examples of Aceti's generosity to the community over the past 20 years that could be cited here, but this topic is not relevant to the Application.

However, one relevant example of his community mindedness and generosity is in the Application. **FIGURE 27. LETTER FROM DESCHUTES COUNTY RURAL FIRE PROTECTION DISTRICT #2 REGARDING OFFER OF LAND FOR NEW FIRE STATION** is a letter dated February 28, 2007 from Deschutes County Rural Fire Protection District #2 to Aceti. The letter is a response from the fire district to Aceti's offer to donate land for a new fire station on the subject property, due to its ideal location that could cut down response times in all directions. It is possible that the fire district may take Aceti up on his offer and one of the uses on the rezoned parcel would be a fire station.

During the six years that ODOT and the county were planning and budgeting for the Deschutes Junction Overpass, the Applicant lived in Christmas Valley. He had no awareness of the transportation project planning for Deschutes Junction going on in Deschutes County. Nor did he know about the project when he was looking for property to buy in Deschutes County in 1995.

In April 1995 he entered into a purchase agreement with the Barretts and immediately turned his attention to relocating his business and moving flatbed trucks, trailers and high production farm equipment from Christmas Valley, designing barns and applying for permits to build two large barns on site for his hay brokerage business. He completed the barn that sits at the northern edge of the property in 1995. He applied for permits for the second barn close by and south of it, so that they could share hay moving and stacking equipment and an internal road system. He was awarded the permit for the second barn in 1996.

Very soon after he received the second building permit, but before construction commenced, he was notified about the proposed overpass and the approach to it that would cross his property, in the exact location of the second barn.

While Aceti's attention was focused on designing barns, getting the permits and in barn building, the Barretts noticed Aceti's the specialized farm equipment and hay trucks that he was moving

onto the property. They hadn't farmed the subject parcel or the parcels to the southwest in a few years, and were interested in rehabilitating and replanting 161227D tax lot 1100 and starting over on the subject site. They had been running calves seasonally on their land instead of growing orchard grass for some time and the cattle had compacted the soil and they would have to start over. Aceti's equipment offered them the opportunity to rehabilitate their fields without leasing equipment. The Barrett brothers and Aceti agreed that the Barretts would use Aceti's tractor and farming equipment in return for the Barrett's assistance in putting in a crop on a portion of the land they were selling to him. As was stated on the previous page, the effort was not successful. The Barretts never used their wheel line again and later it was sold to the buyers of tax lot 1100.

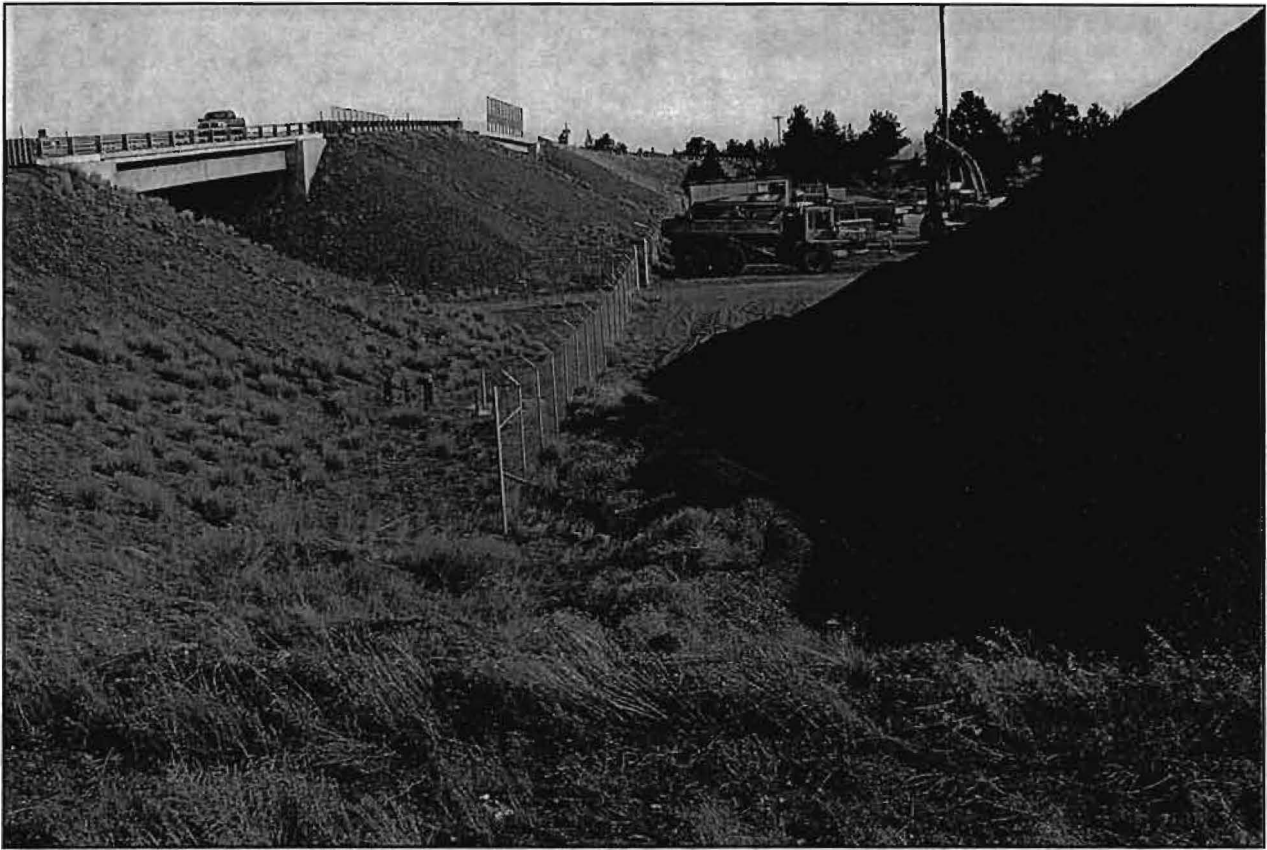
After it was apparent that the parcel was not suitable for farming, Aceti used some of the Barrett's aluminum irrigation pipes three times for dust abatement during fall fund raisers that he initiated and organized that raised tens of thousands of dollars for local non-profit organizations. The festivals included creating a 100-ton hay maize and a haunted hay stack from the tons of hay in his barn following the year's harvest. (The hay was not grown on site.) The first event was to raise funds for the Red Cross for the victims of the 9-11 tragedy in New York City. The following year the proceeds went to support the local Bend-La Pine Hospice program. A third fundraiser the next year raised thousands of dollars for the Bend Chapter of the Boys and Girls Club. The water for dust abatement did not come from SID. It came from the fire hydrants on site.

Other than his experience in getting building permits, Aceti's knowledge of transportation planning, condemnation of private land and land use planning was nearly zero. The realignment and new overpass project was a joint project between the County and ODOT. There were various departments in ODOT and in the County as well as attorneys and independent appraisers involved along with multiple staff members in each department. No one person was assigned to inform him of the project or the process or to negotiate with him.

On the other hand, ODOT and the County had focused on and negotiated with the owners of the Three Sisters Seventh Day Adventist Christian School next door and with the other owners of effected land on the east side and west side of the highway for several years during the long planning process. (The mitigation for the school impacts included building the sound wall along Tumalo Road and constructing a new entrance.)

Attorney Sharon Smith of Bryant Lovlien & Jarvis, P. C., represented both the County Public Works Department in its land use application to site the Deschutes Market Road Interchange and Cascade Pumice that owned the land on the east side of the highway that would be impacted by the project. She declared her conflict of interest, and the parties were agreeable to her involvement on both sides of the table. In her dual role, negotiations with Cascade Pumice began early in the project and were planned for in the budget. By spring of 1996, terms of the settlement with Cascade Pumice were spelled out and generally agreed to while Aceti was just being notified of the project.

While Aceti's attorney had to press hard to get a small 16' box culvert to allow a connection between his northern portion and southern portion of his property to connect his two barns after the overpass was built, Cascade Pumice got a generous settlement that included frontage roads and a bridge.



Bridge built to provide internal road under the overpass across private property on the east side of US Highway 97 as part of the mitigation with Cascade Pumice for the Deschutes Junction Overpass project.



Small 16' box culvert built to allow internal road across the Aceti-Barrett private property on the west side of US Highway 97 as part of mitigation for the Deschutes Junction Overpass project. Photo repeated from Application

Aceti faced the task of learning about the project's location, design and impacts. It had many facets, several County road realignments, a new road called Tumalo Place, and the new ODOT overpass and on and off ramps that would be located on his property. He began to understand the project's adverse effects on his business.

His biggest concern was in how he would get 90-foot long, hay trucks into both the northern and southern portions of his property safely for loading and unloading tons of hay and how the trucks and other necessary vehicles and farm and hay moving equipment could be moved between his barns, if one was on the northern portion of the property and the other was on the southern portion, separated by an approach to an overpass over a 4-lane highway.

In order to consider possible mitigation for the project to keep an appropriate internal transportation connection across the approach to the overpass that would bisect his land, he reached out for expert help. He hired two attorneys in Redmond and Portland in succession. Each one had different ideas and different styles that did not match his own person-to-person, collaborative style. He soon discovered that being represented by attorneys meant that he could not talk directly to ODOT or the County staff and representatives.

It was not until he ended his legal representation that the BOCC decided to communicate with him directly, themselves, and progress was made. As Commissioner Linda Swearingen was quoted in the Bulletin, at the announcement of the settlement with Aceti in 1997, "What got us in trouble was, public safety was our No. 1 concern, so we didn't have the time to work out the

details with Mr. Aceti before the project began.” She continued, “What frustrates me about these cases is, the only person who has ever won is the attorneys – not the public and not the private property owner.” “I hope every elected and appointed official would treat people how they would like to be treated.” “Too often we get caught up in the vision and the mission that we forget. It might hurt to hear it, but now and then, we need the Tony Acetis to keep us honest.”

Aceti was quoted by the Bulletin as saying, “If there had been more communication from the very beginning, this thing would have been settled a long time ago, and at a lot less cost to the taxpayer.

As it happened, the impacts to the property and to Aceti’s business were discussed among the parties, ODOT, the BOCC and the owners. Further complicating the situation, the Barretts had an ownership interest in the property and were involved in the negotiations. If Aceti had decided to not go ahead with the purchase of the parcel, the land would again be for sale and they wanted to have the best situation and be in the position to get the best deal that they could if that happened. The Barretts had previously declined an offer from ODOT to purchase the entire parcel at half the price that Aceti paid for it. Aceti’s attorney said several times at meetings that he did not represent the Barretts and clarified that the Barretts and Aceti had different points of view on the situation and different impacts.

Rezoning the property from EFU to Rural Service Center or Rural Industrial was discussed at length in county meetings and the BOCC agreed that it was appropriate to rezone the property to a non-agricultural zone at that time. However, as the talks progressed, the county’s planning director staff told Senator Ben Westland that contract zoning is not allow-* and the zoning could not be changed through a deed or Settlement Agreement and it must go through a land use application process. However, the county told Aceti he must apply for it and he would likely have to contract for legal help to complete the application. The county attorney did write in the settlement agreement (See **EXHIBIT 18**) (item 9. I) **SETTLEMENT AGREEMENT BETWEEN ACETI AND DESCHUTES COUNTY**

“Subject to paragraph 12 hereof, Public Works agrees not to oppose a subsequent comprehensive plan change or rezoning of the Aceti property from EFU to rural service center, rural industrial, or other similar plan or zone designation.”

This agreement was signed by the chair of the BOCC, Nancy Pope Schlangen on May 14, 1997 and by the three owners at the time, Anthony J. Aceti, Bruce G. Barrett and Gary W. Barrett.

The Cascade Pumice property across the highway was rezoned from EFU to RI the year after their settlement. The same rezone was anticipated for the subject parcel.

It became clear to Aceti and the Barretts that the overpass would be a tall barrier between the two portions of the property bisected by the new overpass approach on Tumalo Road. In order to allow a transportation connection between his barns and the circulation on his property, Aceti would need something like the bridge under the overpass approach on the east side of the highway that Cascade Pumice was awarded. ODOT did not want to spend the same money for mitigation and construction of the bridge that they did on the east side of 5209641 the highway, so it offered the 16’ box culvert and the three turn lanes and entrances into Hay Depot property. The turn lanes would be adequate for 90-foot long hay trucks. The turn lanes are of course owned by the public, but return the County road access to the property that was there previously. The resulting mitigation was moderate, inexpensive and reasonable.

The negotiations with Aceti took about a year, but were played up in the press. Oddly, the settlement with Aceti was never compared to the settlement across the highway with Cascade Pumice.

In hindsight, the parties acknowledge that negotiations with Aceti were overlooked by the County and ODOT until the last minute. He was a new owner and a new resident of the county and had not been informed or included in information during the several years that the other parties had been involved. Aceti's negotiations were rushed and compressed in time at the end of the planning period while communication with and negotiations with the other parties and neighbors had started years earlier when the location of the overpass was still being considered. The negotiations with Aceti took far less time than negotiations with the owners of the other parcels. The difference was that identifying adverse effects from the project and negotiating his mitigation were overlooked until the last minute when the project was nearing the construction phase.

4. **STATEMENT BY COLW, Page 1.** *The hay farm had been in use for irrigated agriculture since approximately 1905. The hay farm was irrigated with a single wheel line, but after the property was bisected, the property would need another wheel line or a hand line, according to the hay farmer who, along with his family, had been irrigating the property since the 1950's.*

RESPONSE: The Borine Study shows that even if the subject site could be irrigated today, the irrigated soils would still not be classified as Agricultural soils. See **EXHIBIT 14, MAY 8, 2012 AGRICULTURAL SOILS CAPABILITY ASSESSMENT, ROGER BORINE, SAGE WEST, LLC, 46 PAGES.** Borine's conclusion states:

"Conclusion:

The purpose for this study was to conduct an inventory and assessment of the soil resource and specifically the extent of agricultural land as defined in Oregon Administrative Rules (OAR) 660-033 Agricultural Land for this 21.6 acre parcel.

The inventory and analysis of this parcel in T16S, R12E, Section 26 tax lot 201 and Section 27 tax lot 104 determined that approximately 80% (17.2 acres) is Land Capability Class 7 and 8 soils; and 20% (4.3 acres) is Land Capability Class 3-6 soils. The parcel as defined is not predominantly Agricultural Land.

Further, together with the LCC soil ratings as non-agricultural soils, the determination of suitability for farm use is "generally unsuitable" for the production of farm crops, livestock or merchantable tree species based upon low fertility, limited soil depth for cultivation and ability to store and hold water, lack of forage production for livestock grazing, limited length of growing season and high levels of energy input with limited outcome.

Table 3: Summary of LCC, acreages and percentages for revised soil mapping units

Symbol	Revised Map Units	Soil	LCC NIRR	LCC IRR	TL 104 (1.3 ac)		TL 201 (20.3 ac)		TL 104 + 201 (21.6 ac)	
					ac	%	ac	%	ac	%
A	<i>Deskamp loamy sand, 0-3% slopes</i>	<i>Deskamp</i>	6	3	-	-	1.7	8	1.7	8
B	<i>Gosney, deep-Deskamp complex, 0-8% slopes</i>	<i>Gosney, deep</i>	6	6	-	-	2.6	13	2.6	12
		<i>Deskamp</i>	6	3						
C	<i>Gosney-Zeta complex, 0-3% slopes</i>	<i>Gosney</i>	7	7	0.2	15	12.6	62	12.7	59
		<i>Zeta</i>	7	7						
D	<i>Urban Land</i>	-	8	8	1.1	85	3.4	17	4.5	21

Furthermore, Borine states,

“This parcel requires technology and energy inputs over and above that considered acceptable farming practices in this region. Excessive fertilization and soil amendments; very frequent irrigation applications pumped from a pond with limited availability; and marginal climatic conditions restrict cropping alternatives.”

As previously corrected in the response, the subject site was not irrigated until 1968.

COLW's term "Irrigated agriculture" conjures up the image of a healthy, lush orchard, vineyard or field with water being sprinkled on deep, productive soils. The erroneous image is misleading and is only wishful thinking and is not backed up by any facts. The image of generation so of farmers is not true. The statement of generations of owners farming the property is not true.

The wheel lines belonged to the Barretts and it is true that they would not work after the overpass was built. This was one of the Barrett Brother's concerns and an adverse effect of the overpass project that they wanted to have mitigated.

Aceti never irrigated the property. He bought it in 1995. His parents were deceased before he moved to Deschutes County. COLW is likely confusing the Applicant with the previous owners, the Barrett Brothers, Bruce and Gary. The Barretts had an ownership interest in the land at the time of the negotiations with the county and ODOT and were outspoken at that time, were involved in the terms of mitigation, and signed the Settlement Agreement. Many of the terms that the COLW is belittling and criticizing without cause, came from the Barretts and the other parties to the negotiations. It is wrong to criticize the Applicant and other parties involved in the project 20 years later, especially without having the facts or understanding the situation twenty years ago.

The Barretts are no longer owners and are not a part of this Application. The Applicant bought the property on contract from the Barretts in 1995. Previous to that he lived and worked in Christmas Valley.

No owner since 1902, including the Barretts, would characterize the 19 acre unproductive parcel as a "hay farm".

See the testimony from cattle rancher Carl Juhl (who would not run his cattle there), Rod Fraley, Jim Lawrence (owner of the 4.15 acre tax lot 161226C000200 directly south of the subject site), Dean Pettijean (a contract hay farmer), Harry and Bev Fagan (owners of the RC parcel directly north of the subject site), Ron Robinson (owner of a RI parcel at Deschutes Junction), Judd Wierbach (a contract farmer who lives in the area and would not farm the subject site for any amount of money), Leslie Bangert, Steve Mulkey, Ed Galazzo and Jack Holt (who owns the Used Cow Lot a half mile to the northeast of the subject site and east of the railroad tracks and

responded to this COLW testimony). All of those people told the Hearings Officer that the parcel is miss-zoned and unsuitable for farming or grazing. Former owner Jim Lawrence, said it is about time the property was rezoned. The EFU zoning is inappropriate. His family could not find a use for the unfarmable parcel and sold it within a month of the purchase. They retained the parcel to the south with the irrigation pond that was rendered inoperable by the ODOT highway widening project in 1991/92.

The Hearings Officer considered their testimony in her decision. Several of them are ranchers, farmers and contract farmers and described the property as unsuitable for grazing of livestock and farming, due to its location at the busy intersection, being surrounded by non-farm uses, the commercial and industrial uses immediately north and east of the site, the expense and difficulty in using any irrigation devices if the water could be delivered to the site at all, the high noise level that adversely effects livestock, poor soils, exposed rock flows, the parcel's small size that lacks economy of scale, its triangular and irregular shapes and being bisected by the busy overpass and being bordered by major county roads and a state highway on three sides.

ODOT's list of considerations to mitigate the loss of the use of the Barrett's wheel line is below. The solutions came from Thompson Pump and Irrigation to ODOT, at ODOT's request. See **FIGURE 17. THOMPSON PUMP & IRRIGATION, INC. LETTER** in the Application. The September 20, 1996 Thompson Pump Letter was requested by ODOT. The letter was addressed to ODOT and is an objective description of the project's impacts on the wheel line and the cost of each solution. It shows that COLW's sarcasm is not warranted. The irrigation company studied the situation and wrote the letter. They also noted the lack of easement to allow Aceti to bring water across other properties to the site after interviewing Ross, the SID the ditch rider and talking to the owners of the neighboring parcels, the Barretts,. Thompson described the project's impacts to the irrigation system on the subject property and possible solutions and their costs. The request from ODOT to Thompson Irrigation regarding mitigation options for the Aceti/Barrett property and the from Thompson Pump and Irrigation follow:

Sept - 15 - 96

ACETI/BARR

ITEMS TO BE CONSIDERED:

- With the roadway construction, the property will be separated into two parcels with access to either parcel along the west end of the roadway, plus there will be the existing access to the hay storage barn from Tumalo Road. (see attached map)
- Can the current irrigation system be modified to water two separate parcels? If so, please outline how this could be done and the cost to modify the existing system. The modified system needs to be similar to what's there now, if possible, and not more labor intensive (like going from wheel lines to hand lines), if possible.
- To maintain the current mainline set-up, a pipe could be constructed under the new roadway and then the mainline pipe run through this. Is there a point along the new roadway where the pipe would work best? Would more than one pipe be necessary and if so, where?
- The irrigation equipment is owned by the Barretts and they are irrigating the property. If, after the roadway construction is completed, the Barretts elect not to irrigate the property and Aceti assumes that task, what would a similar system (new or used) cost Aceti using your proposed modification to the existing system?
- Please outline how the water would be delivered to Aceti's property from the canal/headgate assuming he would not have use of Barrett's pond, mainline, and did not have access over Barrett's property to deliver the water to his property and include the cost of the equipment from the canal/headgate to deliver the water to his property. Please contact Todd or Ross (ditchrider) at Swalley Irrigation District, 388-0658, for information on how the water is delivered to the property and how it might be delivered if not able to continue delivery through Barrett's property.

9-15-96

Toddy - contact
382-7616
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Linda Drake
Right of Way Agent



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Oregon Department of Transportation

ACETI/BARRETT IRRIGATION SYSTEM

ITEMS TO BE CONSIDERED:

* Irrigation system can be modified to water in two separate parcels. The main line would have to be extended approximately 700' north. The use of wheel lines would be pretty much prohibited because of the shape of the fields. First the use of hand lines would be the most economical. The cost to add mainline and hand line would be approximately \$8,000.00. If hand lines are not suitable either a hose traveler, cost approx. \$21,000 plus new pump station or solid set fields with hand line at a cost of \$40,250. The last two prices of equipment would not show a profitable return for those small parcels of land and the type of crops grown in the area.

* The best place to run pipe under roadway is the east side of the field where the main line run now. It may also be a benefit to run a pipe under west side of field. In either case, this is not a very big expense if done when the roadway is constructed.

* To replace irrigation equipment that presently is in field and hand line equipment without pump station is approximately \$13,000.00 new and used runs about \$9000.00-10,000.

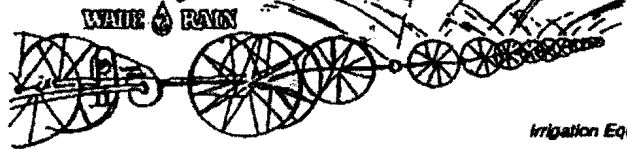
* The only way water can be delivered to Aceti's property according to Ross, ditch rider, at Swalley Irrigation is across Mr Barrett's property via one of 2 options:

1. Divert the water out of a ditch behind Barret's barn into a buried pipe across Mr Barrett's property to the S.W. corner of Aceti's property where Mr. Aceti could build a pond and install a pump station estimated cost of \$70,000-\$80,000.
2. Aceti could install his own pump station at Mr Barrett's pond and bury a supply line to the SW corner of Mr Aceti's property estimated cost \$90,000-\$100,000.00.

Mr. Barrett is willing to give easement for option # 2 but at present time is against giving easement for option # 1.

Prepared by Greg A. Smith

cc: to Barrett/Aceti/Drake



SINCE 1964

Pumps: JACUZZI GOULD
BERKELEY CORNELL

Irrigation Equipment: WADE RAIN CROWN AM
RAIN BIRD GHEEN TRAVIS

5. STATEMENT BY COLW, Page 2. *The hay farmer's demands to the Deschutes County Board of Commissioners included mitigation for the cost of revising the irrigation system and multiple other costly elements, as explained in contemporaneous Deschutes County records, ...*

RESPONSE: COLW does not say which criterion they think each of these opinions addresses or how they are relevant to the Application. COLW seems to be uniformed and misguided in its approach to this testimony. It unilaterally, in hindsight, and by using Bulletin articles and purportedly some old county records, sets itself up as a judge of the 20 year old settlement agreement among many parties. This is inappropriate, unfair and unkind. It is irrelevant to this Application. Is using the term "hay farmer" supposed to be demeaning? What is the purpose of the name calling? Using the person's name would help sort out COLW's comments about the Barretts and the Applicant.

The settlement agreement was appropriate. Again, COLW lumps the issues of the three owners together and tries to denigrate the Applicant for something it does not know about. See the responses above to COLW's rewriting of history and the erroneous image of irrigation and farming on this site.

Bisecting an already small, irregularly shaped parcel has significant impacts on the inability to continue to use of the Barrett's wheel line. It alludes to "other costly elements" to portray the three owners in a bad light, much different than they really were. The actual settlement with the Barretts and Aceti was not "costly" and all parties including the BOCC (who were watching the project budget) thought it was reasonable and fair and agreed to it. COLW is editorializing, which is inappropriate.

6. STATEMENT BY COLW, Page 2: *7) provide a culvert pipe under the existing Tumalo Road and under the relocated road at no cost to the hay farmer to accommodate extension of water lines and related utilities and revise the then-existing irrigation system to defray the costs of "tapping into the existing water line and running said line in the culvert to the hay farm's northern boundary." See (COLW's) Figure 5 showing irrigation wheel lines at the northern boundary of the subject property."*

RESPONSE: COLW does not tell us how this is relevant or which criterion it is addressing. COLW is ignorant of the many water issues at that time of the transportation project that were discussed and decided twenty years ago. COLW confuses domestic water and irrigation water and lumps them together in this paragraph.

Aceti was thinking ahead and wanted to prevent the new Tumalo Place on and off ramps and road connecting to the newly realigned Tumalo Road from being dug up shortly after it was constructed. He knew that Avion would need to bring domestic water into and across his property to serve the area in the near future. The Avion water line was on the north side of Tumalo Place so the road would have to be dug up to bring the water across the road to the south side of Tumalo Place. The same idea to prevent future damage to the new roads was implemented for the overpass approach. To prevent digging the new overpass up when the domestic water was extended south of the overpass, the same thought applied there.

Therefore, in cooperation among Aceti, Avion and the County, the domestic water pipes were installed under the roads during construction of the overpass. His planning ahead saved thousands of dollars later and prevented the road from being dug up and patched.

The forethought payed off quickly. In 1996, the County CDD required Aceti to apply for a conditional use permit (CUP) to run the Hay Depot business because he was custom farming, buying and selling hay in Deschutes, Lake, Klamath, Jefferson, Crook, Morrow and Marion Counties. He applied for the CUP and as a condition of approval, the county hearings officer required Aceti to install fire hydrants and extend the 12" water line to the barn. Avion required the water line to be extended for the length of his property, and go under Tumalo Road. Private Contractor Waldron and Sons, Inc. was hired by Aceti costing approximately \$35,000 to install the 12" water line and two fire hydrants. The total project cost of the pipes and in bringing the domestic water to his property cost Aceti \$80,000. Aceti paid for the pipes and installation, but the domestic line and fire hydrants remains the property of Avion and others can connect to and use it. The plan to cross under the two roads before they were built payed off for all parties. It also resulted in a 20-foot wide easement to Avion for the length of his property and in two fire hydrants being on site today. This had nothing to do with wheel lines.

On a related topic, with approval of the County, Aceti had a contractor bury three pipes west of the 12-inch diameter Avion pipe under Tumalo Road, as it was being built. The three pipes are for future uses so the road would not have to be dug up when the property and surrounding properties are urbanized. The county gave Aceti easements for one 12-inch and two 4-inch diameter pipes for future utilities to run under the approach to the overpass.

- 7. STATEMENT BY COLW, Page 2:** *"The farmer demanded these mitigation elements not only to mitigate for changes to operation of the hay farm as irrigated cropland, but also to mitigate for speculative harm for speculative future use of the subject property for livestock grazing."*

RESPONSE: As discussed before, COLW uses "farmer" for some derogatory effect unknown to us instead of a person's name. COLW uses strong words like "demanded" for an emotional effect on the reader. The argument is not relevant or accurate. COLW does not give evidence for its speculative arguments based on wrong assumptions and a rewrite of history and does not tie any of its opinions and stories to the criteria.

The Applicant did not and does not own "irrigated cropland". That is a complete and unprofessional mischaracterization of the land. The property was not a hay farm. It was a site for the hay brokerage and custom haying business called the Hay Depot. Aceti never planned to graze cattle and never discussed anything about cattle grazing with the parties. That was not his business. COLW misattributes and misunderstands comments by the Barretts, who did occasionally run calves on the site seasonally prior to Aceti's ownership.

- 8. STATEMENT BY COLW, Page 2:** *After months of negotiations the county agreed to pay over \$110,000 in mitigation investments to ensure the hay farm could continue to function as an integrated unit even after a highway access road separated the northern end of the hay farm from the southern end of the hay farm.*

RESPONSE: Again, COLW is giving an uninformed opinion and that is not helpful. COLW is trying to demonize the Applicant by using unnecessarily strong rhetoric where it is inappropriate to do so. COLW again misunderstands the process, facts or the issues. She has converted the amount of some money for an unknown use or purpose to today's dollars. Why? It is unclear what she is talking about. Is her point that the owners should have not received any mitigation or payment for the loss of land and the adverse effects of the project? Is it relevant to this application? No. Does it address any relevant criteria? No. Does her opinion matter? No. Aceti is a hay farmer and a hay broker. He is proud of that, not ashamed of it, and knows his agribusiness is critical to Central Oregon. But, the subject site is not a "hay farm".

In 1996, the Barretts wanted to preserve their ability to use the nonproductive land seasonally to run calves from the Hershey's Cattle Company for a few months each year. They would need a way for the calves to move under the approach to the overpass, if Aceti did not complete the purchase of the property and they were to continue as the owners. They needed an undercrossing that would not spook cattle and would allow farm trucks to pass under the new overpass approach.

On the other hand, the Applicant was not interested in running calves on the land. He had other plans for the business that he had moved to the parcel from Christmas Valley and had just invested a significant amount of money to buy the land and to build the first huge barn. His concern was how he was going to move equipment and trucks between his barns if one barn was on the north side of the overpass approach and the other was on the south side. A loaded 90 foot hay truck that is hauling 30 tons of hay would be a tight fit through a 16-foot square box culvert. The County and Aceti decided on two turn lanes into driveways opposite one another on the west end of the overpass approach to help solve that problem and offered a third turn lane and driveway off Tumalo Place to allow some hay trucks to turn into the property near the northern barn.

This topic is discussed in the Application under **SECTION 11. TRANSPORTATION FACILITIES AND ROADS SERVING THE PROPERTY**. This item in the settlement agreement was cost effective and necessary, when compared to the full bridge built for the same reason for Cascade Pumice.

9. STATEMENT BY COLW, Page 3: *COLW calls the "property" a "hay farm".*

RESPONSE: The 21.59 acre parcel that was overlooked for cultivation for 68 years because it was not worthwhile, has 16 acres of water rights and no way to deliver water to irrigate it, and that is comprised of rock and soils that are not classified as resource soils, and has not been used to grow any crop for nearly 20 years, and was used sporadically only for 29 years as part of a larger ranch, and that yields hay by the pickup truck loads instead of farm truck loads, and that requires technology and energy inputs over and above that considered acceptable farming practices in this region and excessive fertilization and soil amendments; very frequent irrigation applications pumped from a pond with limited availability; and marginal climatic conditions that restrict cropping alternatives, among other reasons, is not a "hay farm".

COLW may be making a misguided attempt to preserve what it imagines is a large parcel of productive prime farm land. Preserving prime farm land is important to everyone. However, you can't make a silk purse out of a sow's ear, the idiom goes. That saying applies well here.

Aceti's land never was prime farm land and never will be prime farm land. It does not even meet the definition of agricultural land, as found by the hearings officer and soil scientist.

10. STATEMENT BY COLW, Page 3: *Except for the bisection of the property by the new road, the circumstances on and around the subject property remained unchanged, as can be seen by comparing (COLW's) Figure 1, a recent aerial photograph, with (COLW's) Figure 2, a 1995 aerial photograph. There is no visible change in road networks, surrounding land uses, or any other feature. There is no evidence that anything about the land itself, including its soils, have changed: it remains the same land used by successive generations of farmers beginning in 1905 for irrigated agriculture.*

RESPONSE: Taking the last line first, see the previous detailed Responses #1 and # 2 to the false statement that the parcel has been farmed for irrigated agriculture continuously by generations of farmers since 1905. 1968 is the beginning date of attempts to irrigate and farm this parcel. It was unsuccessfully farmed for a low value crop sporadically for only 29 years. See Responses #1 and #2.

Roger Borine described the scraping of the soils on this parcel. The rocky shallow soils and rock flows never were good for farming. Not all of the parcel was ever cleared or cultivated and not all of it has irrigation water rights. The soil was always more shallow than the length of the blades of farming equipment. Soil was scraped in an attempt to allow equipment to cultivate it, but failed. Borine's discussion of this fact is on page 4 of the Soils Report.

As described fully in the application section 13, Changes in Circumstances, the following is a summary of the significant changes since 1991. The event in 1991 had the significant effect on the subject site in that it had a domino effect that led to the loss of the ability to deliver irrigation water to the Subject Site when the Barretts sold their property south of the Three Sisters Seventh Day Adventist Christian School called Tax Lot 161227D001100. That happened after Aceti purchased his parcel from the Barretts.

FIGURE 19. SUMMARY OF KEY IMPACTS AND CHANGE IN CIRCUMSTANCES TO SUBJECT PARCELS BY DATE

1991 to 2014, Bruce Barrett and Anthony J. Aceti Ownership

	DATE	PARTY	Issue	Acreage
1	Feb. 15, 1991 Recorded on March 22, 1991	Barrett to ODOT	Sale of 35-feet of land on the west side of the state right-of-way to widen Highway 97. Loss of 75% of the size of the "Lawrence" Irrigation Pond south of the subject site, the source of irrigation water for the subject site. ODOT pays for a new pond on Half	Loss of 1.18 acres

			Mile Lane, the "Barrett" Pond.	
2	April 10, 1995	Aceti to Barrett	40-foot easement along western property line for egress and ingress to tax lot 161227D 001100	Loss of use of 1.23 acres
3	April 1995	Deschutes County to Aceti	Approval of application to build a 20,000 square foot barn on NW corner of property.	Barn constructed in 1995.
4	1996	Deschutes County to Aceti	Approval of permit 247-AG 9670 to build a second barn on property in location of proposed overpass. Barn was to be 100 x 200 feet/30 feet tall.	Second barn could not be built in selected and approved location and has not been built. Reserved right to build it in a different location.
5	Nov 6, 1997	CU-97-72/SP-97-49	Conditions of approval included requirements that took land out of farming, changed the internal shape of the farm parcel and reduced farming efficiency by designating acreage for customer parking and loading and a designated place to maneuver and store equipment.	Loss of use of land in new 20-foot wide easement for length of property for 12-inch water line and fire hydrants. Loss of farmable land for acreage needed to maneuver fire apparatus.
6	Circa 1998	County changes zoning of Cascade Pumice from EFU to RI	Approximately 6 acres on east of US Highway 97	
7	June 6, 1998	Aceti to Deschutes County	15 feet of right-of-way dedication for Tumalo Place along northerly property line for 997.75 feet	Loss of 0.34 acre
8	1998	Loss of ability to have a farm dwelling due to reduced parcel size.		
9	1998	New transportation system across and around parcels.	Dramatically increased traffic volumes and noise.	

10	1998	Construction of New Overpass at Deschutes Junction	Loss of scenic view with overpass approach bisecting property	
11	July 6, 1998	Seventh-Day Adventists to ODOT to Aceti	Remnant land at northwest corner of	Increase of 1.32 acre Creation of new parcel in NW corner, identified as 161227D000104.
12	July 23, 1998	Aceti to ODOT	Land for Right of Way for new Overpass	Loss of 2.33 acres and loss of water rights to that acreage.
13	December 5, 1998	ODOT	Completed construction of new overpass across Aceti Property.	
14	1998	Construction of Tumalo Place resulted in a new "T" intersection at Tumalo Place and Tumalo Road and new on and off ramps at the highway.	Changed northern boundary of property, created a left turn lane into subject property, reduced size of 161226C000201 parcel by 0.34 acre, size, added 1.32 acre new lot 161227D000104. The design created future capacity and safety problems at the new intersection.	Net 0.96 increase Vehicles run though his fence into the corner and gates near the barn. The abrupt on and off ramps at Tumalo Place and the highway results in many vehicles running through the Aceti fence to his property at the northeast corner.
15	1999 to present		Overpass has brought in noxious weeds to Aceti property. Property damage to fences due to new roadways. Added trash and trespassing due to exposure for all new roadways.	Prevailing winds blow weed seeds from travelers using overpass to take loads to Deschutes County Landfill. There were no noxious weeds prior to the overpass and the south side remains noxious weed free. Aceti needs to regularly spray weeds on north portion of his property.
16	1999		Commuters between Redmond and jobs at Bend Airport, St. Charles Hospital and The Forum Mall and trucks bypassing	Accidents decrease at Deschutes Junction and increase at Gift Road. Pleasant Ridge Road intersection with

			Bend Parkway use Pleasant Ridge Road instead of Deschutes Junction Overpass	Highway 97.
17	1999	Deschutes County to Aceti	Conditional Approval of Conditional Use Permit for Processing of Hay on site.	
18	1999	Deschutes County to Aceti	Approval to add 3,460 square foot office and loading dock to existing barn	
19	December 27, 2000	County	Aceti Book 2001, page 3070	Unrestricted use easements for egress and ingress through underpass.
20	May 4, 2001	Aceti to ODOT	Land for south bound Turn Lane from US Highway 97 Right-of-Way	Loss of 0.05 acre
21	May 4, 2001	Aceti to ODOT	Land for south bound on ramp to US Highway 97 Right- of-Way	Loss of 0.04 acres
22	2001	Private Contractor (Waldron and Sons, Inc.) hired by Aceti costing approximately \$35,000	Constructed 12-inch water line for 1341 feet from the northern property line at Tumalo Road to the southern Property line and installation of two fire hydrants.	Creation of 20-foot easement and loss of ability to use the land in the easement. Loss of use of
23	March 5, 2002	Aceti to Avion	20-foot wide easement 1341 feet north-south through property for Avion to maintain a 12-inch wide domestic water line.	Loss of use of 0.62 acre
24	2008	4 R Equipment LLC, Robinson, locates to Deschutes Junction on east side of Highway 97	Increased large truck use of interchange and intersection	Increased noise
25	2011	Completion of Phase II of Overpass connection to Deschutes Market Road.	ODOT and County Close Intersection of Pleasant Ridge Road and Highway 97	Traffic now uses Deschutes Junction Overpass resulting in increased traffic volumes during daily

				commutes.
26	Aug 6, 2012	County Comp Plan Ordinance 2012-005, Appendix "C"	Page 144 of 268 adds Deschutes Junction Frontage Road and/or Interchange upgrade to TSP	Frontage road would be on the west side of Highway 97, north of Aceti's property and connect into the current interchange.
27	20125	County rezones Robinson property from EFU to RI PA 97-9/ZC-98	West of canal and east of Highway 97, adjacent property to Aceti's property	
28	2015	County PA 14-2 and ZC 14-2 rezones 161226C000107	Rezone of adjacent parcel to east, 2.67 Acres from EFU-TRB to RI	9.05 acre property directly on east side of Aceti's property is now zoned Rural Industrial.

As Figure 19 shows, there were numerous significant changes to the size and shape of the property and to the transportation network and traffic volumes during the past 20 years.

On pages 26, 27 and 28, the Hearing Officer in her September 30, 2015 decision lists 25 changes in circumstances. They are copied as follows:

"1. The average parcel size within a mile of the subject property has been reduced from 80 acres to 5 acres.

2. Deschutes County GIS Analyst Programmer Tim Berg states, "In the "Deschutes Junction Vicinity there are 1,756 platted lots; 339 buildable lots which was a 20% increase in two years; 9 lots built-out for industrial and commercial uses; 1,417 residential built-out lots; and there are five different zones in the vicinity." More residential lots and rural subdivisions with lots to less than ¼ acre in size are within two miles.

3. The adjacent parcel 161226C000107 was rezoned Rural Industrial in 2014.

4. A portion of Nichols Market Road, now called Tumalo Place, has been realigned and reconstructed as on and off ramps to the south-bound US Highway 97. Its realignment required the "taking" of land from the Applicant, reducing his parcel size and adding traffic adjacent to his property. The southern right-of-way of Tumalo Place forms the northern property line of the Applicant's property. The Applicant's property was "dog-eared" at the south-bound on-ramp.

5. Aceti's Hay Depot business is the last commercial agricultural business that provides the primary income for the owner in the vicinity. Due to changes in the hay market, the reduction in livestock being raised in the county and the reduction in parcel sizes throughout the area, the business is no longer viable. The area is shifting to a tourism/retirement based business.

6. The Deschutes Junction US Highway 97 Overpass western approach was constructed across the Applicant's land, bisecting it into two irregularly shaped portions, that made irrigation impossible and farming more difficult.

7. No longer can anyone see across the overpass approach from one side of the parcel to the other.

8. The land has not been irrigated since the overpass was constructed and cut through the established irrigation system.

9. The overpass construction reduced the parcel size and thereby removed the owner's ability to qualify for a farm dwelling.

10. Three paved dedicated turn lanes and three 120 foot long driveways that accommodate hay trucks were constructed into the parcel from the new roads. One entrance is from Tumalo Place and two entrances are from Tumalo Road.

11. To partially address the lack of connectivity between the newly created northern and southern portions of the parcel, a 16 x 16-foot concrete tunnel was designed and constructed through the underpass approach for trucks, farm vehicles and livestock.

12. On January 22, 2001, an "unrestricted use easement", water line easement and an underground utility easement were granted by Deschutes County to Aceti in perpetuity for future development.

13. Aceti paid for a new 12-inch-diameter Avion domestic water line to be brought from Tumalo Place through his land to the southern property line. He installed two fire hydrants, one in each portion of the parcel.

14. Tax lot 161227D000104 was created with remnant land at the end of the on and off ramp and overpass construction. It was deeded to the Applicant as a partial settlement for land lost to the new road right-of-ways. The lot allows for turn around and backing space to trucks to use his loading docks on the storage building.

15. The 1991 widening of US Highway 97 from two to four lanes took land from the subject parcel. It cut off the historic source of irrigation water from the Pilot Butte Canal and took 2/3 of the historic irrigation pond.

16. Aceti in 2003 attempted to build a new irrigation pond near the high point on his property. Using heavy equipment to dig it, the crews hit solid rock between the surface and four feet down. The attempt failed. During that process, the bulldozers dug about eight inches until they hit a solid lava flow slab. The meager soil was scraped and pushed up to form the brim of the pond, in order to create some depth to it. The applicant imported bentonite (an absorptive clay used as a sealant or filler) to make the base impermeable. But the shattered lava flow could not be sealed, and the process was abandoned.

17. The new overpass, the new south-bound on and off ramps to US Highway 97 and the reconfiguration of Tumalo Road, Deschutes Market Road and Pleasant Ridge Road and the changes in the irrigation water access points have resulted in an un-farmable property because of its lack of irrigation water, location, size, configuration and soils.

In 1996 ODOT requested mitigation for the loss of the irrigation system and secured a proposal from Thompson Pump and Irrigation. The Thompson Pump and Irrigation letter is Figure 17.

18. Aceti purchased and installed a water pump to draw water from the irrigation pond on Half Mile Road, filled with Swalley Irrigation System water. With cooperation from the owners of tax lot 161227D001100, the Applicant shared the water pipes on the neighboring property.

However, the current owners who are associated with the Seventh Day Adventist Church do not farm and do not use the irrigation system. They plan to use the 30 acres for recreational uses for the present school on the adjacent property, tax lot 161227D000100. Even with all the money spent and the effort made, due to the overpass, it is infeasible to irrigate the northern portion and therefore grow a crop on the northern portion of his property.

19. Rural and urban density residential subdivisions and commercial and industrial development in the area have resulted in a parcel that is nearly impossible to farm and irrevocably committed to urbanization. That action began with the platting of Centralo in 1911 and continues today. No parcel within a half mile of the subject site is being commercially farmed today.

20. The new Swalley Hydroelectric plant is south of Deschutes Junction, on the west side of US Highway 97. When the Applicant tried unsuccessfully to use his 19 acres of irrigation water rights, he put the water back into the Deschutes River through the Deschutes River Conservancy's In-Stream Leasing program. His annual Swalley Irrigation District bill dropped from \$1000 per year to \$300 per year. However, Swalley then piped much of its canal and constructed a hydroelectric plant upstream from the subject property. Swalley rescinded his annual in-stream lease because the irrigation water was needed to turn the turbine. His bill returned to \$1000 annually, even though he is not using the water and agreed to in-stream leasing. Swalley's new in-stream leasing policies only allow Aceti to lease the water to the Deschutes River Conservancy's in-stream leasing program once every five years, but the \$1000 per year assessment fees continue, even though he is not using the water. (See Figure 18.)"

21. Commercial, industrial, wholesale, and retail businesses now surround the property on its northern and eastern side and a school is on the western side. No one farms the 4 acre parcel with a rental house on the ridge at the southern end of his property.

22. ODOT and the County have been discussing and circulating designs to eliminate the unsafe intersection of US Highway 97 and Gift Road. The current proposed solution is to eliminate the intersection entirely and direct traffic to a new road paralleling the west side of the highway south to Tumalo Place, ending at the northern property line of the subject property.

23. ODOT and the County are circulating designs and discussing a diamond interchange at Deschutes Junction that will either be on the Applicant's property or just north of it.

24. The flowing table summarizes changes to the subject property and adjacent property since 1991."

25. On November 6, 1997 Hearings Officer Karen Green signed a conditional approval of a conditional use permit for the subject parcel. Many of her 3½ pages of conditions were urban in nature, adding to the urbanization of the parcel. They interfered with the ability of the Applicant to farm, took land out of the farm, and increased overhead so much that the hay farming operation became infeasible. The Applicant made many fire safety improvements. Many of them such as the "fire apparatus access roads" took more land out of farming. The most expensive was that he paid to bring the 12-inch diameter Avion water line from Tumalo Place into the property and the ditch was dug through the rock and the pipe was put in for the entire length of the property, north to south. This created a twenty-foot wide easement that could not be farmed or developed. Then he paid to install two fire hydrants surrounded by bollards, one on the northern portion and one at the southern end of the parcel. At that time, there only was one parcel, 161226C000201. The smaller parcel of remnant land from the road projects had not been created. How many farms in Deschutes County have 12-inch domestic water lines or two

fire hydrants on them? How many farmers have been required to make these urban types of improvements on EFU zoned land in order to store and sell hay?"

11. **STATEMENT BY COLW, Page 3:** *“As Figures 1 and 2 show, the surrounding lands are indistinguishable now from what they were in 1995 with the sole exception of the new road.”*

RESPONSE: It is not clear what COLW mean by “new road”. Is COLW only noticing one difference in a 20-year period that brought dozens of significant changes? Among other things that are obvious differences between the two photos that are observed in COLW’s Figure 2, the visible differences include:

- Tumalo Place, a new road, was created, took land from Aceti’s parcel and is a newly named road.
- Tumalo Road was significantly realigned and crossed the subject parcel at an angle. .
- Deschutes Market Road was realigned and it was ended west of the railroad tracks.
- The new on and off ramps on both the west and east sides of US Highway 97 were constructed.
- The Deschutes Market Overpass itself and its approaches and bridges and culverts were constructed.
- The extension of 19th Street was constructed to the newly realigned Deschutes Market Road.
- The entrance to the Three Sisters Seventh Day Adventist Christian School was moved.
- The school was expanded and new buildings were added. Soccer fields are constructed and irrigated.
- A new tax lot of 1.33 acres that was created from school land was transferred to Aceti when it ended up on the north side of Tumalo Road and was of no use to the school and is now used for trucks loading at his barn.
- Aceti’s barn is built.
- Three new turn lanes and access roads to Aceti’s property area clearly apparent.
- Aceti’s property has new fencing along the new roads.
- The irrigation wheel line on the subject property is not in the later photo.
- The new forth pond paid for by ODOT for the Barretts at Half Mile Lane is apparent, but empty
- Aceti’s new display area on the rock shelf in his northeast corner is visible in Figure 2.
- His attempt at a new irrigation pond on his property is evident.
- Hundreds of houses were built during the housing boom in subdivisions in the immediate area.
- 161227 D Tax lot 1100 is no longer cultivated or irrigated in Figure 2.
- 161226C tax Lot 200 is barren and unirrigated. In Figure 2.
- The subject parcel is barren and unirrigated in Figure 2.
- 78th Street has a new connection to the newly realigned Tumalo Road in Figure 2.
- A new entrance was created into the Fagan Property immediately north of the subject property.

12. **STATEMENT BY COLW, Page 4:** *“As we explain in detail below, the subject farm is unchanged from 1997 and 2002 with respect to suitability for farm or agricultural use. We urge the Board to find, as the County’s hearings officers did in both 1997 and 2002, that the entire property, connected as it is through the expensive box culvert, is agriculture*

“The subject property is suitable for farm used based on the seven factors of OAR 660-033-0020: soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices”

RESPONSE: COLW again is harping on a personal evaluation of the 1997 Settlement Agreement between Aceti, the Barrett Brothers and County BOCC. Again, COLW’s evaluation of the box culvert as “expensive” is not appropriate or accurate or relevant to this case.

As discussed in detail earlier, the parcel never was in “continued use” for irrigated hay production before or after Aceti bought it. The description is simply not accurate.

Additionally, it is inappropriate to go back to case files of old land use cases to determine the suitability of soils for agriculture when a better and more thorough soils analysis is in the current Application. Roger Borine, CPSC, CPSS, PWS, of Sage West, LLC submitted a 46-page, detailed, professional “Agricultural Soils Capability Assessment” for this Application that was accepted by the Hearings Officer. The BOCC accepted his soils analysis for the DSL plan amendment and zone change and many other cases and has found his work to be accurate and professional. His study concludes that the property is not composed predominately of agricultural soils. The hearings Officer discusses the soils at length in the decision on this case in pages 3, 4, 10-13, 36-47. The hearings officer concludes on page 47,

“Based on the foregoing findings and conclusions, the Hearings Officer finds that the applicant has demonstrated that the subject property does not constitute “agricultural land” as defined in Goal 3 and OAR 660-033-0020. Accordingly, I find that no exception to Goal 3 is required for the applicant’s proposed plan amendment and zone change from EFU to RI.”

On page 44, the Hearings Officer concludes,

“Substantial evidence in the record shows that the subject property does not constitute “agricultural land” under the Goal 3 Administrative Rule factors first because it is comprised of classes VI and VII soils, and second, based on a consideration (of) each of (the) following factors, addressed by the Borine Report: soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation 0 purposes, existing land use patterns, technological and energy inputs required, and accepted farming practices.”

The Hearings Officer also discussed at length the oral and written testimony presented on irrigation that she considered in her decision. COLW continues to reach the wrong assumptions about irrigation as discussed in responses # 1, 2 and 4.

Although COLW does not mention the Application that is before the decision makers in this case, it mentions different cases from a different time. The situation can change and did change, in addition to the new roads and realignment of roads.

The current application consists of a 330 page Burden of Proof, a video of surrounding uses, a supplemental document exclusively on the topic of irrigation, and large maps. The Application is full of updated research, updated information, primary records, deeds, letters, maps, photos and other factual information.

The information provided by the current Application is ignored by COLW and it uses applications for different purposes from 13 and 18 years ago. An example of how things changed is that the Barretts had not sold tax lot 161227D001100 yet. While they owned the neighboring parcels, they appeared to be willing to share their irrigation water delivery system across their property. The lack of an easement across their land had not been a problem. The lack of an easement to deliver the irrigation water from the Barrett Pond on Half Mile Lane to the subject site was not apparent in 1997. It only surfaced after the Barretts sold the neighboring land.

13. **STATEMENT BY COLW, Page 4:** COLW's incorrect statements about soil types, classes, fertility and suitability for grazing are addressed by Roger Borine.

Roger Borine's responses follow.

Sage West, LLC Roger Borine, CPSS, CPSC, PWS Soils, Wetlands, Wildlife Habitat (541) 610-2457

64770 Melinda Court rborine@bendbroadband.com Bend, OR 97701

December 1, 2015
Deschutes County Commissioners
117 Lafayette Avenue
Bend, OR 97701

Re: Aceti : 247-14-000456-ZC, 247-14-000457-PA

This letter provides rebuttal to submittals, including written testimony from Central Oregon Land Watch (COLW), regarding the Aceti land use application. In particular, this letter addresses issues raised by COLW regarding the *Agricultural Soil Capability Assessment* (Soils Report) dated May 8, 2012 that I completed. I submit this letter on behalf of Tony Aceti; however, the conclusions in this letter represent my best professional judgment and scientific evaluation of the issues addressed. My education and experience that qualifies me to conduct this assessment and response follows:

I. Background and Experience for Roger Borine

- ☑ B.S., Soil Science; Oregon State University, Corvallis, Oregon (1973)
- ☑ Soil Science Institute; Iowa State University, Ames, Iowa (1984)
- ☑ Certifications: *Certified Professional Soil Classifier (#24918)*, *Certified Professional Soil Scientist (#24918)*, *Professional Wetland Scientist (#1707)*

USDA NRCS-Oregon (30 yrs):

- ☑ A Soil Scientist for 23 years followed by 7 years as the State Habitat Biologist.
- ☑ Experience includes identification, inventory and mapping of soils throughout Oregon. I was the primary author of Josephine, Jackson and Sherman County soil surveys.
- ☑ Served on two working groups that developed the Arid West and Western Mountains, Valleys, and Coast regional supplements to the ACOE 1987 Wetlands Delineation Manual.
- ☑ NRCS National Instructor for Remote Sensing-Aerial Photography.

Sage West, LLC (2007-present):

- ☑ Natural resource consulting for soil survey, soil interpretations, wetlands, wildlife habitat and natural resource planning.
- ☑ Personally completed over sixty on-site soil assessments and twenty wetland determinations throughout eastern Oregon.

II. Agricultural Land

The *Agricultural Soil Capability Assessment* (Soils Report) dated May 8, 2012 is part of the record. It concludes:

"The inventory and analysis of this parcel in T16S, R12E, Section 26 tax lot 201 and Section 27 tax lot 104 determined that approximately 80% (17.2 acres) is Land Capability Class 7 and 8 soils; and 20% (4.3 acres) is Land Capability Class 3-6 soils. The parcel as defined is not predominantly Agricultural Land.

Further, together with the LCC soil ratings as non-agricultural soils, the determination of suitability for farm use is "generally unsuitable" for the production of farm crops, livestock or merchantable tree species based upon low fertility, limited soil depth for cultivation and ability to store and hold water, lack of forage production for livestock grazing, limited length of growing season and high levels of energy input with limited outcome."

This soils assessment was conducted using the USDA National Cooperative Soil Survey policies and procedures that include guidance from the *National Soil Survey Handbook*, *Soil Survey Manual*, *Upper Deschutes River Area Soil Survey*, and *Web Soil Survey*.

The Soils Report provides and documents more detailed data on the extent of agricultural land as defined in Oregon Administrative Rules (OAR) 660-033 *Agricultural Land* for this parcel. This more intensive soil investigation and interpretation must stand on its own merit. DLCD's review deemed it complete and did not select it for further review or evaluation by a contracted Soils Professional based on the Departments criteria and past performance of Sage West, LLC. (OAR 660-033-0045(6)(a). COLW states that the Soils Report cannot challenge the NRCS soil capability classification on the property because the Soil Report did not establish that NRCS data for the site are inaccurate.

Response: The following is from the Soils Report that states on page 3, paragraph 2 and justifies the reasoning for conducting an Order 1 soil survey to more accurately define soils on this parcel. "...The NRCS soil survey (Order 2 and 3) at the landscape level was reviewed and determined to be predominantly accurate. The soil/landscape relationships were accurate. Soil boundary placements were general. At this Order 2 and 3 level of mapping, miscellaneous land types were not mapped or identified as inclusions. In addition, original placement of soil boundary lines by field soil scientists on aerial photos are often modified and straightened during the map digitizing process.

The three NRCS soil mapping units occurring in this study area were reviewed at the landscape level throughout their extent. All have contrasting inclusions listed in their map unit descriptions that may exceed the size of this study area. The initial on-site inventory showed a high percentage of contrasting shallow soils and miscellaneous areas in the *36A-Deskamp loamy sand, 0-3% slopes* map unit. This map unit is approximately 76% of the study area. If this area is predominately shallow and very shallow soils and miscellaneous areas the study area may be predominantly non-agricultural soils.

Soil Surveys seldom contain detailed site specific information and are not designed to be used as primary regulatory tools in permitting or siting decisions, but may be used as reference sources. NRCS maps soils at the landscape level. Land use issues in Oregon are addressed by tax lots. Consequently, NRCS soil maps may be perfectly correct at the landscape level while a tax lot may be in part or entirely a contrasting inclusion."

COLW states all soils on these parcels are agricultural lands and none are Land Capability Class (LCC) 7 or 8.

Response: COLW references soils data that is outside DLCD stated policy (660-033-0030) that requires more detailed soils data be related to the NRCS land capability classification system and the more detailed soils information must be from the Web Soil Survey.

COLW's Attachment 5 is the *Upper Deschutes Hydrologic Unit Profile* and states in its disclaimer: *"All data is provided "as is." There are no warranties, express or implied, including the warranty of fitness for a particular purpose, accompanying this document. Use for general purposes only."*

Attachment 5 data was not derived from the Web Soil Survey nor intended for detailed land use planning purposes.

COLW's Figures 8 and 9 from the Web Soil Survey shows *"Warning: Soil Ratings may not be valid at this scale."* Figures 8 and 9 are from the Web Soil Survey but scaled to a level that makes it less accurate than was intended at the scale of field mapping.

COLW inaccurately interprets and portrays soils information in a manner that deems it questionable. This manipulation of soils information further validates the need for a sound and scientifically based soils assessment designed for regulatory purposes as is in the Aceti Soils Report.

III. Suitability for Farm Use

COLW argues **soil fertility** on pages 5-7 without addressing the topic of soil fertility as it relates to suitability.

Response: The Soils Report addresses soil fertility on page 6 and states:

"Two soil samples, from data plots #10 and #42, were collected and analyzed by Agri-Check, Inc. Organic matter for these sites is extremely low to non-measurable and clay content is less than five percent, resulting in a very low Cation Exchange Capacity (CEC); the higher the CEC the better. The CEC is important because it provides a reservoir of nutrients for plant uptake. Both sample sites have low levels of nitrogen, phosphorus, potassium, and sulfur. High levels of fertilization are required for a grass crop to be produced. Without an ability of the soil to attract and absorb nutrients (low CEC) they are readily leached out of the soil by irrigation and precipitation thus becoming unavailable for plant use and lost into the surface and ground water. Presently, the pH (acidity/basicity) of soils is adequate, but soils with a low CEC can quickly be reduced by additions of nitrogen and sulfur fertilizers, also making nutrients unavailable to plants.

To maintain a minimum level of essential nutrients for proper crop growth continual applications of very high rates of fertilizer and soil amendments are required. Without these yearly inputs, soils are non-productive and infertile."

COLW argues **Suitability for Grazing** on page 7 without providing any evidence that there is grazing or the potential for grazing by livestock.

Response: The Soils Report addresses suitability for grazing on page 6 and states:

“Landscape and soil characteristics determine the suitability for grazing livestock. Limitations that are recognized on this site include the cold climate and soil temperatures that delay growth of forage and shorten the growing season; reestablishment of the native vegetation is likely impossible due to the pumice ash surface layer and past land alterations; restricted depth limits seeding only to drought tolerant species, and rock outcrop limits the areas suitable for grazing.”

COLW provides no argument on the Soils Report regarding *Technological and Energy Inputs required and accepted farming practices* and is provided to further support a determination of “unsuitability for farm use”.

“Accepted farming practices in central Oregon to raise forage crops generally require and include a relatively flat to gently sloping parcel that has a moderately deep soil with readily available irrigation water in adequate amounts. Irrigation begins in April and ends in October. The site will produce 2 to 3 cuttings of hay or continuous rotational grazing by livestock. Fertilization is required to sustain the plants and produce a high quality crop.

This parcel requires technology and energy inputs over and above that considered acceptable farming practices in this region. Excessive fertilization and soil amendments; very frequent irrigation applications pumped from a pond with limited availability; and marginal climatic conditions restrict cropping alternatives.”

Please accept my responses to the COLW comments. As always, if there are any questions or clarifications needed I will gladly provide.

Regards,
Roger Borine CPSS, CPSC, PWS

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

- 14. STATEMENT BY COLW, Page 8:** *“The applicant must have had an easement from the Deschutes Lateral during the 1996-1997 negotiations, when Gary Barrett stated that he and the applicant had made extensive improvements in the property for the express purpose of producing quality forage. Gary Barrett, along with the applicant, signed the Settlement Agreement with the Deschutes County Board of Commissioners. Because the applicant clearly had an easement for such water delivery in 1996 and 1997 when the entire property was irrigated from the Deschutes Lateral, such an easement is possible. According to the Hearings Officer’s decision in the present case, a 1996 aerial in the record shows the property was irrigated in 1996. According to a 1997 Hearings Officer decision quoted in the 2002 HO Decision, in 1997 the north and south portions of the property were currently irrigated and in hay production. Therefore the applicant must have had an easement for irrigation since the time the applicant acquired the property in 1995.”*

RESPONSE: COLW's assumptions are incorrect. Easements are recorded with the county clerk and easements that exist at the time a parcel is sold are usually part of deeds of sale, saying this sale is subject to the specific easements. There is no recorded easements for the delivery of irrigation water. COLW's statement that there *must have had an easement* is only wishful thinking and wishing does not make it so. There was no easement and there is no easement in the 1995 Barrett to Aceti deed (**EXHIBIT 9. DEED TO TAX LOT 161226C000201, 5 PAGES**) for delivery of irrigation water to the subject site.

That fact is verified by letters from Swalley ID , by the letter to ODOT from Thompson Pipe and Irrigation and other sources in the Application and included in this response.

At the time Aceti bought his land, the Barretts had not farmed in a few years. The Lawrences owned and continue to own the 4.15 acre parcel south of the subject site which has about two acres of irrigation rights. It had the historic shared irrigation pond that irrigated the Lawrence's property and the George Barrett Ranch. It was reduced to 25% of its size by the Highway 97 widening project in 1991/92. What remains of the pond is about 650 feet south of the subject site. The Lawrences do not irrigate or farm their small parcel and rent out the house.

To mitigate for the loss of the old irrigation pond that was fed with irrigation water delivered by SID through a pipe on the spine ridge, ODOT paid for a new pond on Half Mile Lane on the corner of Barrett's parcel. The Barretts owned the 30.45 acre parcel where the new irrigation pond is located on Half Mile Lane, 1,230 feet west of the subject property. The Barretts could irrigate their 30.45 acre parcel, the subject site that they still owned and Lawrences two parcels from the new pond and the new irrigation pipes if they chose to do so, all at the same time. That is how the pressurized system was supposed to work. The Barretts still owned the subject site at that time.

The water was delivered in a pressurized pipe across the parcels between the pond and the subject site, the 30.45 acre parcel, 161227D001100 owned at the time by the Barretts and 161227D001200 owned by the Lawrences, in order to reach the southwest corner of the subject parcel.

The pond was paid for by ODOT in 1991/1992 to serve land owned by both the Barretts and the Lawrences as mitigation for the reduction in the old pond due to widening the highway to four lanes. It was dug on Half Mile Lane. The old pond was next to the US Highway 97 and south of the rock spine on tax lot 161226C00200, owned by the Lawrences.

Sharing the pond and pipes was not a problem when the Barretts owned the 30.45 acre tax lot 161227D001100 and the subject parcel. But, when they sold the subject parcel to Aceti, they did not include an easement across their parcel and a conversation with Thompson Pump showed that was not an oversight.

After the overpass project was completed, the Barretts sold the 30.45 acre parcel where the new pond it located, 161227D001100, and tax lot 1300 with 7.60 acres to East Slope Investments LLC. The 30.45 acre parcel is key to the delivery and operation of the irrigation system. Ownership of the properties were transferred for zero dollars to Rymilaka LLC, a related business associate, on June 7, 2007. The parcels are not farmed or irrigated. The land is fallow, awaiting a future school use. The East Slope pond is empty except when it received overflow from the pond next to it, the Twigg Pond.

The Lawrences and Rymilaka do not irrigate or farm their parcels. To follow the chain of events that started in 1991, the following narrative previously in the record is offered.

EXHIBIT 26



2014 photo shows the rock spine, former irrigation pond by Highway 97 just south of the rock spine and the four irrigation ponds at Half Mile Lane. The newest pond is in the southeast corner of the grouping and is not full of water.

The deed for widening Highway 97 had a major impact on the ability to irrigate the Subject Property. On February 15, 1991, Bruce and Gary Barrett sold 1.18 acre to ODOT to widen US Highway 97 to four lanes. 24.02 acres remained in the Subject Site. They also sold land on the eastern edge of tax lot 161227D001300 and the Lawrences sold part of 161226C000200. The deed granted the right of ODOT to construct or otherwise provide at any future time a public frontage road or roads with the ability of the property owner to apply for a permit to access the frontage roads. The widening project also cut through the irrigation pond next to the highway, reducing it by 75% and making it inoperable. The 2014 photo below is of the Lawrence House and what remains of the irrigation pond, filled with cattails.



Because the widening project caused the irrigation system to become inoperable, ODOT paid to have a new ditch from the Swalley Deschutes Lateral and a new pond dug along Half Mile Lane, on the NW corner of tax lot 161227D001100, owned by the Barretts at the time. It consisted of a new narrow, shallow ditch paralleling and about 15 feet east of the historic ditch and a new pond. Aceti helped pay for a new electrical pump in 1996 when the Barretts irrigated his property. There was $\frac{1}{4}$ mile of aluminum main line that fed the wheel lines that irrigated five parcels owned by the Barretts and the Lawrence's. The system is a quarter mile from the southwest corner of the Subject Property and is separated from it also by the small Lawrence's parcel, 161227 tax lot 1200. The Barretts owned the 30.45-acre property between the pond and the Subject Parcel, but did not own the strip called tax lot 1200 owned by the Lawrence's. Any pipe or ditch to the Subject Parcel would have to cross tax lots 1200 and 1100.

The Barretts sold the Subject Property to Aceti in 1995. No easement or written agreement between the three property owners was included in the deed to irrigate Aceti's property. He has no easement or right to use either tax lot 1100 or 1200 or the equipment for the delivery of irrigation water to his property, the Subject Property, 161226C tax lot 201. Through a gentlemen's agreement with the Barretts in 1996, Aceti shared costs of the pump and shared his farming equipment and the Barretts irrigated a crop on the Subject Site that failed. After that, Aceti saved his water right by keeping the irrigation water in the Deschutes River through entering into an agreement with Swalley Irrigation District to in-stream lease his water.

The situation was complicated further when on September 16, 2005, the Barretts sold the 30.45 acre parcel (tax lot 1100) and the 7.60 acre parcel (tax lot 1300) to a group called East Slope Investments LLC, a group that is affiliated with the Three Sisters Adventist Christian School. They do not farm the land, have no plans to farm it and bought it to expand the outdoor and athletic facilities for the school.

The irrigation pond and irrigation ditch on Half Mile Lane that were created in 1992 have not been filled for the last ten years. An inspection on June 6, 2015 showed the ditch is dry and no irrigation water is flowing from the Deschutes Lateral into the new ditch or new pond. The water in the pond in July 2015 is backflow from overflowing the Twigg pond with the older ditch. Rymilaka LLC now owns the pond and the pump in the pump house and the ¼ mile long mainline irrigation pipes but does not use any of them.

In order for Aceti to irrigate his land from the pond, if he could get a written agreement with the two landowners, he would have to install a new electrical panel, a new pump and ¼ mile of new mainline pipes across both the Rymilaka LLC property and the Lawrence property to his property. A cost-benefit analyses would have to be completed, estimates of costs would need to be secured, and written easements with both Rymilaka LLC and Lawrence would need to be purchased and filed with the county clerk before such an expenditure is possible. Aceti has spoken with Rymilaka several times, and the easement is out of the question. Even if it were possible, the cost would be prohibitive.

Nearly 20 years ago, before he had experienced the unfarmable shallow soil and rock on his newly purchased property, during the negotiations with ODOT for the overpass, Aceti explored his options. Of course, all of the cost estimates would be higher today, 20 years later. It makes no sense to pursue the matter further. No one around his parcel farms any more.

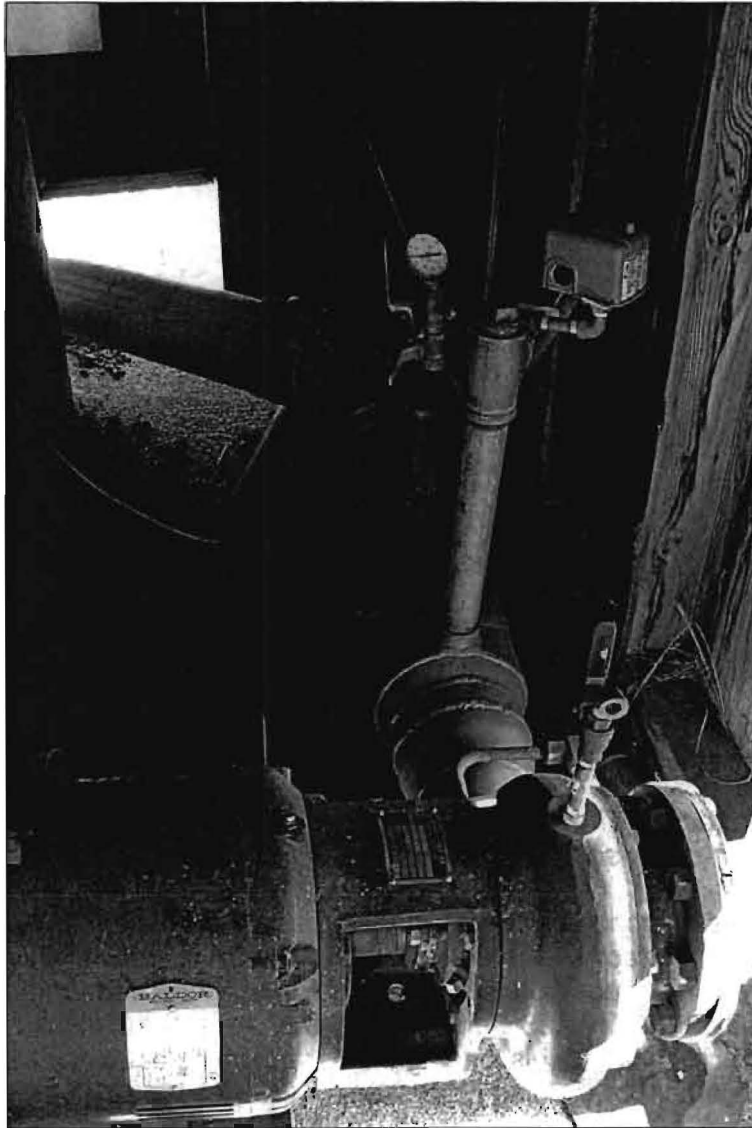
The following June 6, 2015 photo (repeated from the record) shows two ditches on the east side of Half Mile Lane. The ditch near the dirt road is the historic ditch. The ditch on the right (east) is the 1991/1992 ditch from Swalley's Deschutes Lateral that was paid for by ODOT to irrigate the Barrett's and Lawrence's land. It has been dry for over ten years.



The following June 6, 2015 photo shows the Twigs (tax lot 161227D00200) irrigation pond which is full on the left (north). The Twigs property had been used as horse racing track. The nearly empty 1992 pond on the right is on the 30.45 acre tax lot 161227D01000 that formerly owned by the Barretts, but is now owned by Rymilaka LLC". It is receiving overflow water from the Twigg pond. Neighbors also refer to the 1992 pond as the "East Slope Pond". When the Twigg property is not irrigated, their pond floods and overflows. Photo is repeated from the record.



January 2013 photo of abandoned pump beside pond put in with ODOT/Barrett agreement in 1992 to pump water from new pond and pressurize it through a mainline aluminum pipe to Barrett's and Lawrence's parcels that were formerly served by the pond next to US Highway 97. The pump and pond are 1,230 feet west of the subject property. Photo is repeated from the record.





January 2013 photo of abandoned pressurized mainline pipe along northern property line of tax lot 1227D01100, 30.45 acres. The parcel has not been farmed for at least ten years and is planned to become part of the school. Photo repeated from record.

Previous portions of this response to COLW has described the situation in 1995 and 1996 that is referred to by COLW incorrectly. The Barretts used their irrigation wheel line and irrigated by pressure from the pump in the pond on Half Mile Lane. When they were irrigating, they irrigated both their parcels south of the Three Sisters Seventh Day Adventist Christian School and a portion of Aceti's parcel in return for his loaning them the farming equipment to farm other parcels in the area while he was building his first barn. (Tax lot 161227D000104 had not been created at that time.)

The other part of COLW's statement is about the Applicant and the Barretts having made improvements to the property before the overpass project and while Aceti was moving his hay brokerage business to Deschutes Junction from Christmas Valley and building a 20,460 square foot barn, and while the Barretts retained an ownership interest in the subject parcel. In addition to the valuable barn, improvements the Barretts and Aceti were referring to included fertilizer and land preparation for seeding. Anything else was not accurate. Aceti never used the Barretts' wheel line. The Barretts used their own line to irrigate Aceti's land.

EXHIBIT 12, SWALLEY IRRIGATION DISTRICT LETTER TO ACETI DATED JAN. 14, 2013 and the accompanying map describe and verify the above situation and facts.

SWALLEY IRRIGATION DISTRICT LETTER AND MAP
REGARDING HOW WATER RIGHT IS DELIVERED TO ACETI'S
PROPERTY



Tony Aceti
21235 Tumalo Road
Bend, OR 97701

January 14, 2013

Dear Mr. Aceti,

You requested a letter from Swalley Irrigation District describing how your water right of 19.71 acres is delivered to your property. You have not used your Swalley water right for many years other than participating in the Deschutes River Conservancy In-Stream Leasing Program. When you wish to use your water it will be delivered from Gate # 0040 on the Swalley Deschutes Lateral, then enter the private ditch system on the Eastslope Investments parcel to the southwest of you. How the water then reaches your parcel is a private matter between yourself and Eastslope Investments.

On a related matter we need you to meet with District staff to remap your water right as some of the water right layer on your property has been covered over with buildings and pavement.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Butterfield".

Suzanne Butterfield
Manager

Phone 541/388-0658
Fax 541/389-0433

64671 COOK AVENUE
SUITE ONE
BEND, OREGON 97701

www.swalley.com

SWALLEY IRRIGATION DISTRICT MAP OF DELIVERY TO SUBJECT SITE

The subject parcel that has 16 acres of water rights is indicated in red. There is no water right attached to Tax Lot 161227D000104. The irrigation ditches are indicated in pink. The closest irrigation ditch is the abandoned ditch south of the rock spine near the highway, 500 feet south. The pond it flows into was replaced by ODOT with a new pond on Half Mile Lane in 1992. It is in the southeast corner of the grouping of four ponds. There is no agreement between Aceti and the owners of the other parcels for the pumping and delivery of irrigation water the 1,230 feet from the new pond to Aceti's property.



15. **STATEMENT BY COLW, Page 8:** *The Deschutes Lateral, from the beginning of the last century to the present day, provides water to within several feet of the southern edge of the subject property and has been used by every farmer on the land from 1905 up to and including the applicant to irrigate the subject hay farm.*

RESPONSE: COLW is rewriting history inaccurately. First, laterals and ditches are not the same thing. Second, as seen on the preceding SID map, the closest ditch, now unused, is to the south of the subject site on top of the rock spine on Lawrence's property. It is more than 500 feet south of the subject property. The ditch is empty and the Lawrences do not irrigate.

The empty pond on Half Mile Lane is 1,230 feet to the west of the subject site. We do not agree that either 500 or 1,230 feet are "several" feet. The pink lines indicate the two ditches. The subject parcels are outlined in red. The Thompson Pump and Irrigation Letter said that bringing water from the 1992 pond on Half Mile Lane would cost (at that time) \$90,000 to \$100,000. The letter goes on to point out that the Barretts told them that they were not willing to give an easement to Aceti to put the delivery system across their land. Since then, the Barretts sold the property to East Slope Investments LLC and the pond is dry.

Swalley delivered water to the area in the "Low Lateral" a different lateral along Tumalo Road, in September of 1912. It is known that the Deschutes Lateral was completed later, perhaps in 1913. It delivered water due north and downhill along what is now Half Mile Lane. The ditch to the northeast along the rock spine came much later, after Low and the Crawfords sold it. A possible date was around 1947 when electricity became available and Walton bought the homestead.

Electricity to the area was provided by Central Electric Cooperative in 1946, after World War II. No electric pumps to pump water from ponds along Half Mile Lane the 1,230 feet uphill to the subject site or the 650 feet from the other pond near the highway could have been used until that time.

Swalley ID's records show that irrigation water was first delivered to the subject parcel in 1968.

Again, it never was and is not a hay farm. The current owner is a hay farmer, but custom farms large parcels in several counties and not this small parcel. He buys, sells, trucks and distributes hay, up to 4,000 tons a year.

As discussed in previous responses, COLW wants to rewrite the history of the owners, although it is extensively recounted in the Application. In summary, James Low had the 160 acre property from 1903-1943, cultivated only 20 acres east of Half Mile Lane in order to earn his homestead patent and was a saloon keeper in Bend. Next, Crawford owned it for four years and was a logging contractor and a road builder. He did not farm. Next Morris owned it for one day and resold it. Walton owned it in retirement for 20 years until 1967 as part of 700 acres he used for his hobby of raising and breeding Arabian horses. The subject property was not cultivated or irrigated. Next the Lawrences owned it for one week and sold it to the Barretts in 1967 who owned it for 32 years. They were the first owners to cultivate it, irrigate it and run cattle on it. No one has ever lived on the parcel and only two of the owners lived in the area.

Note: On Pages 8 and 9, COLW quotes notes of the previous owner Gary Barrett speaking at a 1996 county hearing. Like most people, he is speaking in generalities, and not specifics. How many of us ever read all of our parents' deeds? As we know from the deeds recorded at the

Deschutes County Clerk's office, George and Vietta Barrett bought the property in 1967. COLW says that he was quoted as saying his family has irrigated the property since the early "50s". We know the facts show he misspoke and the date was after 1967. Vietta and George Barrett bought the 25 acres with 20 acres of water rights on August 1, 1967. Swalley first delivered water for the parcel the following spring in 1968.

Also at that time, Barrett still owned tax lot 161227D001100 which made it possible for Aceti to share in irrigating his parcel when and if the Barretts irrigated their parcel.

It is a fact that the Barrett to Aceti deed did not include an easement for irrigation water over 161227D001100 or across the Lawrence parcel, 161227D001200 and that fact has been verified by SID.

16. STATEMENT BY COLW, Page 9: *"As Gary Barrett explained in detail, the new road would necessitate going to a hand line at greater expense. There is no practical reason the applicant cannot proceed as Gary Barrett described using the utility lines and box culvert built for that express purpose. The applicant's signature on the 1997 settlement agreement is substantial evidence that the applicant accepted the mitigation elements as compensation to account for the increased costs of irrigation such as using a hand line."*

RESPONSE: The COLW conclusion is not correct. Aceti would never agree to use hand lines as they are too labor intensive, and the triangular configurations of each portion made it impractical and significantly inefficient to irrigate. COLW is incorrect that any money was paid for any increased labor costs of irrigation due to the necessity of using hand lines instead of a wheel line. Again, this is all speculation on COLW's part, is irrelevant to the Application and does not apply to any criteria.

It is unclear what COLW means by utility lines in relationship to hand lines. As previously explained, the box culvert was not for irrigation pipes, but rather for vehicles.

17. STATEMENT BY COLW, Page 12: *"If irrigation were not feasible, which it is, the land could still be used for private pasture or other farm uses. It is unclear why successive generations of farmers since 1905 would invest in transferring water from the Deschutes River to the subject property, sowing hay seed, fertilizing the soil, and cutting the hay year after year, if there were no financial profit to be obtained by doing so."*

RESPONSE: COLW's summary to the profitability section of COLW's testimony is incorrect and ignores the facts. COLW has no evidence to back up its statement that irrigation is feasible or that the parcel has been farmed profitably since 1905. The opposite is true.

The facts and deeds show that only one owner that might be called "successive generations of farmers" – the Barretts—who bought it in 1967 and sold it in 1995, but they were not full time farmers. The Barretts were the only people who attempted farming the parcel. They bought the parcel to add to a larger hay and cattle ranch. Farms and ranches need land, leased or owned. The Barretts sold off their parcels as money was needed, because they could not earn much profit from them. The Barretts were also logging contractors and had other businesses. Farming was not their sole income because raising hay on poor soil and running calves

seasonally on their small ranch was only marginally profitable. Bruce and Gary Barrett have other ventures and are and were not full time farmers.

The seven sets of owners who owned the subject site since 1905 did NOT invest in transferring water from the Deschutes River to the subject property, sow hay seed, fertilize the soil, and cut the hay year after year. There was NO financial profit from the activities, because until 1968 the parcel was not cultivated or irrigated. Only one owner, the Barretts ever farmed the parcel. They farmed it sporadically until 1996 when the Barretts and Aceti farmed it together one year and got a yield of 3.5 pickup truck loads of hay bales from the 18 acres.

- 18. STATEMENT BY COLW, Page 12:** *"The applicant himself has used the subject property for growing grass hay, up until at least 2002, according to Deschutes County Hearings Officer Decisions in 1997 and 2002."*

RESPONSE: It is always of concern when information is taken out of context. It takes extra effort to ensure that any conclusion that might apply to another situation a decade later is appropriate and accurate. The Applicant never grew a crop of hay on the non-agricultural soils, independent of the Barretts. The last crop, grown jointly with the Barretts was in 1996 and it yielded 3.5 pickup truck loads from 18 acres. The following year, Aceti tried farming independently only a portion of the property, about 4 acres at the southern end. That crop was so poor that it was not harvested and made it apparent that farming the parcel was not worthwhile.

There was no reason to throw money away attempting to raise another losing crop the following year. After the Applicant paid the balance owed to the Barretts for the purchase of the property, there was no more partnership. The Applicant did not farm the parcel after the overpass was built. COLW alludes to a statement that the mitigation from ODOT made the parcel productive and cost effective to farm. It did not do that. It only made a bad situation worse. It did not improve the productivity of the shallow rocky soil. It did not create an easement for irrigation water to be delivered, and it did not improve the depth or quality of the soil. ODOT did not provide money for a new irrigation system. The main reason Aceti signed the agreement that did not make him "whole" was that the agreement met his primary concerns: payment for the loss of acreage, access to the parcel, a safe way to move trucks within the parcel and protected turn lanes and driveways for 90-foot long hay trucks. It is uninformed to think that anyone gets everything they think they should in these situations.

After the overpass was built, Aceti needed to concentrate on building his business. The situation had taken a great deal of his time. Attorneys had billed for a great deal of his money, and those fees could not be reimbursed. Aceti's efforts after the overpass project was completed were concentrated on getting back to the business of making a living: custom farming larger parcels near Cloverdale, Powell Butte and Prineville. He was also buying, transporting and selling hay all over the state. He leased out his 70 acres in Christmas Valley.

19. STATEMENT BY COLW, Page 12: *“There is no evidence the applicant could not use the culverts beneath the new road and a combination of wheel lines and hand lines to irrigated the subject property and there is no indication the applicant tried to incorporate this approach.”*

RESPONSE: As discussed in a previous response to the same mistake, COLW doesn't understand that the “culverts” were for Avion domestic water pipes crossing under Tumalo Place and under the approach to the overpass. The box culvert is for internal vehicle and equipment circulation on the property.

A fourth “culvert” was installed in the right of way for the overpass along the east property line. Aceti has no easement to use it. It was thought that irrigation lines delivering water from the Half Mile Lane Pond could be pushed through it to fill a new irrigation pond in the northeast corner of the subject property, at the highest point. The Application describes in detail Harry Fagan's failed effort of digging the pond and filling the fissures and holes in the rocky pond with bentonite and soil. It was impossible to make it watertight in the fractured basalt.



Photo taken looking east. Photo repeated from page 19 of Application.

Not one to give up, Aceti in 2003 attempted to build a new irrigation pond near the high point on his property. Using heavy equipment to dig it, the crews hit solid rock between the surface and four feet down. The attempt failed. During that process, bulldozers dug about eight inches until they hit a solid lava flow slab. The eight inches of soil nearby was scraped and pushed up to form the brim of the pond, in order to create some depth to it. The applicant imported bentonite (an absorptive clay used as a sealant or filler) to make the base impermeable. But the shattered lava flow could not be sealed, and the process was abandoned.

So, there is evidence that the applicant tried to incorporate this approach. This was two years before the Barretts sold tax lot 1100 and tax lot 1300 to East Slope Investments LLC in 2005. This was before Aceti discovered he had no easement to bring water across the 30.45 acre parcel and the Lawrence's parcel. At that time, with the Barretts still owning tax lot 1100, Aceti thought that he could get irrigation water to the new pond he was building. After the Barretts sold the property, Aceti discovered he had no way to bring water to his property. Gary and Bruce Barrett sold tax lot 161227D001100 containing 30.45 acres and the parcel south of it ,tax

lot 161227D001300 containing 7.60 acres to East Slope Investments LLC, for \$700,000 on September 12, 2005. The only easement mentioned in that Warranty Deed is for the US Highway 97. The deed is recorded as 2005-62517.

20. STATEMENT BY COLW, Page 13: *"In 1996-1997, the Deschutes County Public Works Department Staff and the County Board of Commissioners recognized the subject property as level, irrigated farmland used for production of grass hay. Deschutes County was so sure the subject property was irrigated, productive farmland that the commissioners invested over \$110,000 of taxpayer money in mitigation elements to ensure that irrigated farm use could continue on the EFU-zoned subject property into the future after the new road crossed the hay farm."*

RESPONSE: The statement is fiction. The county was so sure that the parcel should be and would be rezoned that they wrote the following into the Settlement Agreement.: (See **EXHIBIT 18**) (item 9. I)

"Subject to paragraph 12 hereof, Public Works agrees not to oppose a subsequent comprehensive plan change or rezoning of the Aceti property from EFU to rural service center, rural industrial, or other similar plan or zone designation."

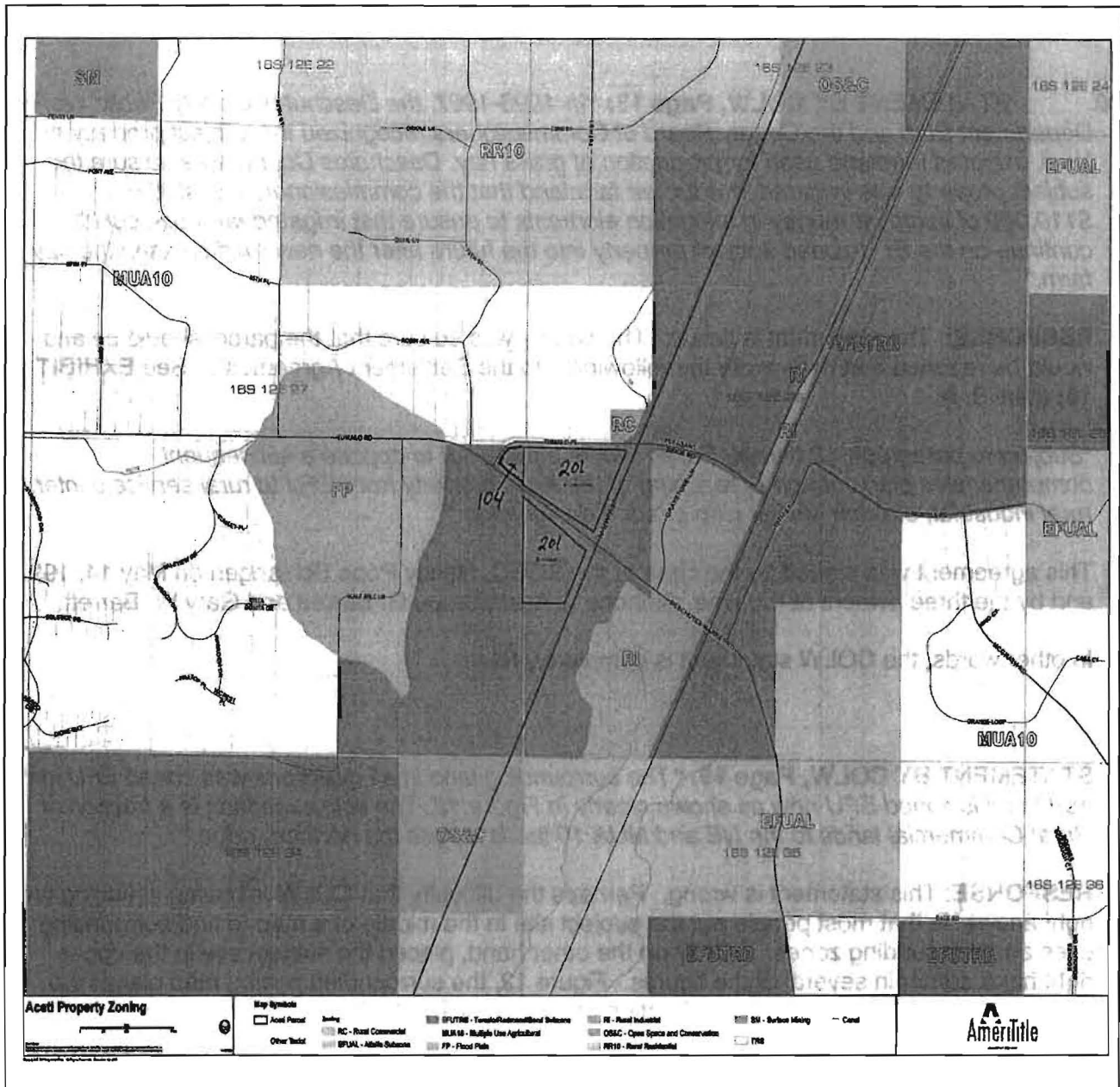
This agreement was signed by the chair of the BOCC, Nancy Pope Schlangen on May 14, 1997 and by the three owners at the time, Anthony J. Aceti, Bruce G. Barrett and Gary W. Barrett.

In other words, the COLW statement is completely false.

21. STATEMENT BY COLW, Page 13. *"The surrounding land in all directions was zoned EFU in 1997 and is zoned EFU now as shown clearly in Figure 12. The sole exception is a fraction of Rural Commercial lands to the NE and MUA 10 lands across the northern edge."*

RESPONSE: This statement is wrong. Perhaps the difficulty that COLW is having in finding the right answer is that most people put the subject site in the middle of a map to find surrounding uses and surrounding zones. COLW on the other hand, placed the subject site in the upper right hand corner in several of the figures. Figure 12, the surrounding zoning map places the subject site on the right edge and a fraction of an inch below the top.

The following zoning map of the area with the subject site placed in the middle is **EXHIBIT 25. 2014 AMERITITLE, ACETI PROPERTY ZONING MAP**, from the Application.



The Powell/Ramsey parcel across the highway to the east of the subject site of 2.67 acres was rezoned since the zoning map was created. It was rezoned in ZC 14-2 and PA 14-2, Powell/Ramsey, Tax Lot 161226C 00107. In 2012, the county rezoned half of the Robinson property tax lot 300 with 26.85 acres from EFU to RI. And, 8.93 acres in tax lot 301 was rezoned from EFU to RI after the overpass was constructed, bringing the total of RI zoned land under Jack Robinson & Sons, Inc to 58.38 acres. After the overpass was built in 1998, the county rezoned 6 acres of Cascade Pumice from EFU to RI.

Surrounding zoning includes 60.4 acres of Rural Industrial, 1.77 acres of Rural Commercial, MUA-10, EFU/TRB, and Rural Residential 10. Since he has owned his land, other parcels have been rezoned to RI at Deschutes Junction in addition to the Powell/Ramsey parcel.

22. STATEMENT BY COLW, Page 13. *“As the Deschutes County Public Works Department explained in 1997, in many cases the MUA 10 lands to the north, even though they are not resource lands, are still used for farming.”*

RESPONSE: This statement is false. The Applicant spent two months recording and photographing each parcel in the vicinity of the subject site. They are listed in a table, described and the photos are included in the Application in **SECTION 16. SURROUNDING ZONING AND LAND USES**. The Section 16 is 74 pages long and it will not be repeated here in its entirety, but is included by reference. Pertinent to the misstatement by COLW, are the lots in Tax Map 161226B. The description and relevant tax map from the Application is included here.

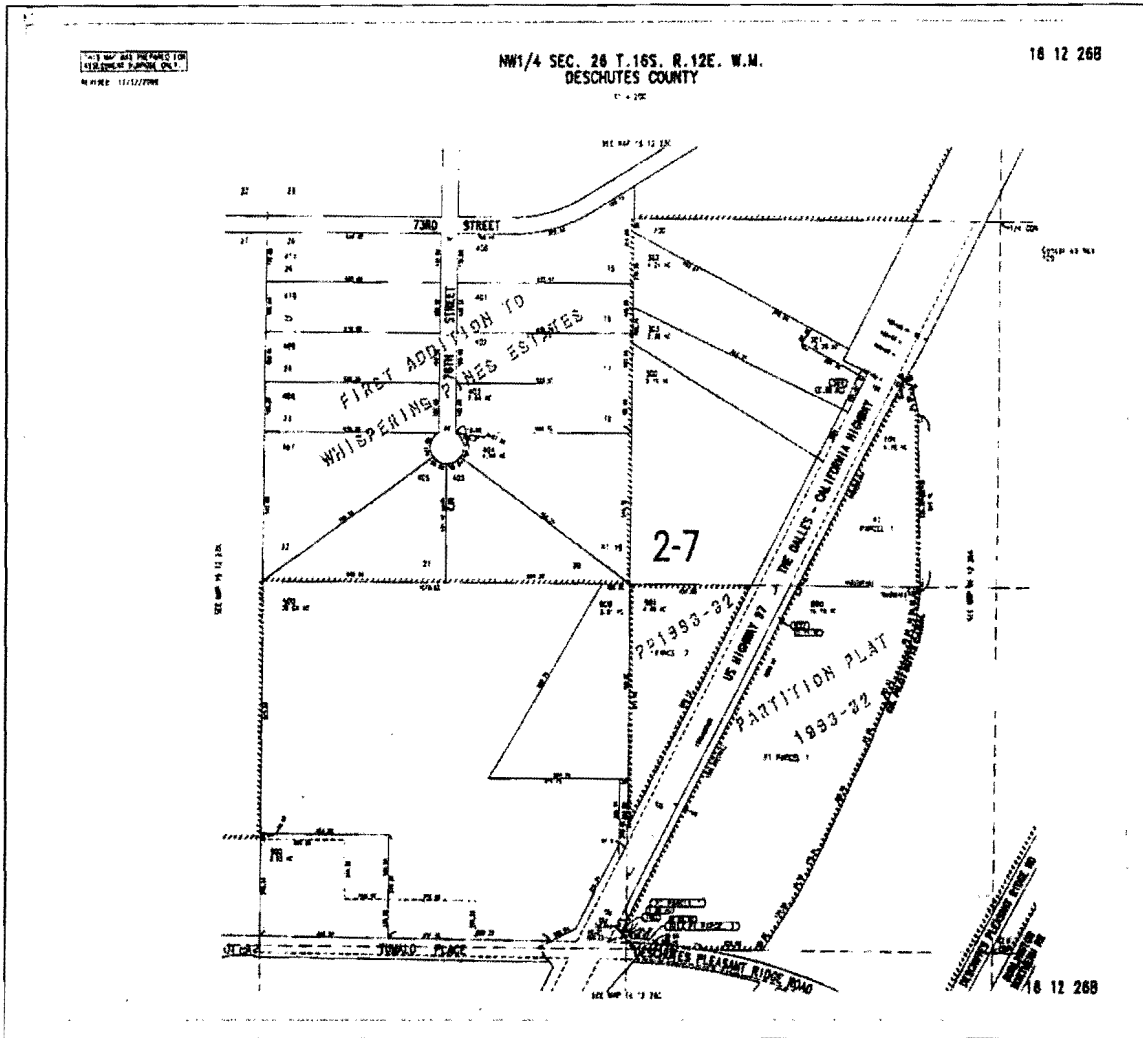
B. Deschutes County Assessor’s Tax Map 161226B

This tax map covers 123.06 acres, plus the acres of roadway, of land due north of the subject property.

SUMMARY: This tax lot map is immediately north of the subject property. It contains 12 parcels that are in a residential subdivision. It also contains a mixture of lots that are used for retail sales, storage units, manufacturing, processing, renting, and sale of products and equipment. There are no farms or agricultural uses. The largest parcel is owned by Harry Fagan and is 29.04 acres. It is zoned both MUA-10 and Rural Commercial. The lot is used for several business ventures including sales of used trucks and heavy equipment, sales of firewood and wood chips, fabrication of log homes, and storage of rubble from Willamette Graystone’s pumice blocks. The next largest parcel is 16.15 acres and is used by The Funny Farm antique and oddities shop and costume rental. It is not farmed. The next largest parcel is 9.71 and is the site of a former motorcycle race track. It is now undeveloped and not used. All of the remaining lots are under 6.2 acres in size, with many under 3 acres.

There are many non-conforming, historical commercial, manufacturing and retail uses in this immediate area next to Aceti’s property. Most date back to the time that Deschutes Junction was an unincorporated community. The 1979 Comprehensive Plan designated Deschutes Junction as a Rural Service Center. Today, within this tax lot map, the following businesses are operating:



1. Retail juniper and pine wood posts and furniture manufacturing and sales.
2. Forklift and Rental of industrial Equipment, sales, rental business, repair shop, storage building
3. Cowboy Collectibles retail and gifts
4. Phoenix asphalt, custom paving service
5. Repair and storage shop, 40 x 80-feet, for Asphalt paving equipment
6. Ministorage business, 22 units
7. Fagan’s business to sell used equipment, firewood sales, wood chip sales, fabrication and sales of log homes, storage of waste and concrete blocks from Willamette Graystone, sales of landscaping materials.
8. Business to reuse wood pallets and manufacturing small storage buildings.
9. Business to rent costumes, retail antiques and novelties, seasonal weddings.







Zones in this tax map include RR 10, MUA 10, Mixed MUA 10/RC, and EFU-TRB. Eight lots totaling 47.46 acres are zoned EFU-TRB. The largest is 16.15 acres and the smallest is 0.20 acre. None are used for any agricultural purposes. One lot has a mixed zone of MUA 10 and Rural Commercial. It is only used for commercial and industrial purposes. Two lots totaling 8.94 acres are zoned MUA 10. Twelve lots are zoned RR 10. The RR 10 zone totals 37.62 acres with the largest lot being 4.44 acres.



Deschutes County Assessor's Tax Map 161226B


This tax map covers 123.06 acres, plus the acres of roadway, of land due north of the subject property.

TAX LOT and OWNER	PHOTO	ZONE	STRUCTURES	HOW IS IT USED?	ACREAGE
101 Carsey	 <p data-bbox="348 894 653 922">Looking east into Lot 101.</p>	EFU-TRB	none	Fallow. Antiques and oddities displays. Used annually for Valentine's Day weddings.	4.20
200 Carrell		EFU-TRB LM	1984 mobile home with 1,248 square feet, outbuildings.	Dwelling, Retail juniper and pine wood posts and furniture manufacturing and sales	6.21

<p>300 Coffin</p>	 <p>Looking southwest from Highway 97.</p>	<p>EFU TRB</p>	<p>House Garage</p>	<p>Dwelling Fallow Formerly had motorcycle race track in the 1970s.</p>	<p>9.71</p>
<p>301 Carrell</p>		<p>EFU TRB</p>		<p>Equipment sales, rental business, Repair Shop Metal Storage Building</p>	<p>0.20</p>

	Looking northwest from driveway.				
302 Mills	 <p data-bbox="344 610 716 643">Looking west from Highway 97.</p>  <p data-bbox="344 1024 506 1057">Looking west.</p>	EFU TRB		<p data-bbox="1430 228 1549 318">Phoenix Asphalt Company</p> <p data-bbox="1430 350 1570 440">Cowboy Collectibles Retail Store</p> <p data-bbox="1430 472 1598 561">Repair shop approximately 40 x 80 feet</p>	4.21

<p>303 Cameron</p>	 <p>Looking west from driveway near Highway 97.</p>	<p>EFU-TRB AS LM</p>		<p>Twenty-two-unit metal self-storage building,</p>	<p>2.38</p>
<p>400 Kinzer</p>	 <p>Mailboxes at 78th Street for Whispering Pines Estates neighborhood.</p>	<p>RR 10</p>		<p>Residence</p>	<p>3.19</p>
<p>401 Neufeldt</p>		<p>RR 10</p>		<p>Residence</p>	<p>2.62</p>
<p>402 Duke</p>		<p>RR 10</p>		<p>Residence</p>	<p>2.62</p>
<p>403 Holmes</p>		<p>RR 10</p>		<p>Residence</p>	<p>2.64</p>
<p>404</p>		<p>RR 10</p>		<p>Residence</p>	<p>4.44</p>

Schuepbach					
405		RR 10		Residence	3.68
Choate					
406		RR 10		Residence	3.67
Mendez					
407		RR 10		Residence	4.39
Weitzel					
408		RR 10		Residence	2.60
Nelson					
409		RR 10		Residence	2.60
Dickens					
410		RR 10		Residence	2.60
Kelley					
411				Residence	2.57
Moon					
500		MUA 10 RC Rural Commercial AS LM		Fagan's used equipment sales, firewood and wood chips for sale. Fabrication of log homes. Storage of rubble and waste of Willamette Graystone pumice blocks	29.04
Fagan					





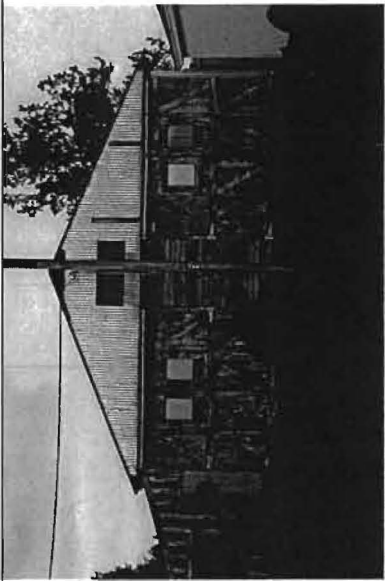
Looking north from Aceti Property across Tumalo Place. Pink building was formerly a dwelling and is now a business. R zone 1.77 acres.



Logging equipment and poles for sale. Log house manufacturing on site. Storage of rock and top soil for sale.

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	 <p data-bbox="344 553 871 604">Looking west from intersection of Deschutes Pleasant Ridge Road and Highway 97.</p>				
<p data-bbox="121 618 317 797">600 Roman Catholic Bishop of the Diocese of Baker</p>	 <p data-bbox="344 1003 898 1057">Dwelling, shop and manufacturing buildings on north side of Tumalo Place.</p>	<p data-bbox="974 618 1073 672">MUA 10 LM</p>		<p data-bbox="1432 618 1612 764">Dwelling Historic shop building for wood products manufacturing</p> <p data-bbox="1432 802 1612 922">Large metal building for the reuse of wood pallets</p>	<p data-bbox="1648 618 1703 639">3.93</p>





Shop building



Building used to manufacture pallets and storage buildings.

<p>800 Carsey</p>	 <p>COVID Canal, Funny Farm Barn</p>  <p>Funny Farm Antique Store, house, outbuildings looking north from Deschutes Pleasant Ridge Road.</p>	<p>EFU TRB LM</p>		<p>Funny Farm Antique and Novelty Store</p> <p>Costume rentals</p>	<p>16.15</p>
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<p>801 Chapin</p>		<p>EFU TRB LM</p>		<p>Unimproved land</p>	<p>4.40</p>
<p>900 State of Oregon ODOT</p>		<p>MUA 10</p>		<p>Unimproved native vegetation Previously used to store road sanding materials</p>	<p>5.01</p>

SUMMARY: This tax lot map contains 12 parcels that are used for home sites in a subdivision. It also contains a mixture of lots that are used for retail sales, commercial business, storage units, manufacturing, processing, renting equipment, and sale of products and equipment. There are no farms.

23. STATEMENT BY COLW, Page 14: *First, there is or should be no difficulty associated with irrigating the subject property according to the applicant himself, whose signature on the 1997 settlement agreement with Deschutes County indicated his acceptance of mitigation, \$110,000 worth of improvements in today's dollars. The improvements the applicant accepted included the 16x16 foot concrete box culvert to connect the northern and southern half of the property, shown in Figure 3, and compensation to revise the irrigation system "tapping into the existing water line and running said line in the culvert to the northern boundary of the Aceti property." If after the applicant received these costly mitigation elements in 1997 the applicant did not in fact revise the irrigation system to run the water line to the northern boundary of the Aceti property, it is not because such irrigation is not possible but because the applicant did not choose to apply irrigation."*

RESPONSE: This opinion and editorial is unfounded. The assumptions are wrong, the conclusions are wrong and the statement is mean spirited. What the writer thinks "should" be is irrelevant. One must look at the facts. Having a signature on the 1997 settlement agreement does not give the Applicant an easement to irrigation water in 2015. The Settlement Agreement did not convey water rights or an easement to cross private property with pipes in order to deliver it between the 1992 pond on Half Mile Lane and his property. These ideas and fantasies have been addressed previously with the facts and records found in the Application and those statements are relevant here.

The irrigation situation changed significantly after 1997, especially in 2005 when the Barrett's old tax lots 161227D 1100 and 1300 without an easement for the subject parcel 161226C tax lot 201. And, as has been previously responded to, it makes no difference to the soil capability if the 16 acres with water rights are irrigated or not. The parcel 201 is not productive or cost effective to farm with or without irrigation and tax lot 104 has urban soils and no water rights. .

Here COLW is also confused about the culverts and pipes. There is one pipe under Tumalo Place and another under Tumalo Road to bring domestic water to the site. The 16' box culvert allows some vehicles to pass between the northern and southern portions of the property. The above ground pipe or culvert on the east side of the property at the edge of the overpass allows laborers to shove an irrigation pipe through it to fill the failed irrigation pond that was attempted in 2002. However, Aceti has no easement to use it. See pervious description and photo of the failed pond.

24. STATEMENT BY COLW, Page 14. *"Second, comparison of Figures 1 and 2 show except for the bisecting road that has been fully mitigated there is no visible change to the surrounding road network, the impacts of nearby heavy traffic and transportation or expansion of Highway 97 since 1995."*

RESPONSE: This statement is false. Please read the Traffic Impact Analysis for the Proposed Deschutes Junction Zone Change, March 2015, Sage Engineering Associates.

The Deschutes Junction transportation project was a transportation safety project. It was a response to the high crash rate at the at-grade intersection of Highway 97 and Deschutes Market Road on the east and Tumalo Road on the west. It also eliminated the at-grade crossing of Deschutes Market Road and the Burlington Northern railroad tracks. Later improvements were made to prevent collisions at the intersection of Pleasant Ridge Road and Highway 97, which is now closed. The historic at-grade intersection of Deschutes Market Road and the BN railroad tracks has been closed with a barricade. There are other changes.

Tumalo Road, on the subject property, has gained 1000 vehicle trips per day since 2006.

The following roads in the immediate vicinity changed since 1995:

1. The Deschutes Market Road was realigned with the new overpass.
2. The Old Deschutes Market Road was barricaded at the Burlington Northern Railroad tracks and is no longer a through street.
3. The north bound on and off ramps to Highway 97 are new.
4. The south bound on and off ramps to Highway 97 are new.
5. Pleasant Ridge Road is now barricaded at its intersection with Highway 97.
6. Tumalo Road is realigned and now bisects one of the subject parcels.
7. Tumalo Place was created.
8. The intersection of Tumalo Road with Tumalo Place is new.
9. The intersection with 78th Street is new.
10. The overpass over the Burlington Northern Railroad is new.
11. The bridges over the Pilot Butte Canal and Cascade Pumice's property are new.
12. Graystone Lane is new.
13. Deschutes Pleasant Ridge Road is realigned and renamed.

25. STATEMENT BY COLW, Page 14. *“The Willamette Valley is the most productive agricultural land in the state and I-5 runs up the center of the valley. Working vineyards, orchards, cropland, pastures, nurseries, and tree farms can be seen growing within a few feet of the six-lane interstate highway.”*

RESPONSE: The assumptions that the Situation along I-5 and at Deschutes Junction is exactly the same is untrue and are not backed up by any facts. Everyone would agree that the climate, precipitation, soils, crops and other aspects of farming are very different in the Willamette Valley than at Deschutes Junction. The crops in the corridor along I-5 mentioned in the statement, with the exception of “croplands”, are all crops that stay in place year after year and in the case of vineyards, orchards, nurseries and tree farms stay in place for decades. There is no relevant parallel between Aceti's land and the general picture given of some unspecified farms on I-5.

The Application describes the two times in 1996 and 1997 that the subject property was fertilized, cultivated, plowed and harvested. The process raised a cloud of powder-dry soil and chaff that blew across the highway from west to east, making a hazardous driving situation. Being so close to the highway, roads, businesses, and the school and in an area of 1,756 tax lots in a small area, it is irresponsible to spread farm chemicals and fertilizers that will drift into the surrounding private property, even if farmers have a right to do so. The following information from the Application gives an idea of the urbanization of the vicinity:


Rural and Urban Density Subdivisions in the immediate area:

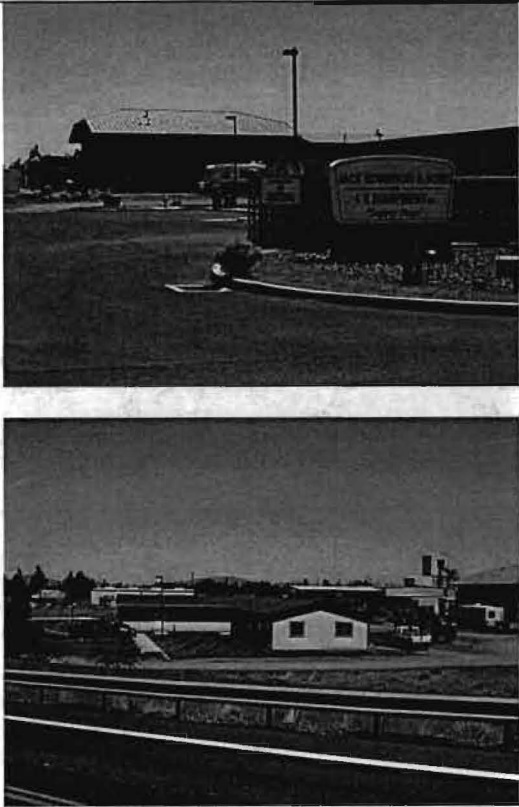

1. Starwood, 178 lots and houses,
2. Whispering Pines Estates, 1st Addition, 396 lots,
3. Whispering Pines Estates 2nd Addition, 285 lots,
4. Whispering Pines Estates 3rd Addition, 14 lots,
5. Whispering Pines Estates 4th Addition, 16 lots,
6. Rancho El Sereno, 39 lots,
7. Centralo, 9 remaining lots,
8. Glacier View, 13 lots
9. Glacier View 1st Addition, 30 lots,



10. Buena Ventura, 41 lots,
 11. Winston Ranch, 15 lots,
 12. An unnamed subdivision in the SE ¼ of the SE ¼ of Section 14, 11 lots.
 13. A rural subdivision off Morrill Road,
 14. Lots off Half Mile Road, 18 lots,
 15. Boones Borough Subdivision, 1st Addition, 79 lots
 16. Boones Borough Subdivision, 2nd Addition, 108 lots
- Conclusion: Total Platted lots in Nearby Subdivisions: 1,252**


Deschutes County Assessor's Tax Map 161226C


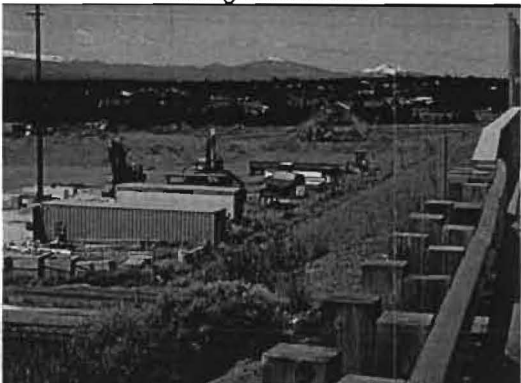
This tax map covers approximately 150 acres plus the acres for roadways, nearly a quarter mile square of land on the east side of subject site.



TAX LOT OWNER	PHOTO	ZONE	STRUCTURES	HOW IS IT USED?	ACRES
100 Deschutes County		EFU-TRB		ROADWAYS	18.13
101 Elrod		EFU-TRB	unimproved	none	1.30
102 Jack Robinson & Sons, Inc.		RI LM	2008 building 7,480 sq. ft.	Business Office, paved parking lot,	1.41

	 <p data-bbox="338 974 852 1003">Looking north from Graystone Lane. .</p>					
<p data-bbox="113 1013 239 1130">104 Deschutes County</p>			<p data-bbox="966 1013 1087 1036">EFU-TRB</p>	<p data-bbox="1146 1013 1213 1036">none</p>	<p data-bbox="1428 1013 1549 1036">Roadway</p>	<p data-bbox="1642 1013 1709 1036">0.47</p>

	County property is old alignment of Deschutes Market Road to right of guard rail.				
105 Elrod		EFU-TRB	none	About 1 acre is unimproved, 1 acre is pasture.	3.21
106 Willamette Graystone (Springfield, OR)		RI LM	Office and display retail building, 2010 building 19,090 sq. ft. Product storage building Paved parking lot	Retail and wholesale sales of hardscaping materials, manufacture pumice blocks, Outdoor products, storage and equipment parking.	4.33

107 Ramsey Trust (Eugene, OR)		RI LM	1984 Building 7,960 sq. ft.	Retail and wholesale sales and product storage.	9.05
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<p>109 Deschutes County</p>		<p>RI LM</p>		<p>road</p>	<p>0.06</p>
<p>111 Jack Robinson & Sons, Inc</p>	 <p>View of lot 111 from east side of railroad tracks looking northwest.</p>  <p>View of southern portion of lot 111 from Tumalo Road overpass, looking southwest.</p>	<p>RI LM</p>	<p>2009 buildings: 480, 1,764 and 8,000 sq. ft.</p> <p>Railroad spur into property.</p>	<p>Heavy equipment repair and fabrication.</p> <p>Heavy equipment parking</p> <p>Central Petro bulk fuel distribution business</p>	<p>18.69</p>

	 <p data-bbox="373 553 915 613">Lot 111 Looking northeast from Tumalo Road overpass.</p>				
<p data-bbox="113 618 163 643">112</p> <p data-bbox="113 678 222 703">Luckman</p>		<p data-bbox="968 618 1087 643">EFU-TRB</p>	<p data-bbox="1146 618 1213 643">none</p>	<p data-bbox="1430 618 1612 703">Unimproved, sagebrush and junipers</p>	<p data-bbox="1644 618 1703 643">1.42</p>
<p data-bbox="113 712 163 737">114</p> <p data-bbox="113 773 289 829">Jack Robinson & Sons, Inc</p>	 <p data-bbox="342 1094 932 1154">Lot114 is in center with the two buildings. Photo is looking to northwest from railroad tracks.</p>	<p data-bbox="968 712 1014 769">RI LM</p>	<p data-bbox="1146 712 1398 802">2008 Buildings 4,704 sq ft, 264 sq ft and 3853 sq ft</p> <p data-bbox="1146 834 1318 894">Paved around buildings.</p>	<p data-bbox="1430 712 1566 737">Truck shop</p> <p data-bbox="1430 773 1591 862">Commercial and business uses.</p>	<p data-bbox="1644 712 1703 737">2.50</p>



Headquarters for Central Petro. Rented from Jack Robertson & Sons Inc. Lot 114



200
Lawrence



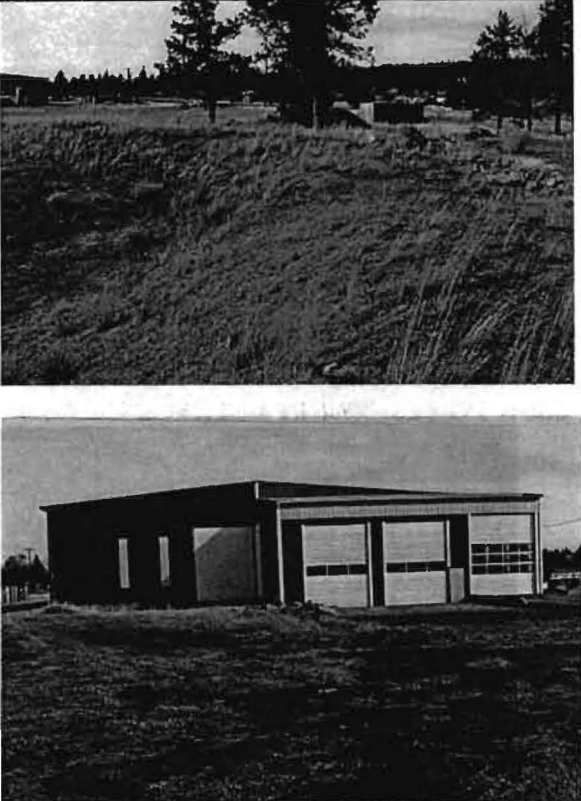
Lot 200 house and pond, photo taken from median



EFU-TRB
LM




1947 Red house, remodel of J. R. Low homestead residence. 1380 sq feet
Garage 420 sq ft.
1/3 irrigation pond (2/3 removed when Highway 97 was widened.)

Rental dwelling.
Fallow land

4.15

<p>201 ACETI</p>	<p>of Highway 97 looking northwest.</p>  <p>Barn looking to east. Truck loading docks and truck access doors.</p>	<p>EFU-TRB, LM</p>	<p>Hay barn</p>	<p>Hay barn Fallow land</p>	<p>20.26</p>
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<p>Burlington Northern Railroad</p>		<p>Railroad 100 feet wide by 1,452 feet long</p>		<p>Tracks and right-of-way</p>	<p>27.50</p>
<p>300 4 R Equipment LLC</p>	 <p>Looking northeast from Highway 97 into Lot 300.</p>	<p>EFU TRB LM</p>	<p>none</p>	<p>Unimproved land, sagebrush and juniper.</p>	<p>26.85</p>

					
	Looking northeast into Lot 300 from edge of Highway 97. Robinson buildings in background.				
301 4 R Equipment LLC		RI, Rural Industrial LU, Limited Use Combining Zone	none	Storage of equipment and excavation and construction materials and supplies.	8.93
400 Luckman (Hillsboro, OR)		EFU TRB	Historic School converted to a house, Trailer park	Dwelling, mobile homes for rent	1.09

401 Luckman (Hillsboro, OR)			none	none	0.15
402 Deschutes County		EFU TRB	1992 Duplex 1780 Sq ft	Dwellings, Rental units	0.45
403 Deschutes County		EFU TRB		Remnant for road project	0.08

Summary:
One acre in this tax map is used for pasture.

27. STATEMENT BY COLW, Page 15: *“Fourth, there is not a lack of surrounding farm use, as shown in the attached aerial photographs.”*

RESPONSE: This statement is false. Adjoining the subject parcel on the west side and sharing a fence is the Three Sisters Adventist Christian School. The school sits on Tax Lot 161227D 00100 and comprises 15.42 acres of partially irrigated land. The “green” in the photo is the landscaping and soccer fields. North of that, adjacent to the subject site, are roads, Tumalo Place and Tumalo Road. Southwest of the subject site are the Tax Lots 161227D001100 and 001300 that have been owned by a subsidiary of the Seventh Day Adventist Church for the past decade and are not farmed. The church plans to expand recreational uses such as ball fields onto them. There are four 1-acre parcels, four 2.5 acre parcels, one 3.5 acre parcel, four 10 acre parcels and two 20 acre parcels in tax map 161227D. The Twigg property that had the horse race track covering it until recently is about an eighth of a mile away. The other parcels are all at least a quarter mile to the west. The hobby farms will not be harmed by the Rezone. Some of the owners buy hay from the Applicant, and there is no reason to assume that the Hay Barn would have to stop operation if the land is rezoned. Farm use is an outright permitted use in the RI zone. More importantly, the RI zone is ideal for the Hay Depot, an agribusiness that supports agricultural in the region. The code for the RI zone, 18.100.010, Section (B.) allows as a use permitted outright, “primary processing, packaging, treatment, bulk storage and distribution of the following products: (1.) agricultural products, including foodstuffs, animal and fish products and animal feeds.

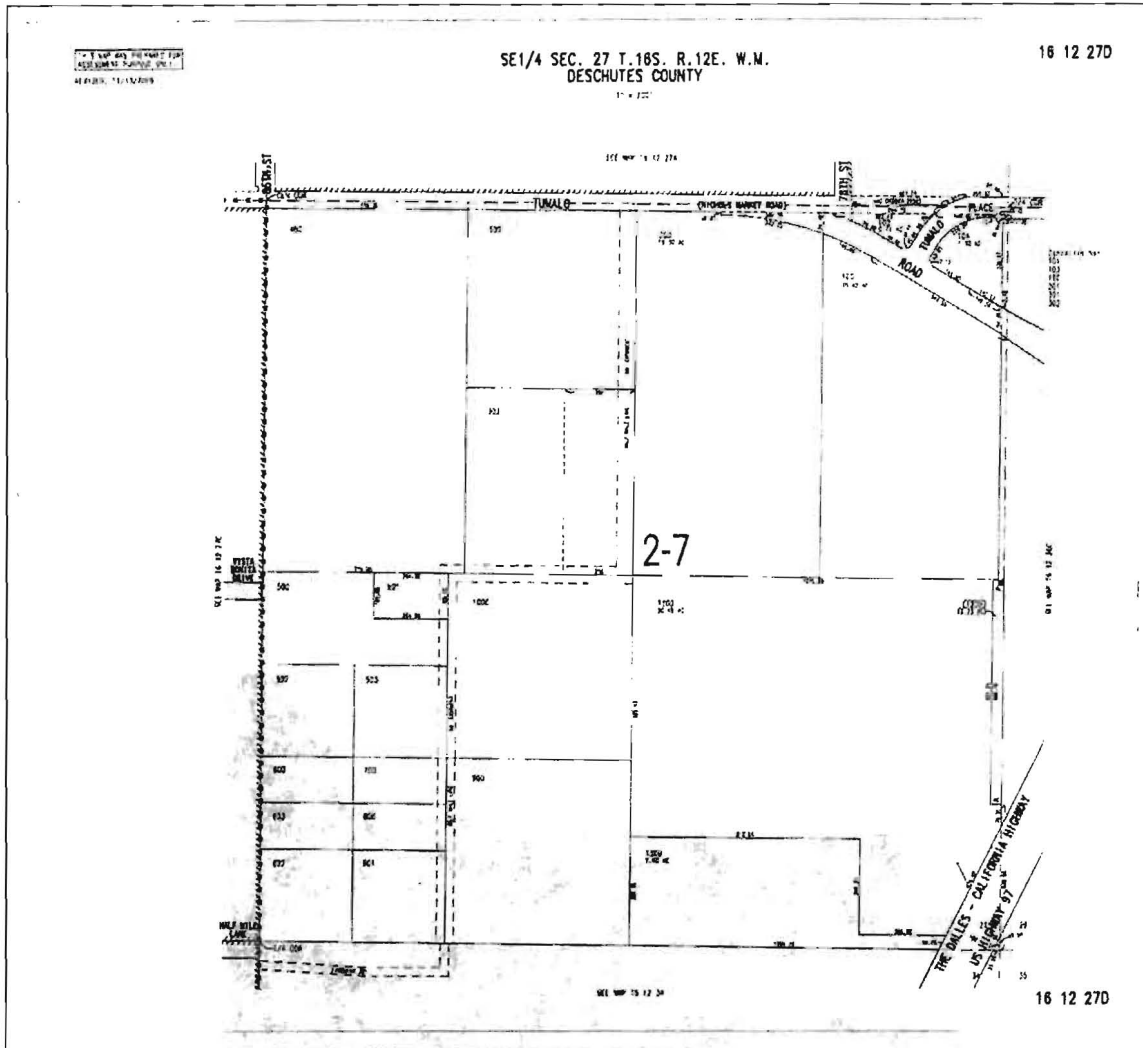


Three Sisters Seventh Day Adventist Christian School
Photo from Application

F. Deschutes County Assessor’s Tax Map 161227D

This tax map covers approximately 160 acres, a quarter mile square of land, on the west side of subject site.

SUMMARY: The Applicant’s small parcel is in the upper right side of this tax map. It is lot 104. Three Sisters Adventist Christian School is on lot 100 with 15.42 acres, with another uncultivated 30.45 acres on lot 1100 and 7.6 acres on lot 1300 being held for the school’s expansion, totaling 53.05 acres. All of the 53.45 acres of school land is zoned EFU-TRB. None of it is used for agriculture. Of the remaining land, five hobby farms have pastures and total about 70 acres. The largest of those parcels is 21 acres, and it is zoned MUA 10, Flood Plain. Another parcel is 20 acres and it is zoned EFU-TRB. The remaining 22.01 acres is used for residences, shops, roads or another nonagricultural uses. Most of it is zoned MUA10.



28. STATEMENT BY COLW, Page 1: *“The Transportation Planning Rule is not met where as (sic) here the conditions of approval are not shown to satisfy OAR 660-012-0060 (4).”*

RESPONSE: This statement is incorrect. Peter Russell, County Senior Transportation Planner; James Bryant, Senior ODOT Transportation Planner; Gary Judd, P.E., Registered Traffic Engineer, and the hearings Officer all were satisfied by the conditions of approval. They agreed that the minor conditions of approval are adequate to meet the Transportation Planning Rule. To meet Condition # 8, the Applicant will submit a Transportation Demand Management program (TDM) upon development.

29. STATEMENT BY COLW, Page 16-17. *General Statements in conclusion*

RESPONSE: It is inappropriate to quote and rely on comments made by an attorney speaking about his opinion of the relative productivity and profitability of soils in the area in 1996 when this Application contains a professional soils report. The Borine Study should be used by the County in making its decision on this Application. As a side note, the Applicant was not

appreciative of the attorney's comments and lack of knowledge and hired another firm to replace him. .

COLW's mistakes about surrounding uses and the adjacent Rural Industrial properties have been addressed. It appears that COLW believes the zoning and uses are always the same. At Deschutes Junction, this is especially not true. The Application, for that reason, contains over 70 pages of factual information and photos about surrounding uses that the Hearings Officer relied on. Additionally, the Applicant showed a 20 minute video of a 360% view of the surrounding properties to the Hearings Officer and to the Board. The Application and the video contradict the assertions of COLW.

COLW's lack of observations of the significant differences between the transportation system today and in 1995 have also been addressed. COLW is wrong.

Under her comments on profitability, COLW argues that even if farms in Deschutes County do not garner a large profit, they are valuable for the scenic open spaces they create and the tourist dollars they bring in. The subject site, however is not scenic open space. The ¼ mile long and more than 30-foot tall overpass approach on the property obstructs the views the tourists might have once had as they passed by the property. The high level of noise as described in the Application and in the video, on and around the property, make its value as a peaceful open space nil. It is surrounded by busy county roads and the highway and the only overpass over Highway 97 between Bend and Redmond, bisects it. 82% of the privately-owned Rural Industrial land is adjacent to it. The heavy truck traffic actively use the roads. *

The Application and the Hearings Officer's Findings show that this is a property specific application and the decision applies to the subject property and it is consistent with County Comprehensive Plan and Statewide Planning Goals.

On the top of page 17, COLW appears to argue that the Application and the Hearing Officer's decision do not address the criteria nor are the relevant recent decisions used as guides. The two documents show that the opposite is true. Both carefully address all of the relevant criteria with thorough, factual evidence and an understanding of the meaning of each criterion. The Applicant and the Hearings Officer were extremely studious about their documents and considerations. The Application took two years to research and write the 350+page Application and the Figures and Exhibits are extensive. The Hearings Officer took adequate time for her work, and it resulted in an additional \$3,307.50 bill to the Applicant by the County, above the \$5,000 deposit paid. The Applicant is not complaining here, and is in fact complementing the HO on her thorough work.

COLW again is not factually accurate about the history of the site or the situation that has led to the inability to irrigate it. COLW also ignores the soils report in relation to the irrigation issue. No one is arguing that the approval should be granted because of small parcel size. That is not a criteria.

Because they are relevant and set precedent, the Applicant submitted two previous decisions into the record at the hearing before the Hearings Officer. The BOCC is familiar with those cases and agreed with the county planning staff and attorneys serving as Hearings Officers and approved the applications based on the criteria and evidence presented. The DSL application, the staff report and decision clearly and accurately explain the issues. (PA-11-7 and ZC-11-2). Also, the Powell/Ramsey Case, PA14-2 and ZC-14-2 was approved recently for the property adjacent to the subject site and is similar. The BOCC has no reason to change its point of view.

Conclusion: We ask COLW to withdraw their factually flawed testimony.

We ask the BOCC to adopt the Hearings Officer's Findings and Approve the Application.

APPENDIX

Part of a Document Submitted into the Record on July 14, 2015

IRRIGATION

The Applicant had a 19.71 acre water right through Swalley Irrigation District. This amount was reduced in October 2015 to 16 acres at Swalley Irrigation District's request. The reduction was made because of the presence of the metal storage building and the associated paved and graveled driveways and truck turn around areas.

An email from Swalley to the County for this application stated that irrigation water was first delivered to the subject property in 1968. Aceti has been preserving his water rights through the in-stream leasing program since 2000.

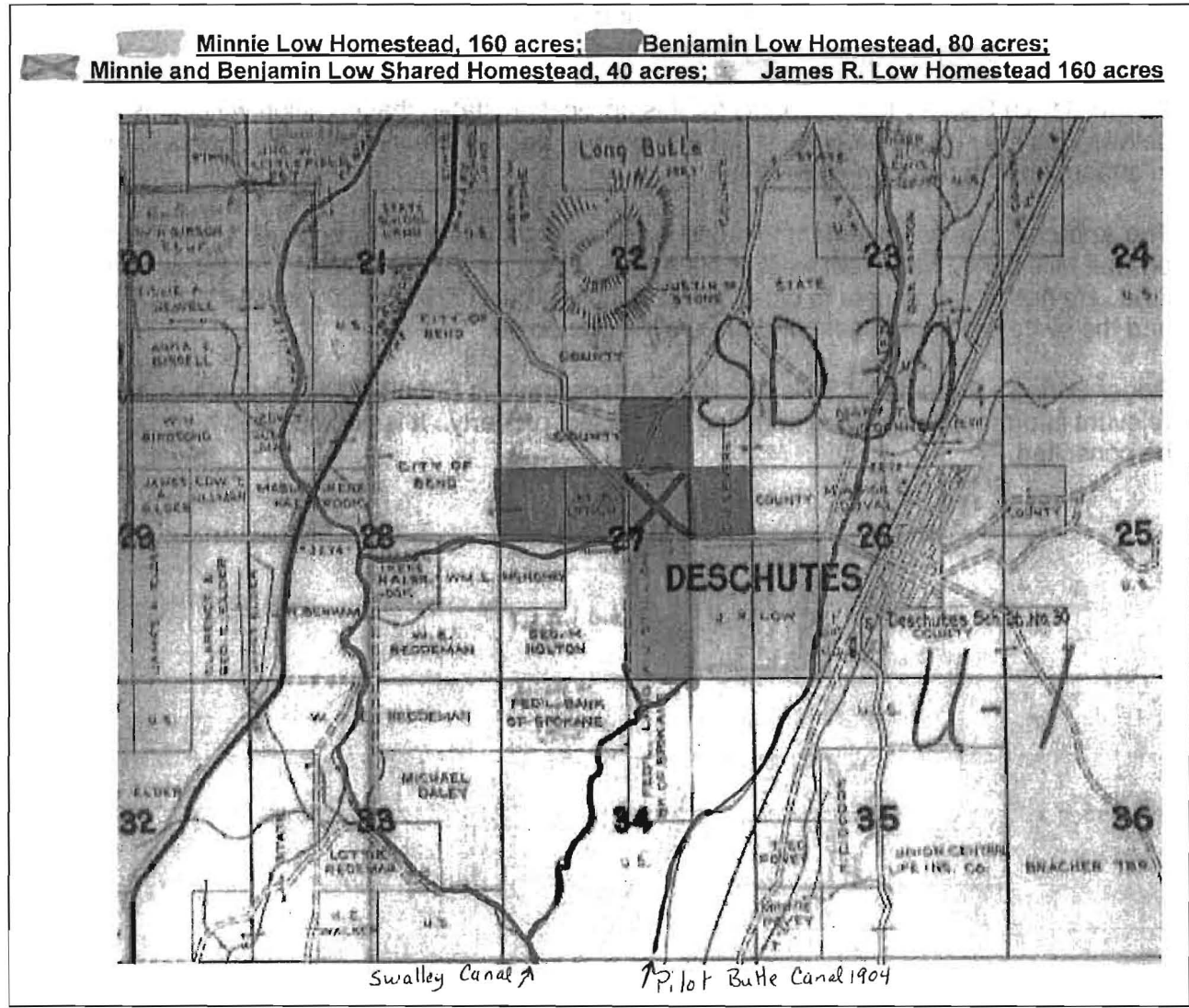
The Applicant has no easement to cross the three private properties between the irrigation pond on Half Mile Lane, 1,230 feet west of his parcel, with a pressurized pipe to deliver water to his land. He needs easements to cross 161227D001100, 161227D001200 and 161226C000200 and the owners do not irrigate and are unwilling to do so.

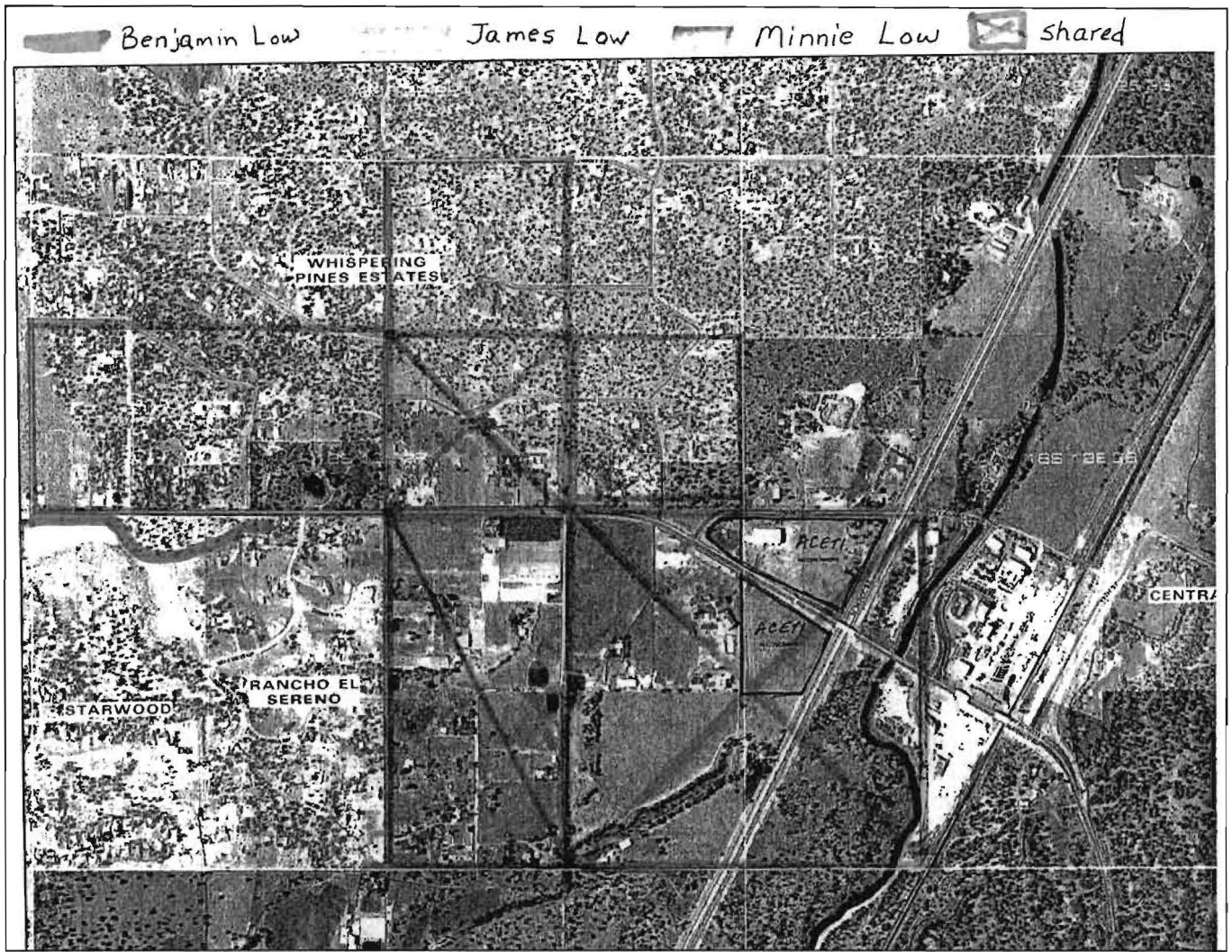
Roger Borine's Agricultural Soils Capability Assessment is EXHIBIT 14 and contains excellent, relevant information regarding irrigating the subject property. It is not repeated here but should be consulted.

Location of the Low homesteads and the alignments of Pilot Butte Canal and the Swalley Canal as shown on Figure 12, 1935 Metzker's Atlas.

The Low family owned 440 acres in Sections 26 and 27 including the subject site and surrounding properties as noted on the map below in pink for Minnie Low, yellow for James R. Low and green for Benjamin Low. The 40-acre green parcel crossed in pink was jointly owned by husband and wife, Minnie and Benjamin Low.

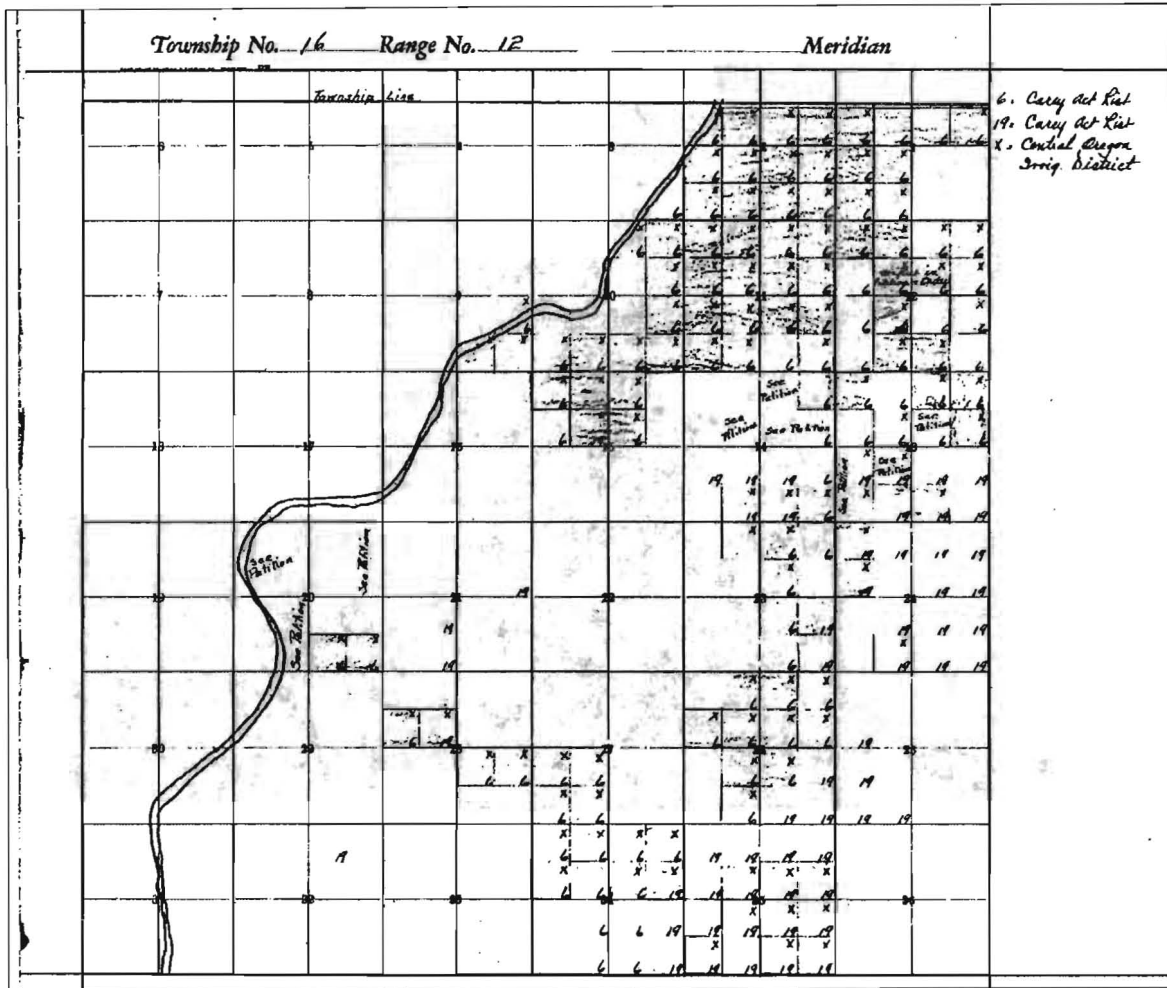
FIGURE 12 repeated





This 2014 aerial photo (EXHIBIT 26) shows the historic homesteads. The blue lines indicate the Deschutes Lateral of the Swalley Canal and the two ditches along Half Mile Lane (south to north) filling four irrigate ponds, the Low Lateral (west to east south of Tumalo Road) and the lateral on the top of the rock spine (angled from the center of the photo to the right) that formerly filled the pond next to US Highway 97, and the Pilot Butte Canal running from south to north on the right side..

None of Benjamin Low, James Low or Minnie Lows' land was in Segregation List # 6 that was served by the Pilot Butte Canal. The 22-mile long Pilot Butte Canal crossed the east side of James R. Low's land in 1904. The entire canal was completed by February 1905. All three bought stock in Deschutes Reclamation and Irrigation Company which was to become Swalley Irrigation District. This undated map is from the Deschutes County Clerk. The Deschutes River is shown, but not the canal, so the map is likely dated around 1902.



James Low made homestead entry at The Dalles on Dec. 3, 1903. He filed the necessary papers called the Homestead Proof that demonstrated that he had met the criteria for receiving his patent. President Taft signed a patent to 160 acres for James R. Low in 1909. In the Homestead Proof submitted in 1909, witness James R. Benham states that the character of the land is "farming land – needs to be irrigated tho". Witness Charles B. Swalley, a neighbor, wrote that the land was "farming land and grazing." He wrote about remembering the date Low settled on the land as when Low "bought stock in our ditch about this time (May 1904)." (The source of all of the homestead records is the National Archives in Washington D.C.)

Charles B. Swalley and G. W. Swalley filed in 1892 for Deschutes River water to irrigate their ranches north of Bend near Deschutes Junction. The water would be diverted from the Deschutes River near Bend, two years before the Carey Act was passed. The project was funded by selling shares, typically to users.

James Low states that, "I have 3 shares of the cap. Stock of the Deschutes Irrigation and Rec. Co carrying water sufficient to reclaim said tract." He wrote in 1909, "The present value of said water right is \$1,000 in addition to all of above improvements (\$500)." Witness James R. Benham wrote that James Low lived on his land in April or May 1904 because, "I was an officer in the Irrig. Co. and he became a stockholder about that time."

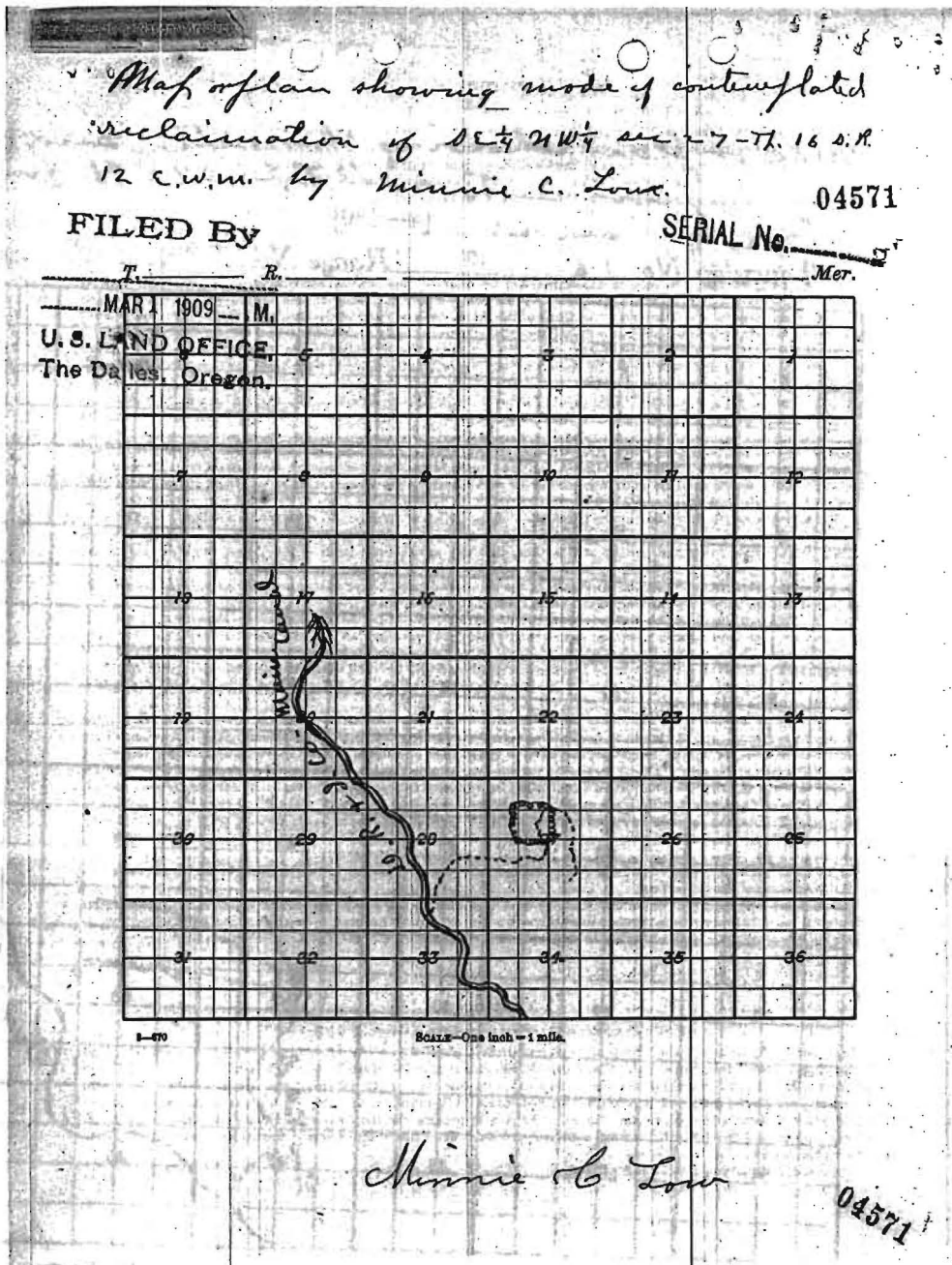
Benham and Charles B. Swalley were two of eight incorporators of the Deschutes Reclamation and Irrigation Company, in 1899. The canal was built over three decades, between 1902 and 1931. In 1912 the North Dam was constructed (near the current Riverhouse Convention Center) and Swalley's intake at the Deschutes River was changed and the canal improved. By 1913, it irrigated 1,280 acres. In 1931 it was 13 miles long. By 1933, 6,638 acres were irrigated. It is unknown when the Swalley lateral called the Deschutes Lateral that ran north from the main canal to Benjamin and James Low's homesteads along the rock spine and half mile Lane was dug. Because Minnie's Homestead Proof mentions specifically that her ditch, called the Low Lateral, was dug and water was delivered by gravity in September 1912, we can assume Swalley water might have been available to the land around Half Mile Lane at that time. Benjamin Low cleared and cultivated 35 acres along Half Mile Lane. He recorded his patent with the Crook County Clerk on Nov 2, 1908. He transferred the deed to his wife Minnie Low three days later.

Benjamin Low was married to Minnie in 1885. They traveled from Illinois to Pineville in 1900. He filed on his 120 acre homestead in November 1, 1901 and built a 1 ½ story 16 by 26 foot house for himself, his wife, Minnie, and four children. He grubbed and cleared two acres. In 1906 he was an employee constructing the Swalley Canal for two months. A witness for his homestead entry papers, James R. Benham, states that Low held many jobs off the land during the years before 1907. By 1907 he had 35 acres (in the flood plain that is now west of Half Mile Lane) under cultivation with four crops and a 24 x 44 foot barn. He bought 6 shares of stock in the irrigation company. Theodore Roosevelt signed Benjamin Low's patent to 120 acres on February 17, 1908. Minnie states that Benjamin Low deserted her in February 1908, immediately after he received his patent and they subsequently divorced. He moved to a winter wheat ranch near the Columbia River.

Minnie Low filed her homestead claim in March 1, 1909 at age 50 and after her husband left. Three sons, Charles, 23; Walter, 15; and Lester, 12 and a daughter Marguerette, 10, lived with her. Minnie was gone from her claim for several years of ill health to stay with relatives in Prineville. Minnie's family continued to live in the house on Benjamin's land until they built a house on Minnie's land in 1911. In 1909 she paid a laborer to clear and grub 3-4 acres of what

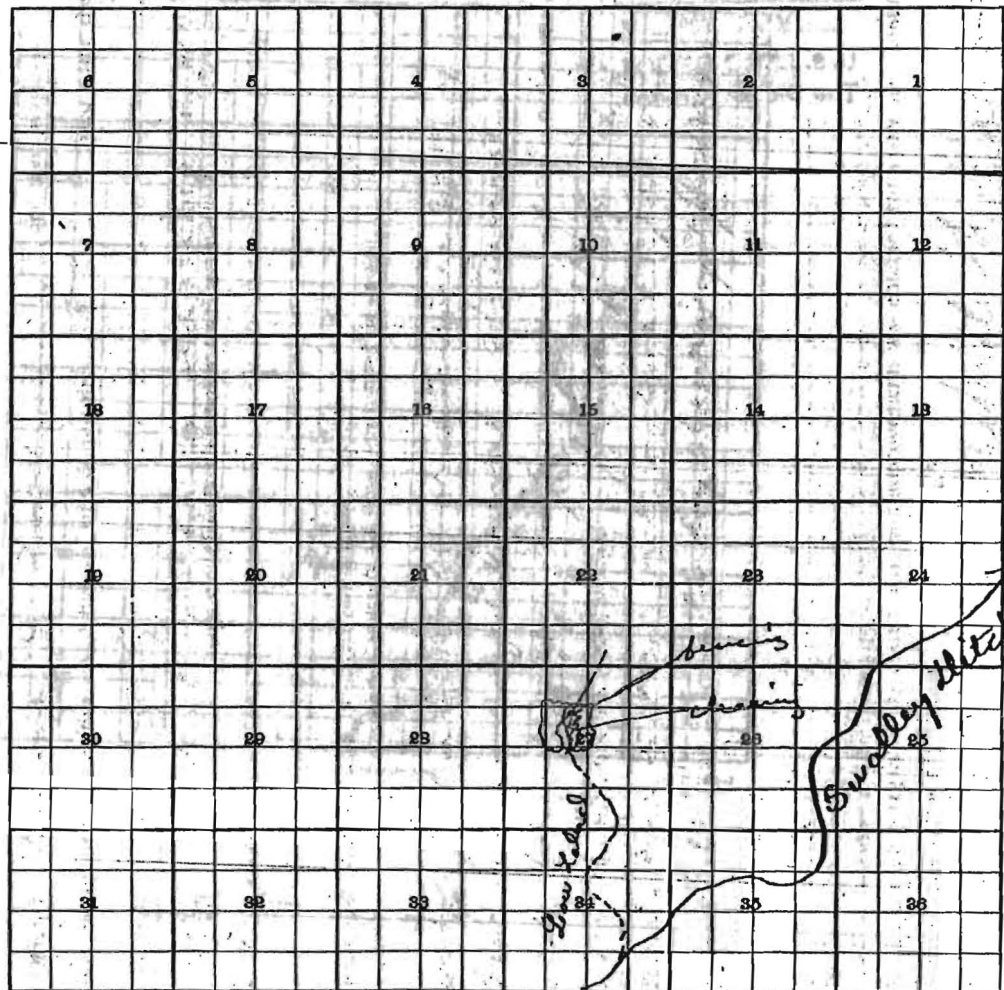
she describes as volcanic ash and rock with juniper trees on a westerly slope. Witness George R. Butts, a neighbor, wrote on the homestead papers that Minnie's homestead land was, "pretty rough – with a general easterly and northerly slope. Volcanic ash – about 2 ½ miles to Deschutes River." In 1910 she hired a man to fence ¾ mile and to dig a ditch to the cultivated acres. She had two more acres cleared to a total of six acres. She bought six shares for 20 dollars each to the Deschutes Reclamation and Irrigation Company (later known as Swalley) on March 1, 1913. The rocky land was sloped on the southern edge of Long Butte and was difficult to irrigate or cultivate. Her records show only 6 acres was cultivated and irrigated. In 1913, she wrote that about 1.25 miles of ditch connected her property to the main canal and it is 16 inches wide and 16 to 20 inches deep. Her son Charles testified that she grew a crop of potatoes, beets, carrots and artichokes in 1910 but the crop was "not good". Nothing was grown in 1911. Six acres were put into dry winter wheat in 1912. He wrote that irrigation water was delivered in September 1912. Most of her 160 acre claim, about 120 acres, was "too high to reach by gravity flow". Some of the land went into tax foreclosure in the depression. Woodrow Wilson signed Minnie Low's patent to a 40 acre parcel shared with her husband in 1913. A patent to Minnie's 160 acres was awarded in 1914 by President Woodrow Wilson. Within a few years, she gave up on farming rock and moved south of Eugene. Today, all of Minnie Low's land is subdivided into Whispering Pines First Addition.

1909 Map at the National Archives dated March 1, 1909 and signed by Minnie Low shows a "contemplated D. R. & I. Co. main canal and a contemplated Low Lateral. The alignments of both are different than what was built four years later. Irrigation water had not reached the area.



1912 Map at the National Archives dated March 1, 1912 and signed by Minnie Low shows another "contemplated D. R. & I. Co. main canal and a new proposed alignment of the "Swalley Ditch" and the "Low Lateral". The anticipated alignments of both are different than what was built a year later.

Map or plan showing character and extent
of improvements on D. R. & I. Co. 04571 from SE $\frac{1}{4}$
NW $\frac{1}{4}$ sec 27 [4-590]
Township No. 16 S Range No. 12 E Mer.

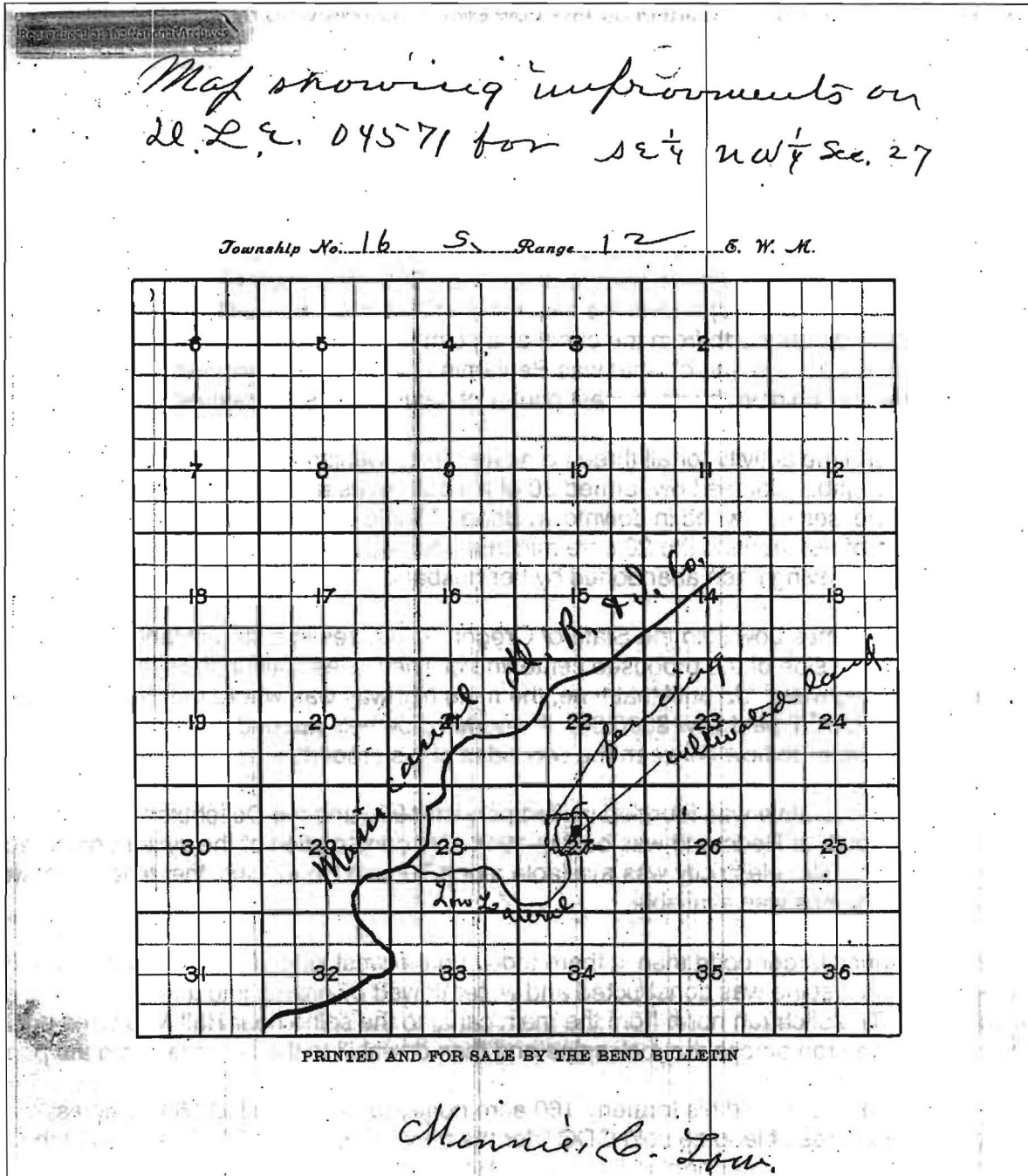


Scale 80 chains to an inch.

Minnie C Low

True Meridian

1913 Map in National Archives showing proposed improvements on Minnie Low's homestead and the "Low Lateral" of D. R. & I. Co. to serve Minnie Low's 6 cultivated acres. Even though water was flowing to her 6 cultivated acres by this time, the Swalley canal was constructed in a different location. Minnie Low's water right was awarded on March 3, 1913. She testified that she received water in September 1912 via the 1.25 mile long ditch that she paid a laborer to dig



While the Swalley system, a “cooperative” project, took over three decades to complete, the well-funded, for-profit Pilot Butte Canal was completed by February 1905 and crossed at the high point of J. R. Low’s land. The Pilot Butte Canal’s development company sold land and water to make money. The company did not have the right to the land the Lows homesteaded. That was in the Swalley service area, a cooperative venture of the landholders. A lateral that today irrigates the Funny Farm runs north from the Pilot Butte Canal on James Low’s former homestead. It is at the highest point of James Low’s land. Low had no right to that water.

A 1940s photo in the Deschutes County museum shows a few acres south of Tumalo Road in potatoes. The exact location of the field is not known. Walter Low’s son, Kenneth Lowe, confirms that the family was experienced in growing potatoes in the Tumalo area after WWII, but Minnie and Benjamin had left the area decades before the photo was taken and James Low had sold his ranch in 1943.

Minnie Low’s homestead records show that the Swalley Canal water was flowing in the area by autumn of 1912. The Swalley system was completed in 1931. The 1935 Metzker’s Atlas of Deschutes County (FIGURE 12) shows the alignment at that time. By 1931, a Swalley lateral, the Deschutes Lateral, ran north from the canal at a point just west of the current hydropower plant to a “Y” at the southern end of what was Benjamin Low’s homestead, then owned by A. J. Stillion, and to the low point in the southwest corner of James Low’s homestead.

Farming was a part time activity for all three homesteaders. Benjamin Low farmed 35 of his 120 acres and held odd jobs. James Low farmed 20 of his 160 acres and derived most of his income from businesses he owned in downtown Bend. Minnie cultivated six acres and received her patent in spite of not meeting the 20 acre minimum cultivated acres due to testimony about her poor health and having been abandoned by her husband.

On October 1933, James Low sold the State of Oregon 6.73 acres in a strip of land 100 feet wide, 50 feet on each side of the proposed centerline of The Dalles-California Highway to construct the new highway. Up until that time, the main highway was where the Bend-Redmond Highway is today. ODOT paid Low \$500.00. A wooden pipe was put under the highway to allow for irrigation water to flow between the two sides of his property.

Central Electric Cooperative was founded in Redmond in 1940 and the Deschutes substation serving 11 users south of Redmond was built in 1941. No construction of the system occurred during WWII. After 1946, electricity was available along Tumalo Road. Until that time, no power for irrigation pond pumps was available.

Around 1947, a much larger pond than is there today on the west side of the new highway and southeast of the rock spine was constructed and water flowed by gravity into it from the Swalley Irrigation Canal. The ditch ran north from the main canal to the spine near Half Mile Lane and turned northeast and ran across the rock spine and then downhill to the southeast into the pond.

In 1943, when James Low sold his formerly 160 acre homestead, it included 153.27 acres; excepting the 6.73 acres of land he sold ODOT for the new US Highway 97. The deed to the Crawfords, states it has a water right in Deschutes Reclamation and Irrigation Company (Swalley) for 120 acres and 120 shares in stock in the corporation. Forty acres were not considered farmable and had no water rights. The land around the rock spine and other rocky areas east and west of the highway were not irrigated. There is no evidence that the subject property was irrigated or cultivated at that time.

James Low's former homestead was broken up into six parcels owned by five parties by 1972. In the summer of 1967 the Waltons sold to the Lawrence's 25.2 acres that included the subject property. It was bounded on the east side by the "Dalles-California Highway 97" and bounded on the northerly side by the south right-of-way line of the "Deschutes Tumalo State Secondary Highway" (now Tumalo Road) for 997.75 feet between the Highway 97 and the line between Sections 26 and 27, thence south along that section line for 1341 feet, thence east for 464.43 feet to the right-of-way of The Dalles-California Highway. It also deeded a 20 acre water right of Deschutes Reclamation and Irrigation Company for the 25.2 acres. Water could be pumped from the irrigation pond next to the highway.

A week later, George and Vietta Barrett family bought the parcel from the Lawrences.

Swalley Irrigation District, in an email to the County, wrote that the parcel was partially irrigated for the first time in 1968.

By 1972 the Barretts had purchased several other parcels in the area and owned about 115 of James Low's original 160 acres. Lester Walton, Art Raymond and W. K. Charlesworth owned the three other parcels that comprised James Low's homestead at the time.

In October 1986, the 16 acres west of the Subject Site was purchased by the Western Conference Association of Seventh Day Adventists, an Oregon Corporation for the Three Sisters Adventist Christian School.

EXHIBIT 17. SWALLEY IRRIGATION DISTRICT REGARDING BENEFICIAL USE REQUIREMENTS



IRRIGATION DISTRICT

February 4, 2013

Anthony Aceti
21235 Tumalo Rd.
Bend, OR 97701

RE: **1st Notice of Beneficial Use Requirements**
Protection of Water Right – Your action is needed
16-12-26-NW/SWE-00201 – 19.71 acres of water rights
***** 2013 - 6th year non use**

The 2013 irrigation season will be starting on April 1st and with that, Swalley Irrigation District is writing because we are concerned about your water rights. We want to bring to your attention state law requirements to keep your water rights and outline how we can jointly help maintain your rights.

State Law

State law requires that the number of acres on your property to be irrigated must be irrigated beneficially and fully at least once every 5 years. "Beneficial use" requires 1) an irrigation system in place; and 2) production of a viable crop. A viable crop (pasture, hay, other crop production, lawn, and gardens) must be produced from the irrigation either for individual use or for sale on the market. Watering sagebrush or cheat grass is not beneficial use. There must be a diversion in place and a means of irrigating.

4th and 5th Year of Partial or Non-Use

After the 4th year of partial or non-use, the District can begin a process to move the water right from a landowner's property that is not beneficially using the water to other properties in the District where the water can be applied. We have completed a process of determining where properties appear not to have been beneficially irrigated for 4 years or more. (ORS 540.572) Our records for this 19.71 acre parcel show 2013 will be 5th year partial use. Full use is required this year.

Pursuant to Oregon law, we request your confirmation that this information is correct. Absent any communication from you, we will presume that you have no information to rebut our conclusion that water has not been placed to beneficial use over the last 4 irrigation seasons. Unless you 1) provide us with evidence of use, or 2) can show the non-use is covered by a forfeiture exception set forth in ORS 540.610, or 3) elect to lease your water in-stream this year, the District intends to petition the Water Resources Commission for approval to transfer the water to other lands in the District.

In-stream Leasing

YOU WILL LOSE THE 19.71 ACRES OF WATER RIGHT IF IT IS NOT USED FULLY THIS YEAR OR IF IT IS NOT INSTREAM LEASED. If you choose in-stream leasing, please contact the Office and we will handle the in-stream leasing paperwork for you. **The last day to commit to In-Stream Leasing is March 1, 2013.** It will cost you \$395.00 for mapping and State fees.

Phone 541/388-0658
Fax 541/389-0433

64672 COOK AVENUE
SUITE ONE
BEND, OREGON 97701

www.swalley.com

What Aceti's Deed States

The Barretts sold the 24 acre parcel next to US Highway 97 and Tumalo Road to the Applicant in April of 1995. The parcel was described as approximately 24.02 acres in the NW ¼ of the SW ¼ of Section 26, T16S, R12E, W. M. It says it is subject to "Regulations, including levies, assessment, water and irrigation rights and easements for ditches and canals of Central Oregon Irrigation District." COID is a quasi-municipal organization of users who maintain and operate the Pilot Butte Canal and the Central Oregon Canal. There is no mention of the Swalley District or of any specific deed to a water right or easement for the delivery of water. Further research by Aceti found that there is no water right from the Pilot Butte Canal and there is a right to water from Swalley, but no easement or ditch to get it across other properties to his property.

The Applicant contract farms for others and brokering and trucking hay. He bought the land for a hay storage and a hay distribution point for his business that began in Christmas Valley 39 years ago. In June 1997, he applied to Deschutes County to conduct a commercial activity in conjunction with farm use. The application was approved with conditions on Nov 21, 1997.

Just when the Applicant was approved for a building permit to construct a second 100 x 200 foot hay barn on the center of his property, ODOT and County told him they needed the land for a new overpass and realignment of Tumalo and Deschutes Market Road. The project took nearly three acres in the middle of his land, including the site of the new barn, realigned the on and off ramps to the highway, created a new road, Tumalo Place, and realigned Tumalo Road and Deschutes Market Road. In addition to other things, the project divided his land into two parts, adding significantly to the challenges of farming it. The second barn was not built. Irrigation and hay farming on site that was necessary in order to comply with the Conditional Use Permit became impossible.

After the overpass was constructed and the traffic system was changed, he could not farm even a meager crop of hay on site. He couldn't get irrigation water to the site and even if he could, the overpass made any hand line sprinkler layout impractical. Other options such as attempting to dig a new pond in the northeast corner or to dig a well were explored without success. When one looks at the rock and shallow non-resource soils, the small parcel size, the overpass bisecting the property and the heavy noisy traffic, it makes sense to find a different more appropriate use for the land.

EMAIL FROM SWALLEY TO THE COUNTY REGARDING ACETI'S IN-STREAM LEASING, THE DATE IRRIGATION WATER WAS FIRST USED ON THE PROPERTY AND EASEMENTS TO DELIVER WATER

From: Suzanne Butterfield [mailto:suzanne@swalley.com]
Sent: Friday, May 29, 2015 1:24 PM
To: Paul Blikstad
Subject: FW: Aceti

Paul,

Here are my comments on the statements made by Tony Aceti regarding Swalley Irrigation District irrigation water delivery to his property:

Aceti statement: "The construction of the Swalley hydroelectric facility which adversely affected applicant's in-stream leasing of irrigation water"

Swalley ID response: The construction of the Swalley hydroelectric facility in 2010 has no bearing on Swalley's In-Stream Leasing Policy which was adopted about the same time. About 5 years ago Swalley changed its Instream-leasing policy from allowing this practice every year to only allowing it once every 5 years so that if a water user had not irrigated in 4 years they had the option to in-stream lease rather than use the water in the 5th year. State water law requires that irrigation water be used fully (beneficial use) once every five years or it is forfeited. In stream leasing is considered beneficial use. The new Swalley policy does not harm the water user other than an inability to receive payment from Deschutes River Conservancy at \$39 an acre above 5 acres, in four years out of five. The reason Swalley tightened its In-stream Lease Policy was unrelated to the hydroelectric facility that was built in 2010. It was because Swalley had permanently dedicated to the Deschutes River 39 cubic feet per second of water as a result of its main canal piping project and several other piping projects. Swalley's water right used to be 125 cfs. Today it is 81 cfs. The District wants its water users to use the water on the land, rather than in-stream lease, so that there is enough carry water to get to all users. In-stream Leasing is a program of the Deschutes River Conservancy and each irrigation district may set whatever restrictions on it they feel are necessary to meet the needs of the district, which is to efficiently deliver irrigation water.

Aceti statement: "The changes in the source of and delivery systems for irrigation water from COID and the Pilot Butte Canal to the Swalley Irrigation District. "

Swalley ID response: Our files for this property (see attached) show that in 1995 Swalley contacted Key (?) Title Company to correct their error stating in 1995 Warranty Deed between Barrett and Aceti that COID was the water provider. Our files show that Swalley ID was the water purveyor of irrigation water to this property from 1968 to date. COID should be contacted to see if COID was ever a provider of water to this property.

Aceti statement: "The lack of a Swalley easement to allow the delivery of irrigation water to the property."

The only easements Swalley has ever had, just like all other irrigation districts, are the easements along the Swalley conveyance system. Swalley owns 28 miles of pipes and canals with federally granted easements along all of it. There is no such thing as a Swalley easement from the conveyance system to each property owner. If a property needs an easement through another piece of private property to get Swalley water to it, it is the responsibility of the property owner to try to secure and maintain such an easement from his neighbor for a private pipeline or canal to traverse through it.

Tony Aceti has instream leased his Swalley ID water as follows:

Year 2000 – 4.5 acres

2001- 6.4 acres

2005- 19.71 acres

2007- 19.71 acres

2013- 19.71 acres

Suzanne

FIGURE 18.

**SWALLEY IRRIGATION DISTRICT RESOLUTION 13-07,
ANNUAL WATER LEASING PROGRAM**

**SWALLEY IRRIGATION DISTRICT
RESOLUTION 13-07**

2014 WATER LEASING POLICY PER THE DESCHUTES RIVER CONSERVANCY AND SWALLEY IRRIGATION DISTRICT AGREEMENT REGARDING THE ANNUAL WATER LEASING PROGRAM FOR THE DESCHUTES BASIN

Whereas since 1999 SID has participated in the Deschutes River Conservancy Annual Water Leasing Program for the Deschutes Basin where individual water users within SID may leave their water in the river rather than use it on the land and it is considered beneficial use, and

Whereas since 2007, in addition to the individual SID water users who have participated in this program, the District has permanently placed in the Deschutes River 38 cubic feet per second of senior water right from 4 conserved water piping projects, representing about 30% of the District's water right, resulting in many benefits for the environment and for SID water users,

And Whereas it is now important that for the most part the remainder of the SID water right be beneficially used by the SID water users on the land rather than leased instream because the water is needed within the delivery system in order to provide the most water to all water users from April through October,

Now Therefore Be It Resolved,

Swalley Irrigation District will continue to allow SID water users to instream lease their Swalley water right under the Deschutes River Conservancy and Swalley Irrigation District Agreement regarding the Annual Water Leasing Program for the Deschutes Basin and in accordance with the Swalley Water Transfer Policy adopted December 17, 2013 as follows:

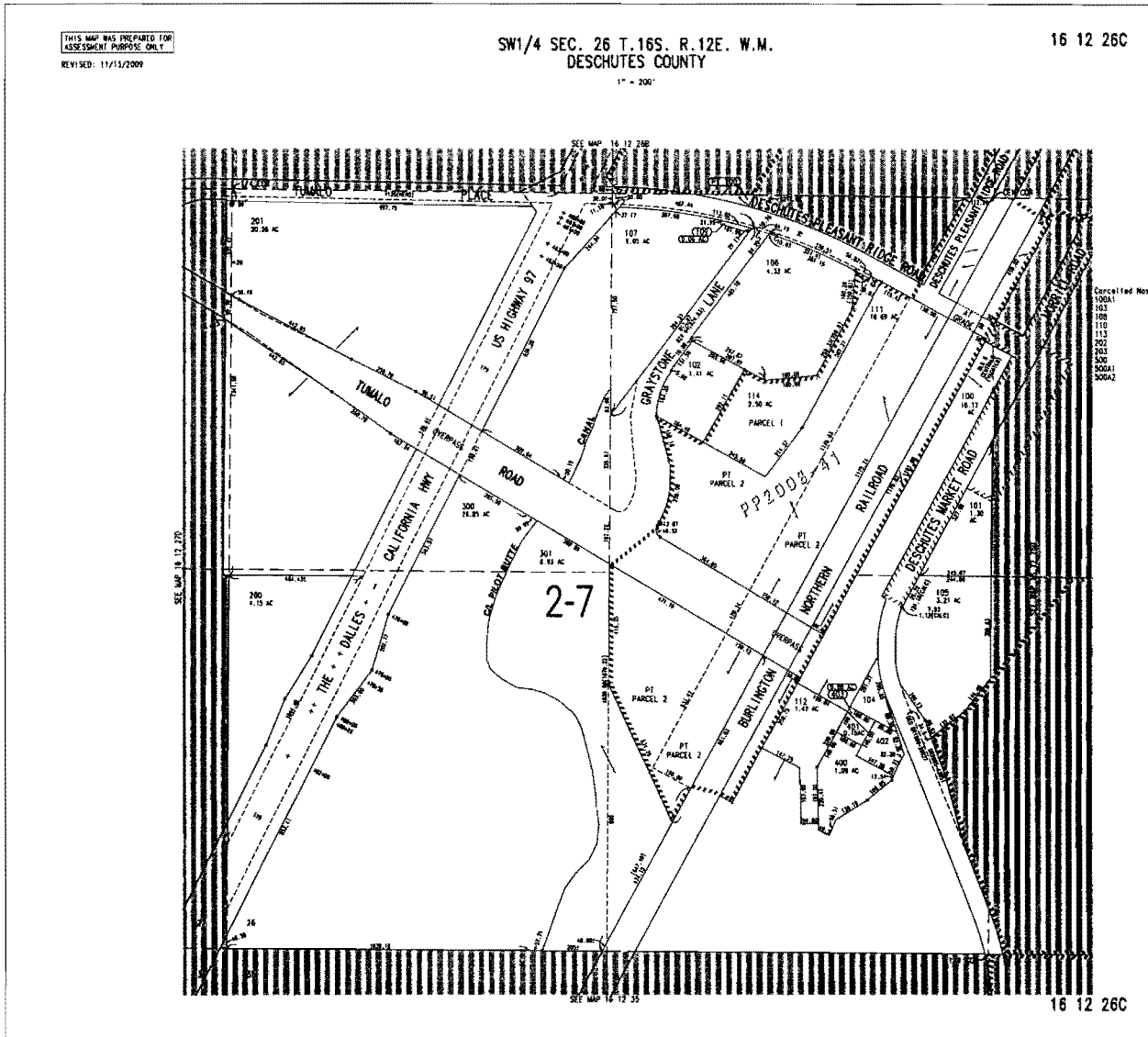
1. Those entering their 5th year of non-use and thus jeopardizing the water right which can only be protected through either instream leasing or using the water on the land
2. Those who pump directly from the Deschutes River at one of the 15 SID points of diversion because they have no impact on the District water right and its distribution throughout the District
3. Those whose Swalley water right is delivered by COID because this is COID water that is being delivered, not affecting the SID water right and its distribution throughout the District.

Adopted by the Swalley Irrigation District Board of Directors on December 17, 2013


President Steve McCarrel


Secretary/Manager Suzanne Butterfield

FIGURE 4. DESCHUTES COUNTY TAX LOT MAP 161226C



Roads form the northern and eastern property lines. Tumalo Place forms the northern property line of the parcel in Map 161226C. US Highway 97 forms the eastern property line. The section line between Sections 26 and 27 forms the western property line. The Tumalo Road approach to the US Highway 97 overpass crosses the parcel and is owned by Deschutes County.

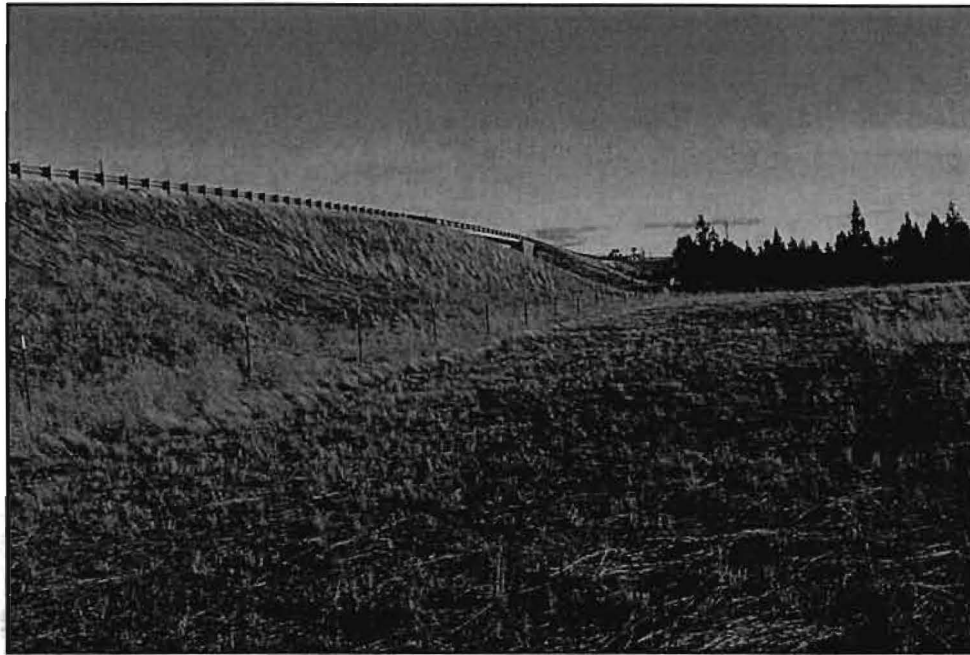


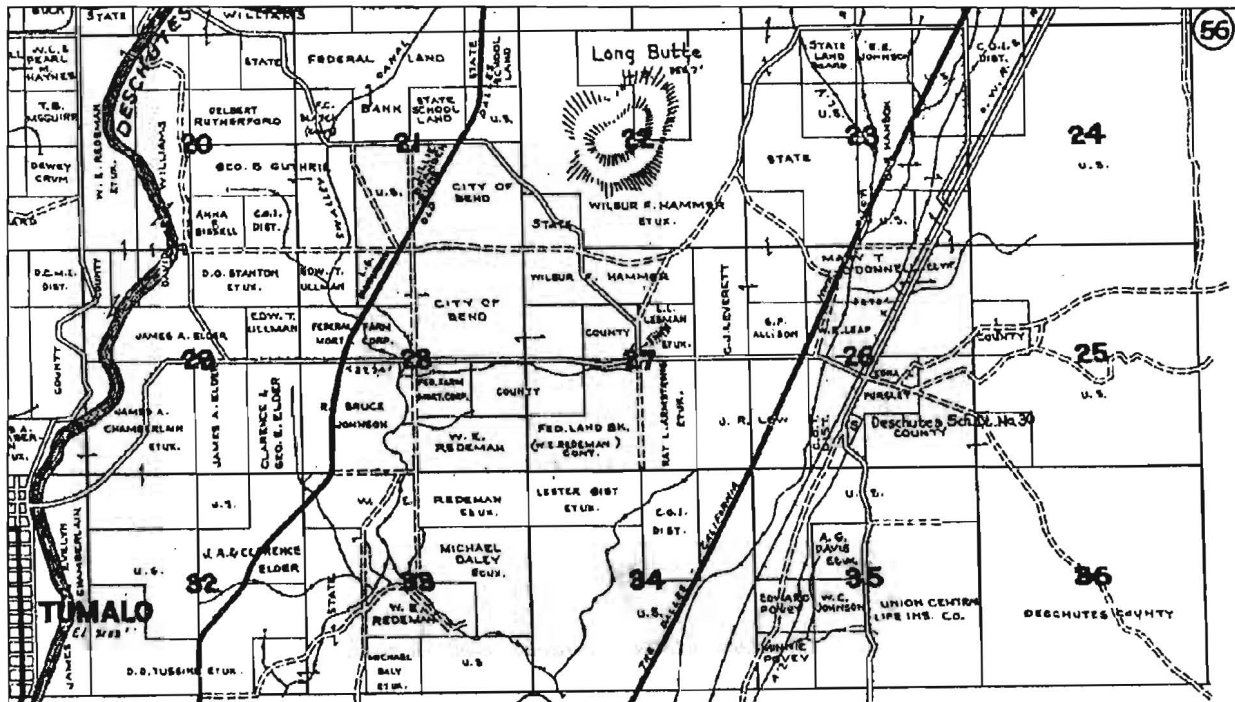
Photo taken in February 2012 looking east to Highway 97 from southern portion of subject property. The western overpass approach ramp and the fencing bisect Tax Lot 161226C000201. The westerly right-of-way line of the Dalles-California Highway forms the eastern property line.

FIGURE 12. 1935 METSKER'S ATLAS OF VICINITY



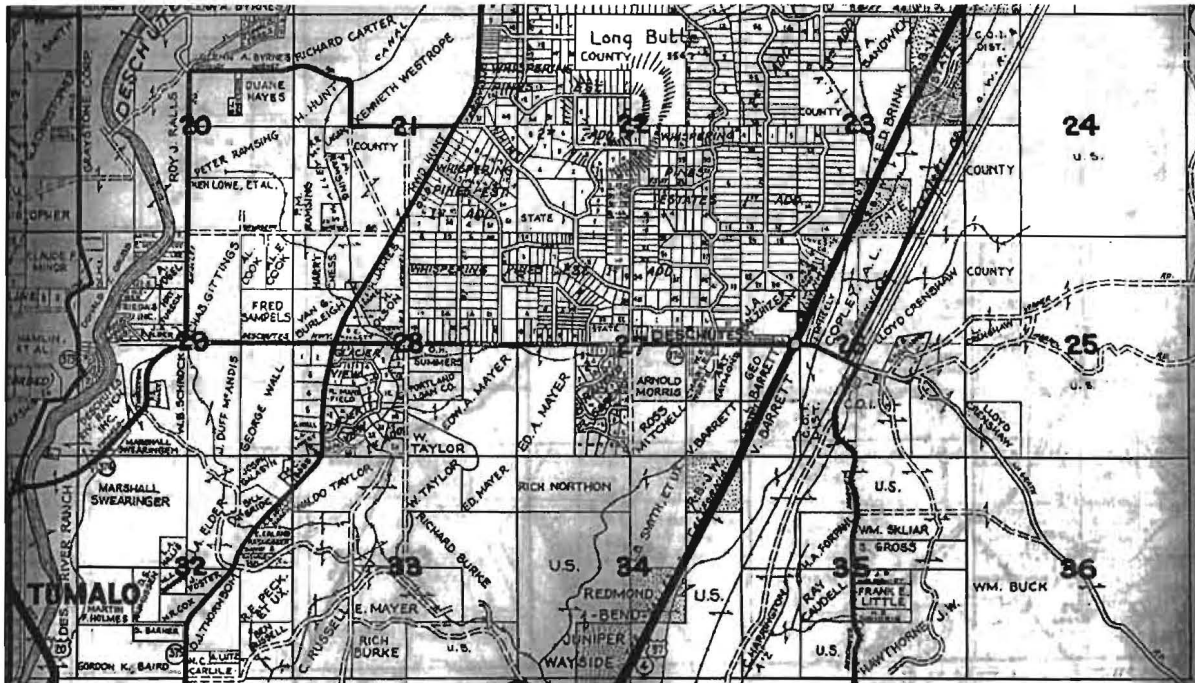
This Metsker's Atlas of Deschutes County, a property ownership map, shows the southeast portion of Township 16 Range 12. Each section is one mile square. The map indicates James R. Low's two 80-acre parcels in the southeast quarter of Section 27 and the southwest quarter of Section 26. The map also shows the Central Oregon Irrigation District (COID) owning the land immediately across the highway from Low. The Pilot Butte canal crosses the southeastern corner of Low's property. The town of Centralo is next to Low's and COID's land, just east of the railroad in Section 26. The Dalles-California Highway is indicated by the heavy black line running north-south in Sections 28 and 32. Today we call it the Bend-Redmond Road. The road is 1 ¾ miles west of Low's property. The Deschutes River is on the far left side of the map, 2 ¾ miles west of Low's property. Long Butte is to the north. Farms are generally 40, 80 or 160 acres in size.

FIGURE 13. 1944 METSKER'S ATLAS OF VICINITY



The 1944 Metsker's Atlas of Deschutes County showing the southeast portion of Township 16 Range 12 is similar to the 1935 map. It indicates James R. Low's two 80-acre parcels in the southeast quarter of Section 27 and the southwest quarter of Section 26. The Map also shows the Pilot Butte Canal crossing his property. But, two changes are noticeable: The Dalles-California Highway has been constructed and crosses Low's land and the townsite of Centralo is no longer indicated. The new The Dalles-California Highway has been built as a two-lane gravel road and crosses Low's property. The Bend-Redmond Road is labeled "Old Dalles California U S Highway No. 97". Parcels are generally 80 to 160 acres in size.

FIGURE 14. 1972 METSKER'S ATLAS OF VICINITY



The 1972 Metsker's Atlas of Deschutes County of the southeast portion of Township 16 Range 12 shows a dramatic increase in subdivisions and development in the vicinity of the subject site. The formerly 40, 80 and 160-acre parcels are now broken up into hundreds of residential lots as small as one acre. James R. Low sold his homestead in 1943. This map shows Vieta A. Barrett, George Barrett, Arthur Raymond, Lester Walton and William K. Charlesworth are owners of the six parcels that previously comprised James R. Low's 160-acre homestead.

Nearly four square miles on the north side of Nichols Market Road (now called Tumalo Road) on and around Long Butte is subdivided into Whispering Pines Estates and various additions to it. Glacier View Subdivision and the first addition to it are platted on a former 160 homestead 1.25 mile west of the subject property.

Eighty acres $\frac{1}{4}$ mile west of Low's former land in Section 27 is subdivided into Rancho El Sereno. Many roads continue to converge on Deschutes Junction: Nichols Market Road, the Dalles-California Highway, Horner Road, Morrill Road, McGrath Road, and two unnamed roads. The vicinity of the subject property is committed to urbanization at this point in time.