



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**TO:** Deschutes Board of County Commissioners

**FROM:** Matthew Martin, Associate Planner

**DATE:** November 4, 2015

**RE:** November 9, 2015, Work Session – CR Contracting Plan Amendment/Zone Change (File Nos. 247-15-000272-ZC/273-PA)

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The purpose of this work session is to determine if the Board of County Commissioners (Board) is supportive of adopting ordinances by emergency. Based on Board direction, staff will prepare two ordinances for the business meeting on November 30.

#### Summary

C.R. Contracting, LLC, requested a Plan Amendment and Zone Change to change the zoning from Tumalo Residential-5 Acre Minimum (TuR5) to Tumalo Industrial (Tul) and the plan designation from Residential 5-Acre Minimum (TuR5) to Industrial (Tul) for a 5.39 acre property located near the southern boundary of the Tumalo Rural Community.

The Hearings Officer held a public hearing on August 18, 2015, and found the application met, or could meet, all relevant criteria and approved the applicant's proposal in a decision dated October 7, 2015 (attached). The Hearings Officer's decision was not appealed.

Under DCC 22.28.030(B), "In considering all quasi-judicial zone changes and those quasi-judicial plan amendments on which the Hearings Officer has authority to make a decision, the Board of County Commissioners shall, in the absence of an appeal or review initiated by the Board, adopt the Hearings Officer's decision. No argument or further testimony will be taken by the Board."

Staff will bring the ordinances for review and adoption on November 30, 2015. The attached letter from Sharon Smith, attorney for the applicant, explains their interest in adoption by emergency.

#### ATTACHMENTS:

1. 247-15-000272-ZC/273-PA Hearings Officer Decision
2. Letter from Sharon Smith, on behalf of C.R. Contracting, LLC

BRYANT  
LOVLIEN  
& JARVIS

EST. 1915  
ATTORNEYS AT LAW

November 6, 2015

ATTORNEYS

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**Via: email**

Deschutes County Board of County Commissioners  
c/o Matt Martin, Associate Planner  
1300 NW Wall Street, Suite 200  
Bend, OR 97701  
[matt.martin@deschutes.org](mailto:matt.martin@deschutes.org)

Re: C.R. Contracting, LLC/247-15-000272-ZC / 273-PA

Dear Commissioners:

Our office represents C.R. Contracting, LLC, a long-time asphalt management and paving business in Deschutes County. C.R. Contracting outgrew its present facilities within the Bend city limits and has had a challenging time finding a suitable alternative location. This led to a zone change and plan amendment application for a 5.39 acre property adjacent to Knife River in Tumalo. The Hearings Officer approved that application on October 7<sup>th</sup> and the decision was not appealed. Now, the County must adopt an ordinance to implement the zone change. Because of a pressing need to relocate, we request that the Board adopt the zone change/plan amendment ordinance by emergency.

If the Board does not adopt the ordinance by emergency, it will not become effective for 90 days. Given the holidays and staff workload, we may not have a second reading until mid December with an effective date in March. Furthermore, C.R. Contracting must still receive site plan approval before it can move its operations to the new site, let alone break ground on a new building. A site plan application cannot be filed until the ordinance is effective and likely will not be approved until the late summer of 2016 with the current large volume of land use applications.

Like all contractors, C.R. Contracting's peak season is summer. Spending the summer moving to the new site instead of working would be disastrous to the company and its 40 peak season employees. Adopting the ordinance by emergency will allow C.R. Contracting to start moving in early spring in advance of the busy season.

November 6, 2015  
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We understand the reasons why the Board avoids adopting zone change ordinances by emergency. However, those reasons are not present here. The proposed ordinance does not have wide ranging application to county residents who would need some time to prepare for this change. It is only applicable to a single parcel and all of the neighbors were provided notice of C.R. Contracting's plans for the property. In any event, the site plan application processing period provides that transition. Accordingly, adoption by emergency is appropriate and would facilitate continuity of business by C.R. Contracting.

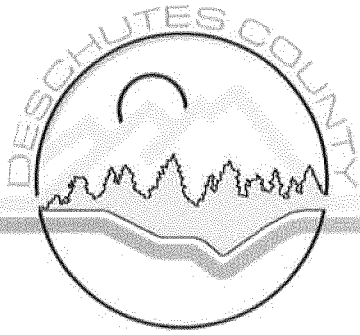
Thank you for your consideration.

Sincerely,



Sharon R. Smith  
[smith@bljlawyers.com](mailto:smith@bljlawyers.com)

c: Client



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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### HEARINGS OFFICER DECISION

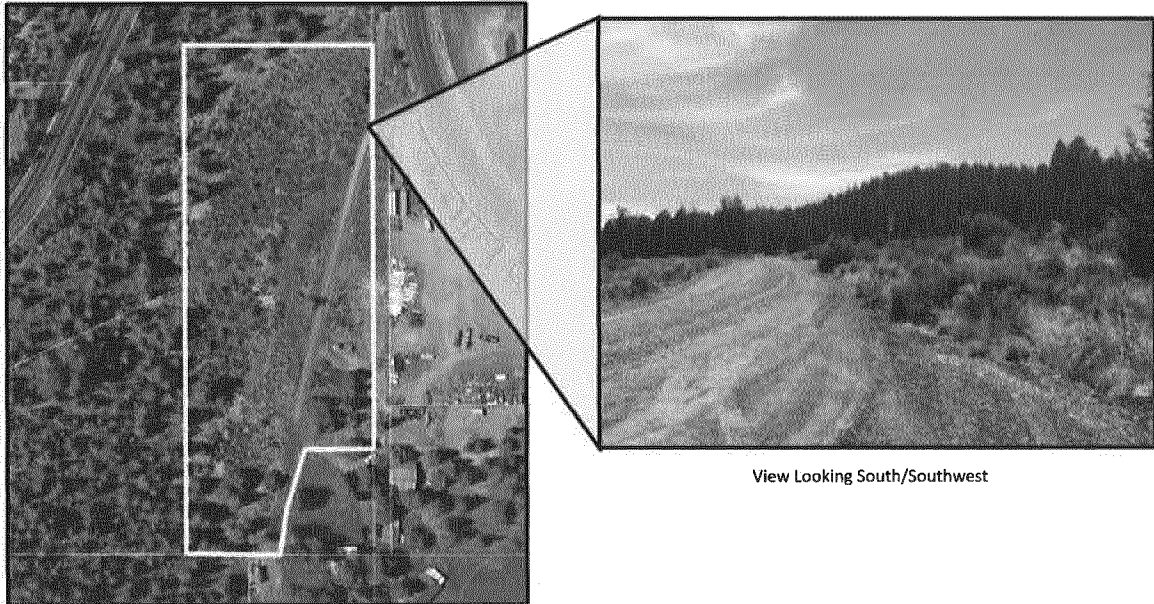
- FILE NUMBERS:** 247-15-000272-ZC and 217-15-000273-PA
- SUBJECT:** The applicant requests a Plan Amendment and Zone Change to change the zoning from Tumalo Residential-5 Acre Minimum (TuR5) to Tumalo Industrial (Tul) and the plan designation from Residential 5-Acre Minimum (TuR5) to Industrial (Tul) for the subject 5.39 acre property.
- APPLICANT:** C.R. Contracting, LLC
- OWNER:** CLR Inc.
- AGENT:** Sharon R. Smith  
Bryant Lovlien & Jarvis PC
- LOCATION:** The property has an assigned address of 64435 Strickler Avenue, Bend, and is further identified as tax lot 401 on the County Assessor's Map 16-12-31.
- STAFF REVIEWER:** Matthew Martin, AICP, Associate Planner
- HEARINGS OFFICER:** Dan R. Olsen
- SUMMARY OF DECISION:** The plan amendment, zone change and text amendments are approved, subject to a condition of approval.

Except as noted by "Hearings Officer" the findings below are taken from the staff report and all are the findings of the Hearings Officer.

#### I. BASIC FINDINGS:

- A. Location:** The property has an assigned address of 64435 Strickler Avenue, Bend, and is further identified as tax lot 401 on the County Assessor's Map 16-12-31.
- B. Lot of Record:** Pursuant to the findings in Lot of Record Determination LR-04-28, the subject property is recognized as legal lot of record.
- C. Zoning and Plan Designation:** The Subject Property is zoned Tumalo Residential 5 Acre Minimum District (TUR5) and is within the Surface Mining Impact Area (SMIA) Combining Zone. It is designated Residential 5- Acre Minimum (TUR5) on the Comprehensive Plan Map.

- D. **Site Description:** The subject property is approximately 5.39 acres and generally rectangular in shape except for an irregularly shaped southeast corner. Vegetation consists of scattered juniper and pine trees with sage, bitterbrush, and other native ground cover. The topography is generally flat with portions sloping to the south. The property is unused but developed with a well, pump house, and gravel driveways traversing the property.



- E. **Surrounding Land Use:** Properties to the north and west are zoned TUR5 and developed with residential uses, some with small scale agriculture, and elevated significantly higher than the subject property. The properties to the south are zoned Exclusive Farm Use (EFU) and developed with residential and agricultural uses. The property adjacent to the east is zoned TUI and is currently being developed with a mini storage facility (land use file 247-14-000413-SP). The properties to the southeast and further east are zoned Surface Mining (SM) and developed with the Knight River facility.
- F. **Proposal:** Applicant requests a Zone Change and Plan Amendment for the subject property to change the zoning from Tumalo Residential-5 Acre Minimum (TuR5) to Tumalo Industrial (Tul) and the plan designation from TuR5 to Tul. No specific development is proposed for the property at this time.
- G. **Hearing:**  
**Hearings Officer:** A public hearing was conducted on August 18, 2015. Several persons testified and the following exhibits were received:

- H-1 Fidler letter dated August 18.
- H-2 Ross/Resnick letter dated August 13
- H-3 Baker letter dated August 18.

I stated that I have no relationship to the applicant or any conflicts of interest. There were no ex parte contacts. I did not conduct a site visit. I provided an opportunity



for any person to raise procedural or other objections but none were raised.

At the conclusion of the hearing, the applicant asked the record be kept open for additional submittals. The request was granted as follows:

September 8, 2015 at 5:00pm for new evidence  
September 15, 2015 at 5:00pm for rebuttal evidence to new evidence  
September 22, 2015 at 5:00pm for applicant's rebuttal but no new evidence

Numerous submittals were received and with one exception are admitted into the record. An email from Dick and Lois Allen was received by staff on September 17, 2015, after the close of the written record on September 8, 2015.

- H. **Public Notice:** The Planning Division mailed written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property.

**Hearings Officer:** No objections or concerns regarding notice have been raised.

- I. **Land Use History:** There are no previous land use approvals for the subject property.

## II. APPLICABLE STANDARDS:

### Chapter 18.136, Amendments

#### 1. Section 18.136.010, Amendments

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

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

**Hearings Officer:** Also proposed are text amendments as discussed below.

#### 2. Section 18.136.020, Rezoning Standards

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

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

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

**Chapter 4, Urban Growth Management**

**Section 4.1, Introduction**

...  
**Purpose**

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

...  
**Section 4.7  
Background**

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

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

**Tumalo Community Plan**

**Land Use**

**Land Use Designations and Inventory**

**Hearings Officer:** As part of the proposal, the applicant seeks two text amendments to the Tumalo Community Plan and staff proposes one.

Amendment #1

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

**Table 4 - Tumalo Land Use Designations**

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

## Amendment #2

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

**Table 5 - Tumalo Land Use Inventory \***

<b>Zone</b>	<b>Residential Units</b>	<b>Commercial / Industrial Developments</b>	<b>Undeveloped Parcels</b>	<b>Total Number of Parcels</b>
TUC	28	17	57	102
TUR	93	0	37	127
TUR5	75	0	<del>28</del> <u>27</u>	<del>100</del> <u>99</u>
TURE	0	2	1	3
TUI	0	2	<del>0</del> <u>1</u>	<del>2</del> <u>3</u>
<b>Total</b>	<b>196</b>	<b>21</b>	<b>123</b>	<b>334</b>

\* Assessor's Data 2009

## Amendment #3

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

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

**Hearings Officer:** The staff report characterizes these changes as necessary updates to address omissions. The applicant states that they merely reflect existing conditions. See Fourth Supplemental Burden of Proof. Terry Fidler Excavation contends that they are substantive and create a class of industrial use beyond the mining that already is allowed. The unrefuted testimony is that there are other TUI zoned properties with uses not associated with surface mining. The TUI District as provided for in the zoning code clearly allows more than surface mining related industrial uses and there is a separate surface mining designation. It is not clear how the Tumalo Community Plan, the zoning code and the actual land uses got out of sync, or how other industrial uses were approved without a change to the Community Plan language. I find that the changes are substantive but necessary and appropriate so as to reflect the uses permitted in the zone and actual existing conditions.



## **Goals and Policies**

### ***Land Use Goal***

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

**Hearings Officer:** Staff concluded that the proposed zone change and plan amendment to industrial use would not adversely impact the rural small-town character of Tumalo as it is limited to the 5.39 acre subject property. In its Sept.8, letter, Fidler argues that this policy is violated as the proposal would extend the incompatible impacts of Hwy 20, which the Knife River site buffers, into quieter areas. I agree with Fidler that the size of the parcel at issue, is not necessarily determinative, but do not see how the proposal expands the impact of Hwy 20. As discussed below, industrial use of the site may impact nearby properties but this "goal" is directed at the overall community. In fact, it is doubtful that it is an approval standard at all, at least as relates to the type of proposal at issue, since it seems to be directed toward promoting certain things deemed desirable. I do not see how the proposal would interfere with the provision of public services or encouraging healthy lifestyles and social connections.

### ***Community Policies***

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

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

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

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

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

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

**Hearings Officer:** It appears that there is a very limited amount of industrial land in the area and that there is a demand for such land, this inevitably will result in more economic activity than a single home on a large parcel as currently zoned.

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

**FINDING:** This policy is not applicable to this proposal.

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

**FINDING:** This policy is not applicable to this proposal.

#### ***Open Space and Recreation Policies***

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

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

#### ***Land Use Policies***

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

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

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

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

**Hearings Officer:** Mr. Fidler testified that he has some cattle on his EFU properties, expressing a generalized concern about noise and dust. Other than that, the record just indicates that there are "some" apparently limited agricultural uses in the area with an indication that most are some distance from the site. Virtually all of the concerns raised in opposition are directed at impacts on rural residential uses, traffic, water and so on. It is possible that a re-designation to industrial may have the potential greater impacts than the existing rural residential designation but the record provides no basis for such a finding. Moreover, again, it does not appear that this policy is an applicable approval standard. It is directed toward drafting plan and code language, not a particular application.

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

**FINDING:** This policy is not applicable to this proposal.

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

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

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

**FINDING:** This policy is not applicable to this proposal.

#### ***Residential Area Policies***

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

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

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

**FINDING:** This policy is not applicable to this proposal.

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

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

### ***Commercial Area Policies***

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

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

### ***Industrial Area Policies***

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

**Comprehensive Plan demonstrates, and land use regulations ensure:**

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

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

- (g) Industrial uses, including accessory uses subordinate to industrial development, as provided under either paragraph (A) or (B) of this subsection:
  - (A) Industrial developments sited on an abandoned or diminished industrial mill site, as defined in ORS 197.719 that was engaged in the processing or manufacturing of wood products, provided the uses will be located only on the portion of the mill site that is zoned for industrial uses; or
  - (B) Industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, in an area planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

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

#### **Public Facilities Goal**

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

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

### ***Public Facility Policies***

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

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

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

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

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

**FINDING:** The policy is not applicable to this proposal.

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

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

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

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

- 6. Support the protection of the Tumalo Town Ditch easement and its distribution system.***
- 7. Support the development and management of the domestic water system for Tumalo so that cumulative development will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.***
- 8. Coordinate with the Tumalo residents and business owners on the creation of a sewer district, if the community initiates district formation.***

**FINDING:** These policies are not applicable to this proposal.

### ***Transportation Goal***

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

**Hearings Officer:** Staff initially recommended denial of the proposal due to inadequacies in the transportation analysis provided by the applicant. On August 17, the applicant submitted a new Supplemental Transportation Impact Analysis that Peter Russell, Senior Transportation Planner found acceptable. See discussion below.



### **Road Network Policies**

1. **Review the existing Transportation System Plan policies and standards for Tumalo.**
2. **Review existing roadway design requirements to ensure complete streets which accommodate all modes of travel.**

**FINDING:** These policies are not applicable to this proposal.

### **Road and Sidewalk Policies**

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

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

### **U.S. 20 Policies**

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

**FINDING:** The subject property does not take access from U.S. 20. Notice of the applications was sent to the Oregon Department of Transportation and no comments were received.

**Hearings Officer:** See discussion under the Transportation Planning Rule.

### 2. Section 18.136.020, Rezoning Standards (Continued)

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

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

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

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

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

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

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

**Hearings Officer:** At the hearing I asked for clarification of the rather cryptic comment from the Bend Fire Department. In its Second Supplemental Burden of Proof statement the applicant represents that it discussed the comments with the Fire Marshall and they are intended as a general admonishment that fire regulations may impose restrictions on the use or storage of regulated materials on the subject property. That appears to be consistent with the best reading of the comment.

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

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

**Hearings Officer:** I read this standard as requiring consideration of the potential impacts of the entire range of uses allowed in the TUI designation and zone. As discussed above, however, there appear to be very few policies relevant to this proposal or that raise compliance issues. In its September 8, letter Fidler cites to an arguably applicable standard not raised by staff.

Comp Plan Chapter 4, Urban Growth Management, Section 4.1 states that the purpose of the comprehensive plan is "to accommodate growth while preserving rural character and resource lands." Since the proposal would remove land from rural residential and add industrial, the argument is that this is inconsistent with this policy because the industrial land would not "mesh with rural and agricultural surrounding uses."

In and of itself, this policy is so general as to not provide any meaningful guidance to a specific provision. It provides no locational guidance. For example, it could but does not, permit designation of land as commercial or industrial only if surrounded by other commercial/industrial

land or otherwise isolated so as to not impact rural character. Rather, Chapter 4 refers to the Tumalo Community Plan for implementation guidance. As discussed above, the TCP has few applicable standards to guide this proposal. But it does clearly permit new or expanded industrial uses so long as meet the standards of Policy 19, in particular being small scale, low-impact uses. That limitation appears to be how the County chose to "accommodate growth while preserving local character." This conclusion is consistent with the fact that the uses allowed under Site Plan Review appear to be limited to those with minimal impacts. More intensive uses require a conditional use approval. The zone also grants fairly broad authority to address impacts with increased setbacks, landscaping and so on.

At the hearing, concerns were raised about potential impacts on wells and on access to the Baker/Ross-Resnick well. Again, it is not at all clear that there are approval standards at this stage that are relevant to these issues. The plan amendment/zone change in itself will not affect water or access, although it opens the door to consideration of whether to approve uses that may have such impacts. The development review stage is where such impacts may be considered and addressed based on a specific proposed use.

The applicant asserts in its Third Supplemental Burden of Proof that it is willing to provide continued access to the Baker/Ross-Resnick well. It may be that a prescriptive easement or other legal right exists. If it does not, the current owner could cut off access under the current zoning. Denying this application would have no impact on this issue. It is more likely (although not certain) that the Bakers and Ross-Resnick will be able to secure some sort of assurance by working with the applicant and county through the land development process.

Finally, as to the concerns about noise, approval certainly increases the odds that a use noisier than a residence will be approved for the site. But there is insufficient basis, particularly given the approval standards, to deny on this basis. Again, the TUI zone grants fairly broad discretion to address impacts associated with a specific proposed use and that should be used to provide reasonable mitigation as necessary.

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

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

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

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

**Oregon Administrative Rules**

**OAR 660, Division 12, Transportation Planning Rule**

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

- (1) ***Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. This shall be accomplished by either:***
- (a) ***Limiting allowed land uses to be consistent with the planned function, capacity and performance standards of the transportation facility;***
  - (b) ***Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division;***
  - (c) ***Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes; or***
  - (a) ***Amending the TSP to modify the planned function, capacity and performance standards, as needed, to accept greater motor vehicle congestion to promote mixed use, pedestrian friendly development where multimodal travel choices are provided.***
- (2) ***A plan or land use regulation amendment significantly affects a transportation facility if it:***
- (a) ***Changes the functional classification of an existing or planned transportation facility;***
  - (b) ***Changes standards implementing a functional classification system;***
  - (c) ***Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or***
  - (d) ***Would reduce the performance standards of the facility below the minimum level identified in the TSP.***
- (3) ***Determinations under subsections (1) and (2) of this section shall be coordinated with affected transportation facility and service providers and other affected local governments.***

**FINDING:** This above language is applicable to the applicant's proposal because it involves an amendment to an acknowledged plan. The applicant is not proposing any land use development of the property at this time and has indicated that future development may include industrial development.

**Hearings Officer:** The applicant submitted a Supplemental Transportation Impact Analysis dated August 17. Unlike the first analysis, it correctly looks at the range of uses permitted under the requested designation and zone. It states that "an unrestricted zone change would

significantly affect the transportation system as defined by TPR criteria.” On the other hand, ODOT did not respond and the TPR permits approval without mitigation in such a case.

The Senior Transportation Planner indicates in his August 18 email that he concurs with the analysis and conclusions. But it appears that he does not actually concur with the statement that the 3 pm peak trips are de minimus and do not need to be addressed. Rather, he suggests a condition prohibiting shift start/end from 4-6 pm.

In its application, the applicant suggests that traffic generation from the site be restricted to that generated by the use it says it intends to pursue and in its Second Supplemental Burden of Proof suggests such that a shift limitation makes little practical sense given the number of trips it intends to generate.

As I understand it, however, the issue is not the overall number of trips but the peak hour trips, even though they are minimal. The applicant testified that the majority of its crews leave on Sunday and return late Friday. The impression conveyed by the description of its intended use is one of a fair amount of flexibility in terms of scheduling. Further, the County apparently has experience with conditions on shift scheduling.

Accordingly, I find that a condition of approval requiring that employee shifts commence and end outside of the 4-6 p.m. period is warranted.

#### **OAR 660, Division 15, Statewide Planning Goals and Guidelines**

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

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

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

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

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

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

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

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

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

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

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

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

The applicant argues that because Goal 10 defines needed housing as housing within urban growth boundaries and the subject property is outside a UGB then Goal 10 is not applicable. Staff agrees with this conclusion. Staff adds that, as the Tumalo Community Plan indicates, residential uses are the predominate use within Tumalo and there are presently a large number of vacant residential lots within Tumalo. Removing one TUR5 lot will not inhibit the ability for Tumalo to provide a diversity of housing types and densities. Therefore, staff believes this proposal will have no adverse impact on the availability of housing on the area.

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

**Goal 12, Transportation.** This report states in a foregoing finding that the transportation impacts of proposed plan amendment and zone change were not adequately addressed in the materials submitted at the time of the issuance of the staff report. However, as previously founds, the Supplemental Transportation Impact Analysis dated August 17 shows the traffic impacts will be mitigated with a condition of approval requiring that employee shifts commence and end outside of the 4-6 p.m. period is warranted.



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

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

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

**IV. CONCLUSION AND CONDITION OF APPROVAL**

Based on the record and the foregoing findings and conclusion, the application for a Plan Amendment from TuR5 to Industrial (Tul) and for a zone change from Tumalo Residential-5 Acre Minimum (TuR5) to Tumalo Industrial (Tul) the subject 5.39 acre property is APPROVED subject to the following condition of approval:

“Any industrial use approved for the subject property shall demonstrate that it can and will employ effective measures to ensure that the start and end of employee shifts occur outside of the 4:00 to 6:00 p.m. peak hour. This condition may be removed or modified only after notice and public hearing and upon demonstration by the applicant that impacts on the US 20/OB Riley-Cook Avenue intersection will be avoided or mitigated, or that intersection conditions have changed so as to warrant modification or removal.”

Further, the following text amendments are APPROVED:

**Table 4 - Tumalo Land Use Designations**

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

**Table 5 - Tumalo Land Use Inventory \***

<b>Zone</b>	<b>Residential Units</b>	<b>Commercial / Industrial Developments</b>	<b>Undeveloped Parcels</b>	<b>Total Number of Parcels</b>
TUC	28	17	57	102
TUR	93	0	37	127
TURS	75	0	<del>28</del> 27	<del>100</del> 99
TURE	0	2	1	3
TUI	0	2	0 1	2 3
<b>Total</b>	<b>196</b>	<b>21</b>	<b>123</b>	<b>334</b>

\* Assessor's Data 2009

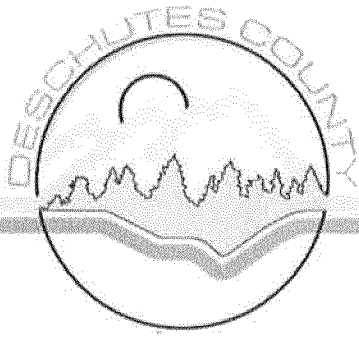
Industrial (TUI). An "Industrial" designation allows a limited range of industrial uses to serve Tumalo and the surrounding area. The designation recognizes nonconforming industrial uses ~~related to surface mining activities located outside of Tumalo in a Surface Mining zone, and properties suitable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

Dated this 7<sup>th</sup> day of October, 2015.

Mailed this \_\_\_ day of October, 2015.



Dan R. Olsen  
Hearings Officer



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

### CERTIFICATE OF MAILING

**FILE NUMBERS:** 247-15-000272-ZC/247-15-000273-PA

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

**MAP/TAX LOT NUMBER:** 16-12-31 401

I certify that on the 15<sup>th</sup> day of October, 2015, the attached notice(s)/report(s), dated October 15, 2015, was/were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth below/on the attached list.

Dated this 15<sup>th</sup> day of October, 2015.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

Applicant: C.R. Contracting, LLC c/o Bryant Lovlien & Jarvis, PC 591 SW Mill View Way Bend, OR 97702	Owner: CLR, Inc. 703 NW Stonepine Dr. Bend, OR 97701
Mary Ross Michael Resnick 64495 Bailey Rd. Bend, OR 97703	Terry Fidler 64375 OB Riley Rd Bend, OR 97701
Dick and Lois Allen 64455 OB Riley Rd. Bend, OR 97701	Lawrence and Conchita Baker 64435 Bailey Rd. Bend, OR 97703
Elizabeth Dickson Hurley Re, PC 747 SW Mill View Way Bend, OR 97702	