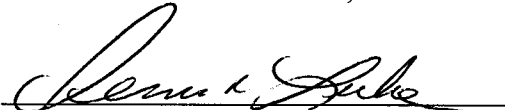


Section 3. FINDINGS. The Board adopts its Decision in TA-02-13 and ZC-02-5, attached hereto and by this reference incorporated as Exhibit "C" of this ordinance, as its findings to support adoption of this ordinance. The Hearings Officer's decision in TA-02-13 and ZC-02-5 is attached as Exhibit "D" of this ordinance.

DATED this 8 day of October, 2003.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


DENNIS R. LUKE, Chair

-absent-
TOM DEWOLF, Commissioner


MICHAEL M. DALY, Commissioner

Date of 1st Reading: 24 day of Sept 2003.

Date of 2nd Reading: 8 day of Oct, 2003.

Record of Adoption Vote

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

Effective date: 6 day of Jan, ²⁰⁰⁴ 2003.

ATTEST:



Recording Secretary

EXHIBIT "A"

Chapter 18.74. Rural Commercial Zone

18.74.010. Purpose.

18.74.020. Uses permitted – Deschutes Junction and Deschutes River Woods Store.

18.74.025. Uses permitted – Spring River.

18.74.027. Uses permitted – Rosland.

18.74.030. Development standards.

18.74.010. Purpose.

The purpose of this chapter is to establish standards and review procedures for development in the Rural Commercial Zone. The Rural Commercial (RC) zone provisions implement the comprehensive plan policies for rural commercial development and associated uses outside of unincorporated communities and urban growth boundaries. (Ord. 2003-080 § 1, 2003, Ord. 2002-019 § 2, 2002)

18.74.020. Uses permitted.

A. Uses Permitted Outright. The following uses and their accessory uses are permitted outright and do not require site plan review:

1. Single-family dwelling.
2. Manufactured home subject to DCC 18.116.070.
3. Two-family dwelling.
4. Home occupation that:
 - a. is carried on within a dwelling only by members of the family who reside in the dwelling;
 - b. does not serve clients or customers on-site;
 - c. does not produce odor, dust, glare, flashing lights or noise;
 - d. does not occupy more than 25 percent of the floor area of the dwelling; and
 - e. does not include the on-premises display or sale of stock in trade.
5. Agricultural uses.
6. Class I and II road or street project subject to approval as part of a land partition or subdivision, or subject to the standards and criteria established in DCC 18.116.230.
7. Class III road or street project.
8. A lawfully established use existing as of 11/05/02, the date this chapter was adopted, not otherwise permitted by this chapter.

B. Uses Permitted Subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.128:

1. A building or buildings not exceeding 2,500 square feet of floor space to be used by any combination of the following uses.
 - a. Restaurant, café or delicatessen.
 - b. Grocery store.
 - c. Tavern.
 - d. Retail sporting goods and guide services.
 - e. Barber and beauty shop.
 - f. General store.
 - g. Video store.
 - h. Antique, art, craft, novelty and second hand sales if conducted completely within an enclosed building.
2. Expansion of a nonconforming use listed under section B(1)(a-h), existing as of 11/05/2002, the date this chapter was adopted, shall be limited to 2,500 square feet or 25 percent of the size of the building as of said date, whichever is greater.
3. A building or buildings not exceeding 3,500 square feet of floor space to be used by any combination of the following uses.
 - a. Retail sales of agricultural or farm products.
 - b. Farm machinery sales and repair.
 - c. Kennel.
 - d. Veterinary clinic.
 - e. Automobile service station and repair garage, towing service, fuel storage and sales.
 - f. Public or semi-public use.
 - g. Residential use in the same building as a use permitted by this chapter.
 - h. Park or playground.
4. Expansion of a nonconforming use listed under section B(3)(a-h), existing as of 11/05/2002, the date this chapter was adopted, shall be limited to 3,500 square feet or 25 percent of the size of the building as of said date, whichever is greater.

C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116, 18.124 and 18.128:

EXHIBIT "A"

1. A building or buildings not exceeding 3,500 square feet of floor space to be used by any combination of the following uses.
 - a. Home occupation as defined in DCC 18.04.
 - b. Utility facility.
 - c. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
 - d. Child care center.
 - e. Church.
 - f. School.
2. Recreational vehicle park.
(Ord. 2002-019 § 2, 2002)
3. Expansion of a nonconforming use listed in section A(1)(a-v), existing as of 11/05/02, the date this chapter was adopted, shall be limited to 2,500 square feet or 25 percent of the size of the building as of said date, whichever is greater.
4. A building or buildings not exceeding 3,500 square feet of floor space to be used by any combination of the following uses:
 - a. Pet and livestock supply.
 - b. Farm machinery sales and repair.
5. Expansion of a nonconforming use listed in section A(3)(a-b), existing as of 11/05/02, the date this chapter was adopted, shall be limited to 3,500 square feet of floor space or 25 percent of the size of the building as of said date, whichever is greater.

18.74.025. Uses allowed in Spring River Rural Commercial/Limited Use Combining Zone.

A. Uses Permitted subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.128:

1. A building or buildings not exceeding 2,500 square feet of floor space to be used by any combination of the following uses:
 - a. Fishing supplies and equipment.
 - b. Snowmobiling accessories.
 - c. Marine accessories.
 - d. General store.
 - e. Hardware store.
 - f. Convenience store with gas pumps.
 - g. Fast food restaurant, cafe, or coffee shop.
 - h. Recreational rental equipment store.
 - i. Excavation business.
 - j. Landscaping business/service.
 - k. Health care service.
 - l. Beauty shop.
 - m. Video store.
 - o. Post office.
 - p. Party supply.
 - q. Equipment sales and rental.
 - r. Appliance store.
 - s. Bank.
 - t. Exterminator.
 - u. Private mailing and packaging store.
 - v. Bakery.

B. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116, 18.124 and 18.128:

1. A building or buildings not exceeding 2,500 square feet of floor space to be used by any combination of the following uses:
 - a. Full service gas station with automobile repair services.
 - b. Welding shop.
 - c. Mini-storage units
2. Expansion of a nonconforming use listed in section B(1)(a-c), existing as of 11/05/02, the date this chapter was adopted, shall be limited to 2,500 square feet or 25 percent of the size of the building as of said date, whichever is greater.

C. Definitions. For the purposes of DCC 18.64.120, the following definitions shall apply:

1. Landscaping business/service: Includes designing landscapes, site grading and preparation, placing boulders, planting trees and shrubbery, installing sod, installing irrigation systems and equipment, installing fencing, and landscape maintenance, but does not include on-site cultivation of plants or plant materials or any on-site retail sales.
2. Health care service: A business providing the diagnosis, treatment and care of physical and/or mental disease, injury and/or disability, but not including a

EXHIBIT "A"

- hospital facility or a nursing home as defined in DCC 18.04.
3. Beauty Shop: A full service beauty salon which would include haircuts, permanents, washes, nails, etc., and the retail sales of incidental beauty supplies typical of any beauty salon.
 4. Mini-storage units: Self service mini-storage units of various sizes from 5' x 10' up to 12' x 24'.
 5. Video store: The sale and rental of videotapes, compact disc movies and audio books.
 6. Laundry and dry cleaners: Dry cleaners, shirt laundry and laundromat with self-service washers and dryers along with the sale of detergents, bleaches, etc.
 7. Post office: United States Postal Service office including mail pick-up and distribution.
 8. Party supply: The sale and rental of party supplies such as balloons, streamers, costumes, dishes, linens and silverware.
 9. Equipment sales and rental: The rental of construction, home repair and maintenance equipment such as ladders, mowers, saws, gardening supplies, etc., and the sales of related equipment.
 10. Appliance store: The sale and service of household appliances such as televisions, ranges, refrigerators, etc.
 11. Bank: Full service consumer bank for checking, savings, loans, safety deposit boxes, etc.
 12. Exterminator: Exterminator of insects and other pests such as rodents, spiders, etc.
 13. Private mailing and packaging store: Private mail boxes and packaging services, which would include the holding and distribution of mail, packing, mailing supplies, FEDEX and UPS pick-up, and FAX and copy machine availability.
 14. Bakery: The manufacture and sale of bread, donuts and pastries.
 15. Pet and livestock supplies: The sale of pet supplies such as dog and cat food, collars, grooming needs, shelters and some large animal supplies such as hay, feeds and grains.

(Ord. 2002-019 § 2, 2002; Ord. 97-015 § 1, 1997; Ord. 96-046 § 1, 1996; Ord. 96-023 § 1, 1996)

Section 18.74.027, Uses allowed in Rosland Rural Commercial Zone.

A. Uses Permitted Outright. Any use listed as a use permitted outright by DCC 18.74.020(A).

B. Uses Permitted subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.124:

1. A building or buildings each not exceeding 2,500 square feet of floor space to be used by any combination of the following uses that serve the surrounding rural area or the travel needs of persons passing through the area:
 - a. Eating and drinking establishments.
 - b. Retail store, office and service establishments.
2. Expansion of a nonconforming use existing as of 11/05/2002 shall be limited to 2,500 square feet or 25 percent of the size of the building (or portion of the building) housing the nonconforming use as of said date, whichever is greater.
3. A building or buildings each not exceeding 3,500 square feet of floor space to be used by any combination of the following uses:
 - a. Sales of agricultural or farm products.
 - b. Farm machinery sales and repair.
 - c. Kennel or veterinary clinic.
 - d. Automobile service station, repair garage, towing service, fuel storage and fuel sales.
 - e. Public or semi-public use.
 - f. Residential use in the same building as a use permitted in this chapter.
 - g. Park or playground.
4. Expansion of a nonconforming use existing as of 11/05/2002 shall be limited to 3,500 square feet each or 25 percent of the size of the building (or portion of the building) housing the nonconforming use as of said date, whichever is greater.

C. Conditional Uses. The following uses and their accessory uses are permitted subject to the

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applicable provisions of this chapter and DCC 18.116, 18.124 and 18.128:

1. A building or buildings each not exceeding 3,500 square feet of floor space to be used by any of the following uses:
 - a. Home occupation as defined in DCC 18.04.
 - b. Utility facility.
 - c. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B).
 - d. Child care center.
 - e. Church.
 - f. School.
2. Recreational vehicle park.

(Ord. 2003-080, § 1, 2003)

18.74.030. Development standards.

A. Yard Standards.

1. **Front Yard.** The front yard shall be 20 feet for a property fronting on a local road right-of-way, 30 feet for a property fronting on a collector right-of-way and 80 feet for a property fronting on an arterial right-of-way.
2. **Side Yard.** A side yard shall be a minimum of 10 feet, except a lot or parcel with a side yard adjacent to land zoned exclusive farm use or forest use shall have a minimum side yard of 50 feet.
3. **Rear Yard.** The minimum rear yard shall be 20 feet, except a lot or parcel with a rear yard adjacent to land zoned exclusive farm use or forest use shall have a minimum side yard of 50 feet.

B. Existing Residential and Commercial Lots.

On-site sewage disposal. For existing lots or parcels, an applicant shall demonstrate that the lot or parcel can meet DEQ on-site sewage disposal rules prior to approval of a site plan or conditional use permit.

C. New Lot Requirements

1. Residential Uses.

- a. The minimum lot size is one (1) acre.
- b. On-site sewage disposal. For new lots or parcels, an applicant shall demonstrate that the lot or parcel can

meet DEQ on-site sewage disposal rules prior to final approval of a subdivision or partition.

- c. Lot coverage for a dwelling and accessory buildings used primarily for residential purposes shall not exceed twenty-five (25) percent of the total lot area. Lot coverage for buildings used primarily for commercial purposes shall be determined by spatial requirements for sewage disposal, landscaping, parking, yard setbacks and any other elements under site plan review.
2. **Commercial and Public Uses.**
 - a. The minimum lot size for a commercial use served by an on-site septic system and individual well or community water system shall be the size necessary to accommodate the use.
 - b. Each lot shall have a minimum width of 150 feet.
 - c. On-site sewage disposal. For new lots or parcels, an applicant shall demonstrate that the lot or parcel can meet DEQ on-site sewage disposal rules prior to final approval of a subdivision or partition.
 - d. for existing lots.

~~B.D.~~ **Solar Setback.** The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.

~~C.E.~~ **Building Code Setbacks.** In addition to the setbacks set forth herein, any greater setbacks required by the applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

~~D.F.~~ **Lot Coverage.** Except where otherwise noted, the primary and accessory buildings located on any lot or parcel shall not cover more than 30 percent of the total lot or parcel.

~~E.G.~~ **Building Height.** No building or structure shall be erected or enlarged to exceed thirty (30) feet in height, except as allowed under DCC 18.120.040.

~~F.H.~~ **Off-Street Parking and Loading.** Off-street parking and loading shall be provided subject to

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the provisions of DCC 18.116, Supplementary Provisions.

G.I. Outdoor Lighting. All outdoor lighting on site shall be installed in conformance with DCC 15.10, Outdoor Lighting Control.

H.J. Signs. All signs shall be constructed in accordance with DCC 15.08, Signs.
(Ord. 2003-080 § 1, 2003, Ord. 2002-019 § 2, 2002)


18.74.050. Maps.
(Ord. 2002-019 § 2, 2002)
(Ord. 2003-080 § 1, 2003)

Exhibit "B"

Ord. # 2003-80

Zoning

File Number: TA-02-13 / ZC-02-5
 Applicant: Karen Demaris - Liz Fancher, Attorney


 SUBJECT PROPERTY

 PARCEL

DESCHUTES COUNTY ZONE DESIGNATION

EFULA - La Pine Subzone

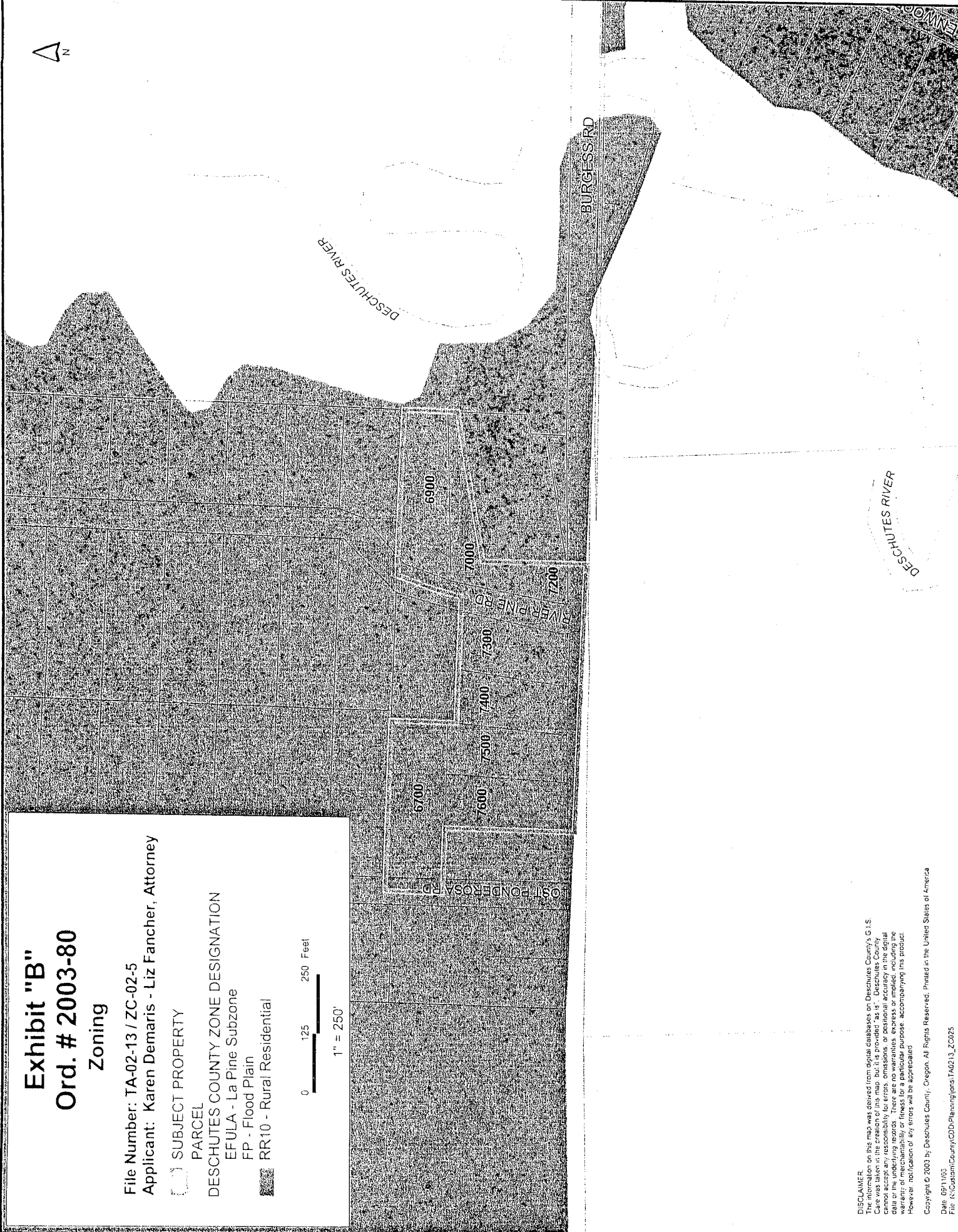
FP - Flood Plain

 RR10 - Rural Residential

0 125 250 Feet



1" = 250'



DISCLAIMER:
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 Date: 06/11/03
 File: N:\Gis\com\County\CD\Planning\pca\TA0213_ZC025

“EXHIBIT C”

DECISION OF BOARD OF COUNTY COMMISSIONERS

FOR DESCHUTES COUNTY, OREGON

FILE NUMBERS: TA-02-13 and ZC-02-5

APPLICANT: Karen Demaris
52427 River Pine Road
La Pine, Oregon 97739

REQUEST: The applicant requests approval of a plan amendment and zone change from Rural Residential to Rural Commercial for eight lots in the Ahern Acres Subdivision west of Wickiup Junction. The applicant also requests approval of text amendments to the comprehensive plan and zoning ordinance to designate the subject property as the Rosland Rural Commercial Zone and to add supporting findings.

SUBJECT PROPERTY: Lots 2, 3, 4, 5 and 6, Block 2, Ahern Acres
Lots 1, 2 and 3, Block 4, Ahern Acres

STAFF REVIEWER: Jon Skidmore, Associate Planner

HEARINGS OFFICER: Karen Green

The Board of Commissioners makes the following findings of fact and law to support its decision to approve the above-referenced land use applications:

I. PROCEDURE

Procedural Background

On December 27, 2002 the applicant submitted plan amendment and zone change applications to rezone seven lots of land in the Ahern Acres Subdivision from RR-10 to Rural Commercial (RC). Upon filing the application, the County required the applicant to post the subject property with a land use action sign. The sign was posted, for the period required by code, on the subject property on a building in a location where the sign was plainly visible from Burgess Road, the arterial road that passes by the subject property.

The County set the hearing for March 4, 2003 before Hearings Officer Karen Green. Notice of the hearing was provided, by mail, to owners of lots within 250 feet of the seven lots. The County also published a notice of the hearing in The Bulletin, a newspaper of general circulation within Deschutes County, on February 9, 2003.

On March 4, 2003 a public hearing was held. At the hearing, the Hearings Officer received testimony and evidence about the proposed changes. The Hearings Officer questioned whether one additional lot, Lot 6, Block 2, Ahern Acres should be included in the land use application

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based upon its commitment to use for utilities that serve existing commercial development on the seven lots included in the land use application. In response, the applicant asked that the Hearings Officer recommend that the Board of Commissioners include that lot as one of the properties to be included in the proposed Rosland Rural Commercial area.

On April 15, 2003, Hearings Officer Green approved the application and recommended that the Board of Commissioners also rezone and designate Lot 6, Block 2, Ahern Acres for RC zoning. The Hearings Officer's decision was mailed on April 16, 2003. In her decision, Hearings Officer Karen Green determined that the posted, mailed and published notice provided by the County complied with the requirements of DCC 22.24.030. That decision and the determination of compliance with DCC 22.24.030 were not appealed by any party on or before the appeal deadline of April 28, 2003.

Board Hearing Procedures

DCC 22.28.030, below, is the procedural law that prescribes the legal effect of the Hearing Officer's decision:

DCC 22.28.030. Decision on plan amendments and zone changes.

A. Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.

FINDING: Hearings Officer Karen Green made the land use decision in this quasi-judicial zone change and plan amendment application. The Board is adopting ordinances to implement Ms. Green's decision.

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.

FINDING: The Hearings Officer has authority to make a final decision on all matters before her other than the inclusion of Lot 6, Block 2 in the zone change and comprehensive plan map amendment request. As Lot 6, Block 2 was not included in the notice of the hearing before the Hearings Officer, the Hearings Officer recommended inclusion of Lot 6, Block 2 upon the assumption that a hearing would be held on the matter by the Board of Commissioners. The Board, therefore, provided notice and held a hearing on this issue on June 4, 2003.

The notice complied with ORS 215.060 that requires that notice be published in a newspaper of general circulation in LaPine or Deschutes County a minimum of ten days prior to the hearing. The County Community Development Department published notice of the hearing in The Bulletin, a newspaper of general circulation in Deschutes County. The notice appeared on May 18, 2003.

"EXHIBIT C"

The Deschutes County Community Development Department also mailed notice of the June 4, 2003 public hearing to property owners who owned property within 250 feet of Lot 6, Block 2, Ahern Acres on May 14, 2003.

On June 4, 2003, the Board of Commissioners held a public hearing regarding Ms. Green's recommendation that Lot 6, Block 2, Ahern Acres be included in the Rosland Rural Commercial zoning area. As required by this section of DCC 22.28.030, the scope of the hearing before the Board was limited to the issue of whether to include Lot 6, Block 2, Ahern Acres as a part of the Rosland Rural Commercial zoning district and plan map amendments.

C. Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission. Such hearing before the Board shall otherwise be subject to the same procedures as an appeal to the Board under DCC Title 22.

FINDING: The Demaris property is in an acknowledged goal exception area. It is not agricultural or forest land. The RC zoning requested by Ms. Demaris is a rural zone that limits uses to rural uses. It does not require a goal exception. As a result, it was appropriate for the Board to allow its hearings officer to make the decision in this case for all issues other than the appropriate zone and plan designation of Lot 6, Block 2, Ahern Acres. Hearings Officer Karen Green made an unchallenged finding to that effect in her April 16, 2003 decision.

Procedural Objections Raised at Board Hearing

At the June 4, 2003 land use hearing, opponent Wayne Roan argued that the location of the land use posting was inadequate. He said the sign was not posted on Lot 6 and that the sign was not readily visible from Lost Ponderosa, the road that Lot 6 adjoins.

The County law that governs posted notice is DCC 22.24.030.

DCC 22.24.030 Notice of hearing or administrative action.

B. Posted Notice.

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

DCC 22.24.030 requires that notice be posted on the subject property. "Where practicable," it is to be visible from any adjacent public way. This code provision is ambiguous. There are two possible interpretations. First, the code may be read to require that the sign, where practicable, be visible from all of the public ways that adjoin it. Second, the code may be read to say that the sign must, where practicable, be visible

“EXHIBIT C”

from one of the adjoining roadways. The Board finds that the second interpretation is the correct reading as practical difficulties would not logically prevent a property owner from posting property so that it is visible from one adjoining roadway. Posting property to be seen from all adjoining roadways is a situation that would often present practical difficulties.

The “subject property” is one large area that consists of eight adjacent platted lots, including Lot 6, Block 2, Ahern Acres. The subject property adjoins or is bisected by Burgess Road, Lost Ponderosa Road and River Pine Road. Lost Ponderosa Road and River Pine Road approximately parallel each other and are separated by over 500 feet. This means that a sign posted to face either road would not be visible from the other. As a result, it is not practicable nor is it possible to post a sign on this property that is visible from all of the adjoining roadways.

The applicant’s decision to post the sign where it was visible from Burgess Road provided good, actual notice of the application to the general public. In that location, it would be visible to residents who live on Lost Ponderosa because they must travel past the notice on Burgess Road when coming and going from the center of LaPine, Wickiup Junction or points on Highway 97, including the City of Bend. Burgess Road is an arterial road that carries a considerable amount of traffic, including traffic bound for River Pine Road and Lost Ponderosa – both local streets located within the Ahern Acres subdivision. As a result, even if there were a violation of the posted notice requirement, Mr. Roan failed to establish any prejudice occurred. Mr. Roan was not prejudiced as he knew the legal issues, filed detailed written objections to application materials and the staff report and testified at both land use hearings.

Additionally, no party was prejudiced by any alleged irregularity in the posted notice as the County mailed notice to owners within 250 feet of the subject property and published two notices regarding the public hearing in a newspaper of general circulation. ORS 215.060 requires only that the County hold a hearing and publish notice in a newspaper of general circulation in the County ten days prior to the hearing. In the case of both hearings, the County provided the notice required by ORS 215.060.¹

Decision by Board of Commissioners

On June 11, 2003, the Board of Commissioners voted to include Lot 6, Block 2, Ahern Acres as a part of the Rosland Rural Commercial zoning area.

II. HEARINGS OFFICER’S DECISION AND ADOPTION BY REFERENCE

The Board finds that the Hearings Officer’s decision is final, as written, as to Lots 2 through 5, Block 2, Ahern Acres and Lots 1 through 3, Block 4 Ahern Acres. No further findings are required to support that decision. The fact that the decision was not appealed means that the

¹ ORS 215.431 authorizes the County to allow its hearings officer to hold the required hearing and make the decision on this land use application. This was the procedure used by the County for the text amendments to the zoning ordinance and comprehensive plan and the map amendments to the comprehensive plan and zoning maps.

"EXHIBIT C"

Board must do the following: (a) amend the comprehensive plan to recognize the Rosland Rural Commercial center; and (b) amend the text of the County's zoning ordinance to create the Rosland Rural Commercial zoning district; and (c) amend the Deschutes County comprehensive plan map and zoning maps to designate Lots 2 through 5, Block 2, Ahern Acres and Lots 1 through 3, Block 4, Ahern Acres as Rosland Rural Commercial.

The Board finds that the findings in the Hearings Officer's decision also support inclusion of Lot 6, Block 2, Ahern Acres in the Rosland Rural Commercial area. As a result, the Board hereby adopts that report as findings of the Board to support approval of the zone and comprehensive plan map change for Lot 6, Block 2, Ahern Acres. A copy of that decision is marked Exhibit D, attached hereto and incorporated by reference herein.

III. FINDINGS REGARDING HEARING TESTIMONY AND EVIDENCE RE LOT 6

The Board has considered the evidence in the record of TA-02-13/ZC-02-5, including but not limited to the findings and legal conclusions of the County's Hearings Officer in Exhibit D and all evidence presented to it at its hearing on June 4, 2003. Based on the evidence, the Board makes the following supplemental findings of fact:

DCC Section 18.136.020, Rezoning Standards

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

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

FINDINGS: The Rural Commercial zoning is consistent with the Rural Commercial plan designation approved for this and adjoining properties in this land use action. The findings in Exhibit D demonstrate that a Rural Commercial plan designation is appropriate for Lot 6, Block 2, as well as other adjacent lots owned by Ms. Demaris.

The change is also consistent with the introductory statement of the comprehensive plan. That statement indicates land use decisions should be made after adequate consideration of alternative[s] or consequences following the orderly process established by the county's plan and ordinance. The Board finds the applicant's proposal is consistent with the plan's introductory statement because the process contemplated in the plan is being used to evaluate the applicant's proposal, and the proposed zone change can occur only after this process has been completed.

The alternatives and consequences of leaving the property zoned Rural Residential have been considered by the Board. The retention of RR zoning would have acted as a disincentive to proper stewardship of the property. Even small changes of benefit to the public, like the paving of a parking area on Lot 6 to serve existing commercial development on adjoining lots in the RC zone would require County land use approval.

“EXHIBIT C”

The public interest would be served by rezoning. Lot 6, Block 2 is currently devoted to Rural Commercial use by its development with wells that serve commercial uses on adjoining Demaris lots that are being zoned Rural Commercial. This change will make it clear that the use of Lot 6, Block 2 for wells to serve commercial uses on adjoining RC zoned property is legal, can continue and can be altered without need for County approval of an application to alter a nonconforming use. As the limited commercial use of this property provides a service of benefit to many area residents and reduces vehicle trip lengths, its continuation is in the public interest. RC zoning will allow appropriate future rural commercial development to occur and to serve the large surrounding rural population.

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

FINDINGS: The purpose of the RC Zone is to establish standards and review procedures for development of rural commercial uses outside of unincorporated communities and urban growth boundaries. Approval of the zone change will apply the RC Zone to the property and will limit future commercial development to a rural, rather than urban level, as intended by the Rural Commercial policies of the comprehensive plan.

At the hearing before the County Hearings Officer, opponent Wayne Roan argued the applicant's proposal is not consistent with the purpose of the RC Zone because the lots that make up the subject property are too small for commercial development. The inclusion of Lot 6 in Block 2 makes lots adjacent to Burgess Road deeper, making it easier for the applicant to meet the LM zoning district and other setbacks if and when new development is proposed for the subject property and adjoining RC zone lots.

Mr. Roan argued that the Burgess Road lots were too shallow to allow redevelopment in compliance with LM zone setback requirements that are measured from Burgess Road.² The addition of Lot 6, Block 2 to the Rosland RC district will make it easier for the applicant or a future owner to site new buildings further back from the roadway and comply with the LM zoning district.

The addition of Lot 6, Block 2, Ahern Acres to the RC zone will allow the applicant to continue to use Lot 6 for wells to serve the existing commercial development on the Block 2 lots. That use is a historical use that has not disrupted the neighborhood. Any change in the character of this historical use will require County land use approval. In that process, the rights and concerns of neighbors will be addressed by the County when it reviews the development proposed. Additionally, the public's interests will be protected by the LM Combining Zone siting and landscape regulations.

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

² The existing development occurred prior to the adoption of the LM zoning district and was not governed by its setback requirements.

"EXHIBIT C"

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

FINDINGS: The findings in Exhibit D establish that there are adequate public services and facilities available to serve the subject property once it is zoned RC.

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

FINDINGS: The impacts of applying RC zoning on surrounding land use will be minimal and consistent with the goals and policies contained in the Plan and addressed in Exhibit D. The subject property is already a part of an existing rural commercial development. The RC zoning may allow some increase in the intensity of the commercial use but said changes must comply with County site plan review criteria that mitigate impacts on neighbors. The evidence shows that redevelopment of the subject property will be constrained by the need to be served by septic systems, by the lack of a public or community water service and by issues with the water table in the La Pine area. The Board finds that these issues have not precluded the development that exists on the property and that the proposed changes will allow the applicant to continue these uses. These factors will, however, limit future development so that it, like the existing commercial uses on adjoining properties, will remain rural in character.

Some neighbors expressed concern that the addition of Lot 6 to the Rosland RC district would increase traffic on Lost Ponderosa north of Lot 6, Block 2, Ahern Acres. They claim commercial traffic will drive through Ahern Acres. One opponent claimed that traffic associated with the fitness salon on River Pine increased traffic through the neighborhood. The applicant testified that new homes have been built in the neighborhood, thereby increasing traffic. The Board finds that the applicant's position more credible.

Maps in the record show that Ahern Acres has two outlets only. Both outlets are on Burgess Road. One is Lost Ponderosa Road and the other is River Pine Road. It is possible for motorists to drive north in the subdivision but they must, ultimately, loop back to the south and return to Burgess Road. This loop requires a great deal of out-of-direction travel. No reason was provided by opponents to explain why motorists might use this route rather than traveling directly south to reach Burgess Road. Additionally, the County code requires site plan review of any development of RC zoned property. At that time, the County would be able to determine and control accesses to minimize development impacts on neighbors. Access limits might include a prohibition against access to Lost Ponderosa Road if such a restriction is deemed appropriate to protect the neighbors to the north of Lot 6, Block 2, Ahern Acres.

- 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.**

"EXHIBIT C"

FINDINGS: The findings in Exhibit D demonstrate compliance with this approval criterion.

Title 23 of the Deschutes County Code, the Deschutes County Year 2000 Comprehensive Plan

Chapter 23.36, Rural Development

Goals:

1. **To preserve and enhance the open spaces, rural character, scenic values and natural resources of the county.**
2. **To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid unnecessary expansion of service boundaries, and to preserve and enhance the safety and viability of rural land uses.**
3. **To provide for the possible long term expansion of urban areas while protecting the distinction between urban (urbanizing) land and rural lands.**

FINDINGS: The proposed plan amendment recognizes the history and existence of rural commercial development on the subject property. The current uses of the property are of low intensity. The intensity of future uses will be limited by septic feasibility, lot sizes, minimum setbacks and the restrictions of the RC zoning district. The wells on Lot 6, Block 2 provide water for commercial uses on adjoining lots. This is the only commercial use presently conducted on this lot.

Allowing commercial development of a property that is already used as a well site for adjoining commercial uses helps preserve and enhance open spaces by providing needed rural commercial services where they already exist, rather than on other property that has not been developed. County landscape management subzone criteria will assure that the scenic qualities of Burgess Road are not harmed.

The subject property is centrally located to serve a large rural population. It is located near a rural arterial road – a location where traffic is expected. This location minimizes the public costs of providing needed services as an existing major road provides excellent access to the RC center. No new roads are required. For these reasons, the applicant's proposal is consistent with these plan policies.

IV. DECISION TO AMEND THE TEXT OF TITLE 23, THE DESCHUTES COUNTY COMPREHENSIVE PLAN TO RECOGNIZE AND SUPPORT ADOPTION OF THE ROSLAND RURAL COMMERCIAL CENTER

DCC 22.28.030 makes the Exhibit D Hearings Officer's decision binding as to all issues other than the issue of whether to include Lot 6, Block 2, Ahern Acres in the RC zoning district.³ The

³ The issue of whether to include Lot 6, Block 2, Ahern Acres in the RC zoning district includes the decision whether to amend the comprehensive plan maps to designate the property "Rosland Rural Commercial Center."

“EXHIBIT C”

Board of Commissioners, therefore, finds that the text of Title 23, the Deschutes County Comprehensive Plan, should be amended as provided in Deschutes County Ordinance No. 2003-079. Additionally, the Board finds that Lot 6, Block 2, Ahern Acres should be included in the rural commercial center. The addition of this lot changes the size of the Rosland Commercial area from approximately 4.07 acres to approximately 4.5 acres. The text of Title 23 adopted in the ordinance that implements the approved text amendment shall be revised to indicate that the area is approximately 4.5 acres in size.

V. DECISION TO CREATE THE ROSLAND RURAL COMMERCIAL CENTER ZONING DISTRICT AND ADOPT REGULATIONS FOR SAID ZONING DISTRICT

As DCC 22.28.030 makes the Exhibit D Hearings Officer’s decision binding as to all issues other than the issue of whether to include Lot 6, Block 2, Ahern Acres in the RC zoning district, the Board of Commissioners hereby finds that the text of Title 18, the Deschutes County Zoning Ordinance, should be amended for all lots other than as provided in Deschutes County Ordinance No. 2003-080.

VI. DECISION TO AMEND THE DESCHUTES COUNTY COMPREHENSIVE PLAN MAPS TO DESIGNATE THE SUBJECT PROPERTY AS THE ROSLAND RURAL COMMERCIAL CENTER

As DCC 22.28.030 makes the Exhibit D Hearings Officer’s decision binding as to all issues other than the issue of whether to include Lot 6, Block 2, Ahern Acres in the RC zoning district, the Board of Commissioners hereby finds that the comprehensive plan maps of Deschutes County should be amended to designate the subject property, other than Lot 6, Block 2 as the Rosland Rural Commercial Center, in the manner described in Deschutes County Ordinance No. 2003-079.

As the findings contained in this Decision and Exhibit D support inclusion of Lot 6, Block 2, Ahern Acres in the RC zoning district, the Board finds that the comprehensive plan maps of Deschutes County should be amended to designate Lot 6, Block 2, Ahern Acres as “Rosland Rural Commercial Center.”

VII. DECISION TO AMEND TITLE 18, THE DESCHUTES COUNTY ZONING ORDINANCE, TO APPLY THE ROSLAND RURAL COMMERCIAL CENTER ZONING DISTRICT TO THE SUBJECT PROPERTY.

As DCC 22.28.030 makes the Exhibit D Hearings Officer’s decision binding as to all issues other than the issue of whether to include Lot 6, Block 2, Ahern Acres in the RC zoning district, the Board of Commissioners hereby finds that the Deschutes County zoning map should be amended to designate the subject property, other than Lot 6, Block 2 as the Rosland Rural Commercial Center, in the manner described in Deschutes County Ordinance No. 2003-080.

Both actions are required to apply Rural Commercial zoning to Lot 6. Where the act of rezoning Lot 6 is discussed in this decision, it refers to both actions.

“EXHIBIT C”

As the findings contained in this Decision and Exhibit D support inclusion of Lot 6, Block 2, Ahern Acres in the RC zoning district, the Board finds that the Deschutes County zoning map should be amended to designate Lot 6, Block 2, Ahern Acres as “Rosland Rural Commercial Center.”

VIII. IMPLEMENTING ORDINANCES

The Board’s decision and the decision of County Hearings Officer Karen Green are implemented by the ordinances referenced herein.

DATED THIS ____ DAY OF _____, 2003

BOARD OF COUNTY COMMISSIONERS

Dennis Luke, Chair

EXHIBIT "D"

**FINDINGS AND RECOMMENDATION OF
DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBERS: TA-02-13 and ZC-02-5

APPLICANT: Karen Demaris
52427 River Pine Road
La Pine, Oregon 97739

ATTORNEY: Liz Fancher
644 N.W. Broadway
Bend, Oregon 97701
Attorney for Applicant

REQUEST: The applicant requests approval of a plan amendment and zone change from Rural Residential to Rural Commercial for eight lots in the Ahern Acres Subdivision west of Wickiup Junction. The applicant also requests approval of text amendments to the comprehensive plan and zoning ordinance to designate the subject property as the Rosland Rural Commercial Zone and to add supporting findings.

STAFF REVIEWER: Jon Skidmore, Associate Planner

HEARING DATE: March 4, 2003

RECORD CLOSED: March 28, 2003

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 18.74, Rural Commercial Zone

* Section 18.74.010, Purpose

2. Chapter 18.136, Amendments

* Section 18.136.010, Amendments

* Section 18.136.020, Rezoning Standards

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

1. Chapter 22.08, General Provisions

* Section 22.08.005, Preapplication Conference

* Section 22.08.010, Application Requirements

2. Chapter 22.20, Review of Land Use Action Applications

* Section 22.20.010, Action on Land Use Action Applications

3. Chapter 22.24, Land Use Action Hearings

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

4. Chapter 22.28, Land Use Action Decisions

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

C. Title 23 of the Deschutes County Code, the Comprehensive Plan

1. Chapter 23.40, Unincorporated Communities

D. Oregon Administrative Rules, Chapter 660

1. Division 12, Transportation Planning

2. Division 22, Unincorporated Communities

II. FINDINGS OF FACT:

- A. Location:** The subject property consists of Lots 2, 3, 4, 5 and 6 in Block 2, and Lots 1, 2 and 3 in Block 4, of the Ahern Acres Subdivision located west of Wickiup Junction and north of La Pine. The subject property also is identified as Tax lots 6700, 6900, 7000, 7200, 7300, 7400, 7500 and 7600 on Deschutes County Assessor's Map 21-10-35C.

The original application did not include Lot 6 in Block 2 of Ahern Acres (Tax Lot 6700). At the public hearing, the Hearings Officer asked the applicant why she had not included Lot 6 in her applications since it abuts the subject property and is developed with a well serving Lots 2 and 4 in Block 2 which *are* included in the application. In response, in her March 17, 2003, submission the applicant's attorney requested that Lot 6 in Block 2 be added to the applications because its inclusion would facilitate development of the abutting Lots 1, 2 and 3 in Block 2. She also argued the failure to give notice that Lot 6 would be included in the plan amendment and zone change applications could be cured by new notice given before the Deschutes County Board of Commissioners holds the required hearing to adopt my decision. The applicant's attorney stated county planning staff had no objection to the inclusion of Lot 6 in the applications.

The Hearings Officer finds that under the circumstances presented here, it is appropriate to include in this decision Lot 6 in Block 2. I also find sufficient notice of this change will be provided both through my decision and in the notice required prior to the public hearing before the board of commissioners.

- B. Zoning and Plan Designation:** The subject property is zoned Rural Residential (RR-10) and is designated Rural Residential Exception Area on the comprehensive plan map.
- C. Site Description:** The eight tax lots that comprise the subject property total approximately 4.5 acres in size and are developed as follows:
1. Tax Lot 6700 has a shed, well house and wells serving Tax Lots 7400 and 7600.
 2. Tax Lot 6900 has a duplex, parking area and septic drainfield.

3. Tax Lot 7000 has an overflow parking area, an electric meter and a water line to serve the duplex on Tax Lot 6900.
4. Tax Lot 7200 has a commercial building developed as a small gym, a carport, parking area, sign, well and septic drainfield.
5. Tax Lot 7300 has a sign frame.
6. Tax Lot 7400 has two commercial buildings one of which is developed with a barber shop, a parking area, water lines and septic tank.
7. Tax Lot 7500 has a parking area and water lines.
8. Tax Lot 7600 has a commercial building currently developed as Mountain Country Homes, a shed, parking area, septic tank and water lines.

The topography of the subject property generally is level with vegetation consisting of native trees, brush and grasses as well as introduced landscaping. Half of the tax lots take access from Burgess Road and the other half from River Pine Road. The record indicates Burgess Road is classified as a rural arterial road and River Pine Road is classified as a rural local road.

D. Surrounding Zoning and Land Uses: Property to the north is zoned RR-10 and consists of remainder of the Ahern Acres Subdivision developed with residential uses. To the south directly across Burgess Road from the subject property is land zoned Exclusive Farm Use-La Pine Subzone (EFU-La Pine) and developed with a seasonal campground. To the east along Burgess Road is the Little Deschutes River and the associated Flood Plain Zone. Further east on the north side of Burgess Road is land zoned EFU-La Pine. Further east on the south side of Burgess Road is land zoned RR-10 and developed with residential uses. Further to the east is the Wickiup Junction Planning Area developed with several commercial uses. To the west of the subject property is land zoned RR-10 and developed with residential uses.

E. Procedural History: The record indicates the Ahern Acres Subdivision was recorded in 1961 and was platted by the applicant's mother, Betty Ahern. When the subdivision was platted deed restrictions were recorded that designated Lots 1 through 7 in Block 2 and Lots 1 through 4 in Block 4 for "multiple residences, light commercial or light industry." Some of the subject lots were developed with commercial uses. When the county adopted PL-15 and the accompanying zoning maps in 1979, the subject property was designated and zoned RR-10 because it was found to be committed to non-resource uses. However, the property was not designated or zoned Rural Service Center (RSC) which would have allowed commercial uses. Consequently, the commercial uses that were on the subject property in 1979 became nonconforming uses.

In 2002, the county adopted amendments to Titles 18 and 23 of the Deschutes County Code authorizing the creation of the Rural Commercial (RC) Zone and the designation of rural commercial areas that would allow commercial uses outside the boundaries of both unincorporated communities and rural service centers. The applicant submitted the subject plan amendment and zone change applications from RR-10 to RC on December 27, 2002, and they were deemed complete on January 27, 2003. Under ORS 215.427, plan amendments and dependent zone changes are not subject to the 150-day period for issuance of a final local land use decision.

A public hearing on the applications was held on March 4, 2003. At the hearing the Hearings Officer received testimony and evidence and established the following schedule for the submission of post-hearing evidence and argument:

* March 18 -- staff comments, opponents' evidence and applicant's response to evidence submitted at the public hearing

* March 25 – evidence in response to staff comments and post-hearing evidence submitted by March 18

* April 1 – applicant's final arguments

By a letter dated March 28, 2003, the applicant waived her right to file final arguments, and the record closed on that date.

F. Proposal: The applicant proposes to change the plan designation and zoning of the subject property from RR-10 to RC. The proposal would amend the comprehensive plan map as well as the text of the plan and zoning ordinance to create the Rosland Rural Commercial Zone. The applicant concluded, and the Hearings Officer concurs, that a goal exception is not required for the proposed plan amendment and zone change because the proposed RC Zone is a *rural* zone and therefore would not create “urban” development outside an unincorporated community.

G. Public/Private Agency Comments: The county sent written notice of the applicant's proposal to a number of public and private agencies and received responses from the Deschutes County Road Department, Environmental Health Division and Code Enforcement. In addition, the county provided written notice to the Department of Land Conservation and Development (DLCD) as required for all plan amendments. DLCD did not comment on the applicant's proposal.

H. Public Notice and Comments: The county mailed individual 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. In addition, notice of the public hearing was published in the “Bend Bulletin” newspaper, and the subject property was posted with a notice of proposed land use action sign. The county did not receive any letters in response to these notices. However, two members of the public testified at the public hearing. In addition, one letter in support of the application, and one letter and a petition with 54 signatures in opposition to the application, were submitted into the record following the public hearing.

Opponent Wayne Roan testified that the applicant's posting of the proposed land use action sign in the window of one of the buildings on the subject property did not constitute adequate notice because that sign location did not provide adequate visibility.

¹ The applicant argues the Hearings Officer should give little if any weight to the petition in opposition to her proposal because the signatures may have been obtained by false pretenses. In support of her argument, the applicant submitted two letters to that effect from persons who signed the petition. The Hearings Officer finds this evidence, coupled with the very broad and unfocused language of the petition, substantially diminishes the credibility and weight of this document.

However, Mr. Roan did not offer any evidence that the placement of the notice deprived interested parties of the opportunity to participate in these proceedings.

III. CONCLUSIONS OF LAW:

PROCEDURES

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

1. Chapter 22.08, General Provisions

a. Section 22.08.005, Pre-application Conference

FINDINGS: The Staff Report states the applicant conferred with members of county planning staff prior to submitting the subject applications.

b. Section 22.08.020, Acceptance of Application

Development action and land use action applications shall not be accepted until the planning director has determined that (1) the requirements of DCC22.08.010 have been met and (2) the application is complete or application is deemed to be complete under state law.

FINDINGS: The Staff Report states, and the Hearings Officer concurs, that the applicant submitted a complete application.

2. Chapter 22.20, Review of Land Use Action Applications

a. Section 22.20.010, Action on Land Use Action Applications

(A) Except for comprehensive plan amendments and zone changes and other instances where a hearing is required by state law or by other ordinance provisions, the Planning Director may decide upon a land use action application administratively either with prior notice, as prescribed under DCC 22.20.020 or without prior notice, as prescribed under DCC 22.20.030 or he may refer the application to the Hearings Body for hearing. The Planning Director shall take such action within 30 days of the date the application is accepted or deemed accepted as complete. This time limit may be waived at the option of the applicant.

FINDINGS: A public hearing on the subject applications was held on March 4, 2003. The applications are quasi-judicial rather than legislative because they affect only eight tax lots and one property owner. For these reasons, the Hearings Officer finds the requirements of this section have been met.

3. Chapter 22.24, Land Use Action Hearings

a. Section 22.24.030, Notice of Hearing or Administrative Action

FINDINGS: As discussed above, the owners of record of all property located within 250 feet of the subject property received individual written notice of the applicant's proposal and the public hearing. In addition, the subject property was posted with a notice of land use action sign and notice of the public hearing was published in a newspaper of general circulation. For these reasons, the Hearings Officer finds the requirements of this section have been met.

4. Chapter 22.28, Land Use Action Decisions

A. Except as set forth herein, the Hearings Officer or the Planning Commission when acting as the Hearings Body shall have authority to make decisions on all quasi-judicial zone changes and plan amendments. Prior to becoming effective, all quasi-judicial plan amendments and zone changes shall be adopted by the Board of County Commissioners.

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.

FINDINGS: The Hearings Officer finds my findings and recommendation may be appealed to the Board of County Commissioners. In the absence of an appeal the board must adopt my decision approving the proposed plan amendment and zone change.

ZONE CHANGE

B. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance

1. Chapter 18.74, Rural Commercial Zone

a. Section 18.74.010, Purpose

The purpose of this chapter is to establish standards and review procedures for development in the Rural Commercial Zone. The Rural Commercial (RC) zone provisions implement the comprehensive plan policies for rural commercial development and associated uses outside of unincorporated communities and urban growth boundaries.

FINDINGS: The subject property is located outside any city limits and the boundaries of the La

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Pine unincorporated community. The applicant proposes to rezone the subject property from RR-10 to RC to reflect the current commercial uses on the property and to allow future rural commercial development consistent with the standards in the RC Zone. Therefore, the Hearings Officer finds the applicant's proposal is consistent with the purpose of the RC Zone.

2. Chapter 18.136, Amendments

a. Section 18.136.010, Amendments

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

FINDINGS: The applicant submitted an application for a quasi-judicial comprehensive plan text and map amendment and zone change by filing the required county application forms and submitting the required fees. The applicant's compliance with the provisions of Title 22 of the Deschutes County Code is discussed in the findings above.

b. Section 18.136.020, Rezoning Standards

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

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

FINDINGS: The Hearings Officer finds this paragraph establishes three zone change approval criteria, discussed in the findings below.

1. Conformance with Comprehensive Plan. The subject property currently is designated and zoned rural residential. As discussed above, the subject property has been developed with rural commercial uses since before the county adopted PL-15 in 1979. The applicant submitted an application to rezone the subject property from RR-10 to RC and a plan amendment to create the Rosland Rural Commercial Zone to conform the property's zoning to its plan designation.

2. Consistent with Plan's Introductory Statement. The introductory statement of the comprehensive plan indicates land use decisions should be made after adequate consideration of alternative[s] or consequences following the orderly process established by the county's plan and ordinance. The Hearings Officer finds the applicant's proposal is consistent with the plan's introductory statement because the process contemplated in the plan is being used to evaluate the applicant's proposal, and the proposed zone change can occur only after this process has been

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completed.

3. Public Interest. The applicant argues the public interest would be served by rezoning the subject property from RR-10 to RC for three reasons. First, the property has been developed with rural commercial uses since prior to the county's adoption of PL-15 and the subject property's RR-10 zoning. Second, the RC zoning will eliminate the need for the applicant and subsequent property owners to verify the existing non-conforming uses in order to authorize the commercial uses that have been on the subject property for decades. Third, the RC zoning will allow appropriate future commercial development to serve the large surrounding rural population.

Opponent Wayne Roan argued in his oral and written testimony that the applicant did not meet her burden of proving the public interest would be served by the proposed zone change because she failed to show a need for additional commercial-zoned land in the La Pine/Wickiup Junction area. Mr. Roan asserted there are 20-25 area lots available for commercial development. The Hearings Officer finds Mr. Roan's argument without merit. The approval criteria for a zone change do not include a requirement that the applicant demonstrate a need for the proposed zoning. Moreover, if additional parcels would qualify for RC zoning, nothing in this decision will prevent the owners of those parcels from applying for a zone change.

For the foregoing reasons the Hearings Officer finds the applicant's proposal satisfies the approval criteria in this paragraph.

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

FINDINGS: As discussed above, the purpose of the RC Zone is to establish standards and review procedures for development of rural commercial uses outside of unincorporated communities and urban growth boundaries. The Hearings Officer finds the applicant's proposal is consistent with this purpose because the subject property is located outside any urban growth boundary and unincorporated community, and has for decades been developed with the very types of commercial uses intended to serve surrounding rural residents.

Opponent Wayne Roan argues the applicant's proposal is not consistent with the purpose of the RC Zone because the lots that make up the subject property are too small for commercial development. As discussed above, the applicant does not propose any new development on the subject property in conjunction with the zone change application. Rather, she seeks to rezone the subject property to reflect its historic and current development with commercial uses. In any event, the Hearings Officer finds the lots the applicant has proposed for rezoning to RC – particularly with the inclusion of Lot 6 in Block 2 -- are large enough to allow future commercial development within required minimum setbacks either by themselves or in conjunction with other lots comprising the subject property.

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

1. The availability and efficiency of providing necessary

public services and facilities.

FINDINGS: The Hearings Officer finds necessary public services and facilities for commercial development on the subject property consist of sewer, water, transportation facilities, and police and fire protection. Each of these is discussed separately in the findings below.

1. Sewage Disposal. The subject property is located outside the boundaries of the area served by the La Pine sewer system, and therefore existing commercial development is served by on-site septic systems. Opponent Wayne Roan argues no commercial development should be located outside La Pine because sewer should be required for commercial uses. The Hearings Officer finds the RC Zone does not require that rural commercial uses be served by a sewer system. Mr. Roan also asserts the county did not issue permits for the existing septic systems, and therefore the applicant failed to establish these systems are adequate to provide sewage treatment for existing commercial development. In response, the applicant submitted evidence concerning the status of these systems in her March 25, 2003 memorandum. This evidence indicates the septic system that serves the commercial use on Tax Lot 7200 (the gym) was installed in the 1960's before the county required or issued septic permits. However, the applicant's evidence indicates all other septic systems on the subject property have received county permits.

Mr. Roan argues no further septic systems could be installed on the subject property, and therefore the property is not suitable for further commercial development under the proposed RC Zone. He asserts no new septic systems could be approved on any of the subject property's lots that are less than one acre in size. The applicant responds, and the Hearings Officer concurs, that to the extent the half-acre minimum lot size applies to the subject property, she can satisfy that requirement by consolidating any lots that are less than one-half acre.²

Finally, Mr. Roan argues the lots comprising the subject property would not qualify for new septic systems because of the nature of the soils and the property's proximity to the Little Deschutes River. The applicant responds, and I also concur, that Mr. Roan's claims are speculative and have no factual basis. Attached to the applicant's March 17, 2003 memorandum is a summary she prepared of the status of septic systems for all lots in the Ahern Acres Subdivision. This report indicates that approximately half of the subdivision lots currently have septic systems, that a significant number of lots qualified for "standard" septic systems, that a number of systems have received approved upgrades in the last ten years, and that no subdivision lots have been denied septic approval. Mr. Roan offered no evidence to dispute this report.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the subject property is and in the future can be served by approved septic systems.

2. Water. Existing uses on the subject property are served by private wells.³ Opponent Wayne

² The applicant's March 25th memorandum states, and the Hearings Officer is aware, that newer septic systems approved by the Department of Environmental Quality for the south part of Deschutes County may not require half-acre lots.

³ As discussed above, the Hearings Officer has concluded it is appropriate to include in this decision Lot 6 in Block 2 of Ahern Acres because it is developed with a well that serves the uses on Lots 2 and 4.

Roan argues the subject property should not be rezoned RC because it must be served by a public water system. Mr. Roan offers no authority for such a requirement. In fact, the comprehensive plan provisions governing rural commercial development expressly allow such development to be served by private wells. Section 23.40.060(2)(c), Policy 11. For these reasons, the Hearings Officer finds the applicant has demonstrated the subject property is and in the future can be served by private wells.

3. Transportation Facilities. The subject property abuts Burgess Road and River Pine Road, both public roads maintained by the county. The record indicates Burgess Road recently was designated a rural arterial road, and River Pine Road is a designated rural local road. The lots that comprise the subject property take access either from Burgess Road or from River Pine Road. The record indicates Burgess Road has a posted speed limit of 45 miles per hour and currently functions at Level of Service (LOS) C.⁴ Opponent Wayne Roan argues the subject property should not be rezoned to RC because existing and future commercial development will require patrons to back their vehicles onto Burgess Road, creating a safety hazard. In response, the applicant asserts there is sufficient area at the front of all lots taking access from Burgess Road to allow vehicles to maneuver entirely on the subject property. The Hearings Officer finds the photographs in the record of the existing commercial uses on the subject property supports this assertion. Therefore, I find the applicant has demonstrated the subject property is and in the future will be served by adequate transportation facilities.

4. Police and Fire Protection. Because the subject property is located outside any city limits it receives police protection from the Deschutes County Sheriff. The record indicates fire protection is provided by the La Pine Rural Fire District. Therefore, the Hearings Officer finds the subject property has and in the future will have adequate police and fire protection.

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

FINDINGS: The applicant has proposed a zone change from RR-10 to RC in order to reflect the historic commercial use of the subject property. She does not propose any new development in conjunction with the zone change. However, the RC zoning would allow further commercial development on the property consistent with the RC Zone standards. With respect to existing development, as discussed in the findings above the subject property is served by adequate public services and facilities. Therefore, the Hearings Officer finds there will be no adverse impacts on surrounding land from existing development. I also find potential future development also will not have adverse impacts on surrounding land. Commercial development must satisfy the standards in the RC Zone that are designed to assure such development remains "rural" in nature. In addition, the size and intensity of development will be limited by the availability and

⁴ The Hearings Officer is aware the county and the Oregon Department of Transportation recognize six levels of service for transportation facilities – LOS A through LOS F – with LOS A designating the best level of service and LOS F designating the worst level of service. I also am aware that the county road department considers LOS D to be the minimum adequate level of service.

capacity of septic systems and the size limitations resulting from the LM Zone.

Opponent Wayne Roan argues future development on the subject property will harm nearby wells and the Little Deschutes River because of sewage runoff. As with many of Mr. Roan's arguments, there is no evidence in the record to support such a claim. With the exception of one septic system that predates county regulation, all septic systems on the subject property have been permitted and inspected by the county, and all future septic systems will receive similar scrutiny.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies this zone change standard.

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

FINDINGS:

1. Change in Circumstances. The applicant argues the proposed zone change from RR-10 to RC is justified by a change in circumstances consisting of the county's adoption of the comprehensive plan and zoning ordinance provisions creating the RC Zone. She argues the RC Zone was adopted specifically to authorize the type of commercial development present on the subject property and that otherwise would be considered a nonconforming use outside an unincorporated community. The Hearings Officer concurs that the change in state land use law reflected in the county's adoption of the RC Zone expresses a strong policy for the creation of low-intensity commercial development to serve rural populations living outside unincorporated areas.

Opponent Wayne Roan argues the commercial uses on the subject property should remain nonconforming uses under the current RR-10 zoning because these uses thereby would be subject to tighter regulation and could not be expanded. The Hearings Officer disagrees. I find Mr. Roan's argument is inconsistent with the state policy reflected in the RC Zone.

2. Mistake. As discussed above, the subject property was designated and zoned RR-10 with the adoption of PL-15 in 1979. The applicant argues this zoning was a mistake for the following reasons:

- a. deed restrictions were recorded with the platting of the Ahern Acres Subdivision in the 1960's specifically to designate certain lots for commercial uses;
- b. commercial uses were established on the subject property prior to 1973;
- c. in 1996 the applicant saw a copy of the 1973 zoning map for the subject property showing it was zoned A-S, Rural Service Center, which allowed commercial uses;
- d. in June 1973 the county issued an access permit to Burgess Road for commercial development

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on the subject property; and

e. the 1979 zoning map adopted with PL-15 zoned RSC a parcel further west on Burgess Road – the Whistle Stop RSC – that was less developed with commercial uses than the subject property.

Opponent Wayne Roan argues the applicant's evidence is insufficient to establish the subject property should have been zoned RSC in 1979, particularly because the 1973 zoning map for the subject property on which the applicant relies in part cannot be located. The Hearings Officer disagrees. I find the circumstances described by the applicant clearly support a finding that the county's 1979 zoning of the subject property to RR-10 rather than RSC was a mistake.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated the proposed zone change from RR-10 to RC is justified both by a change in circumstances and because the RR-10 zoning was a mistake. Therefore, I find the county zoning map should be amended to rezone the subject property to RC and the text of the RC Zone should be amended to reflect this change. The applicant proposed revised zoning ordinance text. Planning staff reviewed the applicant's proposed language and recommended minor changes. I find staff's recommended changes are appropriate. Therefore, I find the provisions of the RC Zone in Chapter 18.74 of the Deschutes County Code should be amended to include the following new language:

Section 18.74.027, Uses allowed in Rosland Rural Commercial Zone

A. Uses Permitted Outright. Any use listed as a use permitted outright by DCC 18.74.020(A).

B. Uses Permitted subject to Site Plan Review. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116 and 18.124:

1. A building or buildings each not exceeding 2,500 square feet of floor space to be used by any combination of the following uses that serve the surrounding rural area of the travel needs of persons passing through the area:

a. Eating and drinking establishments

b. Retail store, office and service establishments

2. Expansion of a nonconforming use existing as of 11/05/2002 shall be limited to 2,500 square feet or 25 percent of the size of the building (or portion of the building) housing the nonconforming use as of said date, whichever is greater.

3. A building or buildings each not exceeding 3,500 square feet of floor space to be used by any combination of the following uses.

- a. Sales of agricultural or farm products
 - b. Farm machinery sales and repair
 - c. Kennel or veterinary clinic
 - d. Automobile service station, repair garage, towing service, fuel storage and fuel sales
 - e. Public or semi-public use
 - f. Residential use in the same building as a use permitted in this chapter
 - g. Park or playground
4. Expansion of a nonconforming use existing as of 11/05/2002 shall be limited to 3,500 square feet each or 25 percent of the size of the building (or portion of the building) housing the nonconforming use as of said date, which ever is greater.

C. Conditional Uses. The following uses and their accessory uses are permitted subject to the applicable provisions of this chapter and DCC 18.116, 18.124 and 18.128:

- 1. A building or buildings each not exceeding 3,500 square feet of floor space to be used by any of the following uses.
 - a. Home occupation as defined in DCC 18.04
 - b. Utility facility
 - c. Wireless telecommunications facilities, except those facilities meeting the requirements of DCC 18.116.250(A) or (B)
 - d. Child care center
 - e. Church
 - f. School
- 2. Recreational vehicle park

PLAN AMENDMENT

C. Title 23 of the Deschutes County Code, the Deschutes County Year 2000 Comprehensive Plan

1. Chapter 23.36, Rural Development

Goals:

- 1. To preserve and enhance the open spaces, rural character, scenic values and natural resources of the county.
- 2. To guide the location and design of rural development so as to minimize the public costs of facilities and services, to avoid

unnecessary expansion of service boundaries, and to preserve and enhance the safety and viability of rural land uses.

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

FINDINGS: The proposed plan amendment would recognize the history and existence of rural commercial development on the subject property. The current uses of the property are of relatively low intensity and the intensity of future uses will be limited by septic feasibility, lot sizes and minimum setbacks. The lots comprising the subject property have access from Burgess Road, a designated rural arterial. The subject property is centrally located to serve a large rural population. For these reasons, the Hearings Officer finds the applicant's proposal is consistent with these plan policies.

a. Section 23.36.080, Transportation

Policies:

- 15. Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes to assure that proposed land uses do not exceed the planned capacity of the transportation system.**

FINDINGS: The subject property is located at the intersection of Burgess Road, a designated rural arterial, and River Pine Road, a designated rural local road. The record indicates Burgess Road currently functions at LOS C, well above the minimum LOS acceptable to the county. The Hearings Officer finds that the low intensity commercial uses that could be developed on the subject property under the RC plan designation will not generate traffic exceeding the capacity of Burgess Road.

2. Chapter 23.40, Unincorporated Communities

FINDINGS: As discussed in the zone change findings above, incorporated by reference herein, the Hearings Officer has found the applicant has demonstrated the proposed zone change satisfies all of the applicable approval criteria in Chapter 18 of the Deschutes County Code. The same findings and conclusions support the applicant's proposed plan amendment.

The applicant proposed amended comprehensive plan language to include findings describing and supporting the creation of the Rosland Rural Commercial Zone. Planning staff submitted alternate language including minor revisions. The Hearings Officer finds staff's proposed revisions are appropriate. Therefore, I find the provisions of Chapter 23.40 should be amended to include the following new underscored language:

a. Section 23.40.010, Unincorporated Communities

The Rosland Rural Commercial area was zoned Rural Commercial in 2003 because it was recognized as a small rural center that was established prior to the adoption of statewide zoning rules by Deschutes County. The County designated the subject property as Rural Residential Exceptions Area on the 1979 PL-15 zoning maps. This designation does not reflect the nature of the historically committed land uses on the subject property. In 2002 the County changed the designation of the smallest acknowledged RSC areas to Rural Commercial zoning to comply with the new state administrative rules for Rural Communities. The Rosland Rural Commercial area was mistakenly left off the 1979 PL-15 zoning maps. Since 1979, State law regarding Rural Community Centers has changed. The County has changed the designation of the smallest acknowledged RSC areas to Rural Commercial zoning to comply with the new state administrative rules for Rural Communities. The small size and rural nature of the development in the Rosland Rural Commercial area makes it appropriate to apply an RC rather than an RSC designation.

OAR 660-022-0010(10)(b) states that in order for an area to be zoned "Rural Service Center" under the Unincorporated Communities rule, it must be identified in a county's acknowledged comprehensive plan as a "rural service center prior to the adoption of OAR 660-022 (October 28, 1994) or be listed with the Department of Land Conservation and Development's January 30, 1997 "Survey of Oregon's Unincorporated Communities." The Rosland Rural Commercial area does not meet either of these requirements and the level of development on the subject property is rural in character and intensity.

- b. Section 23.040.060, Rural Commercial - Deschutes Junction, Deschutes River Woods Store, Rosland and Spring River

The County has also applied the new Rural Commercial plan designation to the Rosland commercial center which has historically been committed to commercial type uses and has served the area as such since prior to adoption of zoning regulations. No new exceptions are required as the subject properties are in an acknowledged exception area.

A. Introduction

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2. Post-Acknowledgment Plan Amendment

The owner of the Rosland commercial center sought approval of a post-acknowledgment plan amendment in

2002. The amendment was sought to confirm her right to continue to operate the commercial center as it has been operated since 1973. The center was recognized because it is small and rural in character and would qualify for a goal exception as the land is physically developed with rural commercial uses.

3. Rural Commercial

The Rosland Rural Commercial boundary includes approximately 4.07 acres near the intersection of Burgess and River Pine Roads. The remainder is surrounded by exceptions land zoned RR-10.

B. Land Use Planning

1. Existing Land Uses

The Deschutes County Comprehensive Plan designates Deschutes Junction, Deschutes River Woods Store, Rosland and Spring River as Rural Commercial.

C. Policies

...

2. Rural Commercial zoning shall be applied to Deschutes Junction, Deschutes River Woods Store, Rosland and Spring River.

...

4. County Comprehensive Plan policies and land use regulations shall ensure that new uses authorized within the Deschutes Junction, Deschutes River Woods Store, Rosland and Spring River areas do not adversely affect agricultural and forest uses in the surrounding areas.

D. Oregon Administrative Rules

1. Division 660-22, Unincorporated Communities

a. Section 660.22.000, Purpose

(1) The purpose of this division is to establish a policy for the planning and zoning of unincorporated communities that recognizes the importance of these communities in rural Oregon. It is intended to expedite the planning process for counties by reducing their need to take exceptions to statewide planning goals when planning and zoning unincorporated

communities.

- (2) **This division interprets Goals 11 & 14 concerning urban and rural development outside urban growth boundaries and applies only to unincorporated communities defined in OAR 660-22-0010.**

FINDINGS: The proposed Rosland Rural Commercial Zone is comprised of property that received an exception to Goals 3 or 4 when it was designated and zoned RR-10 in 1979. The proposed plan amendment will allow this exceptions area to be zoned RC and therefore will maintain uses that are rural in character and intensity. The subject property is located outside any urban growth boundary and city limit.

b. Section 660-22-0010, Definitions

- (10) **Unincorporated Community means a settlement with the following characteristics:**

- (a) **It is made up primarily of lands subject to an exception to Statewide Planning Goal 3, Goal 4 or both;**

FINDINGS: The subject property is comprised entirely of property designated Rural Residential Exceptions Area in the county's comprehensive plan. Therefore, exceptions from Goals 3 and 4 were taken when the county adopted its 1979 comprehensive plan.

- (b) **It is either identified in a county's acknowledged comprehensive plan as a "rural community", "service center", "resort community", or similar term before this division was adopted (October 28, 1994) or it is listed in the Department of Land Conservation and Development's January 30, 1997 "Survey of Oregon's Unincorporated Communities";**

FINDINGS: The subject property is not identified as a rural community, service center, resort community or similar term in the comprehensive plan and therefore does not constitute an "unincorporated community."

- (c) **It is outside of the urban growth boundary of any city.**

FINDINGS: The subject property is not located within a UGB of any city. The closest UGB is the Bend UGB which is approximately 20 miles north of the subject property.

- (d) **It is not incorporated as a city.**

FINDINGS: The subject property is not within an incorporated city.

- (e) **It met the definition of one of four types of unincorporated communities in sections (6) through (9)**

of this rule, and included the uses described in those definitions, prior to the adoption of this definition (October 28, 1994).

FINDINGS: The subject property does not meet the definition of any of the four types of unincorporated communities in sections 6 through 9 of this section. Therefore, the Hearings Officer finds the property is not an unincorporated community subject to OAR 660 Division 22.

2. Chapter 660-12, Transportation Planning

a. Section 660-12-060, 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 identified facility.**

FINDINGS: As discussed in the findings above, the subject property has access from both Burgess Road, a designated rural arterial street, and River Pine Road, a designated rural local road. The record indicates the Burgess Road currently operates at LOS C and that the county has issued access permits on Burgess Road for the existing commercial uses on the subject property. The applicant is not proposing any new development in conjunction with the proposed plan amendment and zone change. The Hearings Officer has found the size of the lots comprising the subject property, the required minimum setbacks and the feasibility of septic systems will serve to limit the amount and intensity of commercial development on the subject property. Therefore, I find the proposed plan amendment and zone change will not significantly affect a transportation facility.

IV. FINDINGS AND RECOMMENDATION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **RECOMMENDS APPROVAL** of the applicant's proposed plan amendment redesignating the subject property, including Lot 6 in Block 2 of Ahern Acres, from Rural Residential Exception Area to Rural Commercial, and the proposed zone change from Rural Residential - 10 Acre Minimum to Rural Commercial, through the following actions:

1. amending the comprehensive plan and zoning map to create the Rosland Rural Commercial Zone on the subject property;
2. amending the text of the comprehensive plan to include the new findings and policies set forth in the findings above; and
3. amending the text of the zoning ordinance to include new RC Zone provisions set forth in the findings above.

Dated this _____ day of April, 2003.

Mailed this _____ day of April, 2003.

Karen H. Green, Hearings Officer