

RECORDING COVER SHEET

Any errors in this cover sheet DO NOT affect the transactions(s) contained in the instrument itself.

AFTER RECORDING RETURN TO:

CLERK'S VAULT

NAME OF TRANSACTION

Ordinance No 242

An Ordinance amending the Crook County Comprehensive Plan with respect to Goal 5 Parcel size requirement within General and Critical Winter Deer Range; and declaring an emergency

GRANTOR: CROOK COUNTY



STATE OF OREGON } **2011-056**
COUNTY OF CROOK } ss
I CERTIFY THAT THE WITHIN INSTRUMENT WAS RECEIVED FOR RECORD ON THE 2nd DAY OF June, 2011, AT 9:20 A.M. AND RECORDED IN CJRN, RECORDS OF SAID COUNTY MF NO-2011-056.
DEANNA E. BERMAN, CROOK COUNTY CLERK
BY Julie Hammel DEPUTY

n/c

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK

AN ORDINANCE AMENDING THE CROOK
COUNTY COMPREHENSIVE PLAN WITH
RESPECT TO GOAL 5 PARCEL SIZE
REQUIREMENT WITHIN GENERAL AND
CRITICAL WINTER DEER RANGE; AND
DECLARING AN EMERGENCY

Ordinance No. 242
(Amending Appendix A
Of Crook County Goal 5
Parcel Size Requirements)

WHEREAS, Oregon's Statewide Planning Goal 5 establishes a state policy to conserve open space and protect natural and scenic resources; and

WHEREAS, Goal 5 further provides that in conjunction with the Crook County Comprehensive Plan that parcels located within the general and critical winter deer range be no smaller than 80/160-acres in size; and

WHEREAS, the Crook County Planning Commission, by a 4 to 3 vote, recommended that the Crook County Court adopt the below described Reasons Exception as described in the County Staff report and application to allow for an amendment to the County Comprehensive Plan with respect to the Goal 5 Wildlife parcel size, and adopt the attached Staff Report as part of its decision.

NOW, THEREFORE, the Crook County Court ordains as follows:

SECTION ONE: *Subject Property.* The subject property is described as Tax Lot 400, T17S, R19E, located in Sections 3 and 10. The subject property is illustrated on the map attached hereto as "Exhibit A" and by this reference included herein.

SECTION TWO: *Amendment.* The County Court adopts the amendment to the Goal 5 Appendix A of its Comprehensive Plan in accordance with the adopted Staff Report, attached hereto as "Exhibit B" and by this reference included herein. The subject property is thereby *permitted* to deviate from the general parcel size as described in detail in the Staff Report, and described in general to allow a boundary line adjustment application to result in an approximately 302-acre and an 18-acre parcel with the approval to be consistent with this Ordinance.

The subject property must still obtain approval of the boundary line adjustment, subject to conditions attached hereto as "Exhibit C."

SECTION THREE: *Findings.* The Crook County Court adopts as its findings the Staff Report attached hereto as "Exhibit B" and by this reference included herein.

SECTION FOUR: *Severability.* The different sections of this Ordinance shall be deemed to be severable from each other, and the appeal of one section shall not prevent other unappealed sections from becoming effective.

SECTION FIVE: *Emergency*. This Ordinance being necessary for the health, welfare and safety of the people of Crook County, an emergency is hereby declared to exist, and this Ordinance shall become effective upon signing.

First Reading: 5-18-2011

Second Reading: 6-1-2011

DATED this 1ST day of June, 2011.

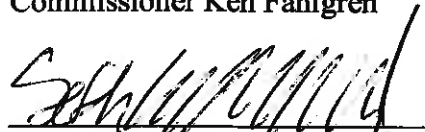
CROOK COUNTY COURT



Judge Mike McCabe



Commissioner Ken Fahlgren



Commissioner Seth Crawford



Ex B

**Crook County
Planning Department**
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www.co.crook.or.us

**RECCOMENDATION BY THE PLANNING COMMISSION TO THE CROOK COUNTY
COURT REGARDING AN EXCEPTION TO STATEWIDE PLANNING GOAL 5 (APPROVAL
OF 18.12 ACRE PARCEL IN THE DEER WINTER RANGE)**

April 27, 2011

APPLICATION NOs: AM-11-0016 (Comprehensive Plan Amendment), related applications are LR-11-0015 (Legal Parcel Verifications) and BLA -11-0017 (Boundary Line Adjustment)

APPLICANT: Rance Kastor
21202 SE Pine Creek Road
Post, OR 97752
(541) 477-3819

ATTORNEY: Myles Conway
Schwabe Williamson & Wyatt
360 SW Bond Street, Bend OR 97702
(541) 749-4019

SURVEYOR/ENGINEER: Armstrong Surveying & Engineering
267 NE Second ST., Suite 10
Prineville, OR 97754
(541) 447-7791

SUBJECT PROPERTY: Tax lot 400, T17S, R19E, located in Sections 3 and 10

REQUEST: The Applicant seeks an exception to statewide planning Goal 5 to reduce the size of an adjusted parcel below the 80/160-acre minimum parcel size that is authorized in the deer winter range.

DESIGNATION/ZONING: The property is zoned EFU-1 and falls within the general and critical deer winter range.

APPLICATION DATE: February 8, 2011

DEEMED COMPLETE: March 9, 2011

150 DAY REVIEW PERIOD: August 6, 2011 (only applied to Boundary Line Adjustment and Legal Parcel verification)

NOTICE:

March 2, 2011

RECOMMENDATION:

APPROVAL

RECOMMENDATION:

The Planning Commission recommends by a 4 to 3 vote that the proposal be approved as follows:

- That the proposed findings in the Staff Report be adopted as part of the final decision.
 - That the following conditions be imposed on the exception and that conditions 1-3 and 5-7 be imposed on the subsequent boundary line adjustment as deed restrictions.
1. No new dwellings or residential structures can be constructed on the 18 acre parcel.
 2. No existing structures on the 18 acre parcel can be replaced or used as habitable dwellings or structures.
 3. No further subdivision or partition of the 18 acre parcel is allowed.
 4. Access to the 18 acre parcel shall be provided through a recorded easement of no more than 20 feet in width.
 5. No trailer, campers or temporary structures are allowed on the 18 acre parcel.
 6. Any fencing shall be consistent with applicable wildlife protection/passage standards required by ODFW (3 strand fencing, top wire no higher than 38 inches, bottom wire no lower than 20 inches). Wildlife fencing standards would be applicable unless and until alternative standards are required by DEQ and/or the US Environmental Protection Agency in connection with environmental remediation efforts.
 7. No further mining of the site shall be permitted except that incidental mining as part of remediation or reclamation efforts is permitted.
 8. The applicants and/or the owners of the property are to sign a letter of non-remonstrance to area farm operations, which complies with the requirements of ORS 215 and is binding on future owners of the property.
 9. DEQ is aware of the site, it is listed as a low priority and DEQ recommends the site be signed and access be restricted. The applicant/owner shall comply with all applicable DEQ regulations and requirements.

Recommended this 27th day of April 2011.

Lawrence J. Weber (Acting Chair)

Bill Gowen, Commission Chairman

Bill Zelenka

Bill Zelenka, Planning Director



**Crook County
Planning Department**
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BEFORE THE CROOK COUNTY PLANNING COMMISSION
**RECCOMENDATION TO THE CROOK COUNTY COURT REGARDING A BOUNDARY
LINE ADJUSTMENT AND EXCEPTION TO STATEWIDE PLANNING GOAL 5 (APPROVAL
OF 18.12 ACRE PARCEL IN THE DEER WINTER RANGE)**

STAFF REPORT
March 16, 2011

APPLICATION NOs: AM-11-0016 (Comprehensive Plan Amendment), LR-11-0015
(Legal Parcel Verifications) and BLA -11-0017 (Boundary Line
Adjustment)

APPLICANT: Rance Kastor
21202 SE Pine Creek Road
Post, OR 97752
(541) 477-3819

ATTORNEY: Myles Conway
Schwabe Williamson & Wyatt
360 SW Bond Street, Bend OR 97702
(541) 749-4019

SURVEYOR/ENGINEER: Armstrong Surveying & Engineering
267 NE Second ST., Suite 10
Prineville, OR 97754
(541) 447-7791

SUBJECT PROPERTY: Tax lot 400, T17S, R19E, located in Sections 3 and 10

REQUEST: The Applicant seeks approval of a boundary line adjustment and cor-
responding exception to statewide planning Goal 5 to reduce the size
of an adjusted parcel below the 80/160-acre minimum parcel size that
is authorized in the deer winter range.

DESIGNATION/ZONING: The property is zoned EFU-1 and falls within the general and critical
deer winter range.

APPLICATION DATE: February 8, 2011

DEEMED COMPLETE: March 9, 2011
150 DAY REVIEW PERIOD: August 6, 2011 (only applied to Boundary Line Adjustment and Legal Parcel verification)
NOTICE: March 2, 2011

I. PROCEDURE

In order to review a request for a comprehensive plan amendment Planning Commission must consider the relevant criteria which include, Oregon Statutes (ORS), Statewide Planning Goals, Oregon Administrative Rules (OAR), Comprehensive Plan Policies and the Crook County Code.

II. CRITERIA

A. OREGON STATUTES AND STATEWIDE PLANNING GOALS

Oregon Statewide Planning Goal 5
ORS 92.017
ORS 197.732(1)(c)
ORS 215.010(1)(a)(c)
ORS 517.570-517.951

B. OREGON ADMINISTRATIVE RULES

OAR 660-004-005
OAR 600-004-0010
OAR 660-005-0015
OAR 660-004-0020
OAR 660-004-0022

C. COMPREHENSIVE PLAN

Review and Revision page 195 -196.

D. ZONING CODE

Crook County Code 18.16.070(3)

E. SUBDIVISION CODE

Crook County Code 17.24.080

III. AGENCY COMMENT

DLCD and ODFW have been notified in writing of the proposal. ODFW was inadvertently notified late on March 11, 2011 and may or may not need more time to respond. Staff had preliminary discussions with both agencies and neither agency was opposed to the application.

IV. ANALYSIS

- This Staff Report addresses information received before 5pm March 16, 2011. Comments received after that time are not included in the Staff Report.
- Exhibits refer to Exhibits received with the application. Exhibits received with the application are available to the public for inspection at no cost and copies are available on request at the County's regular rate at the Planning Department.

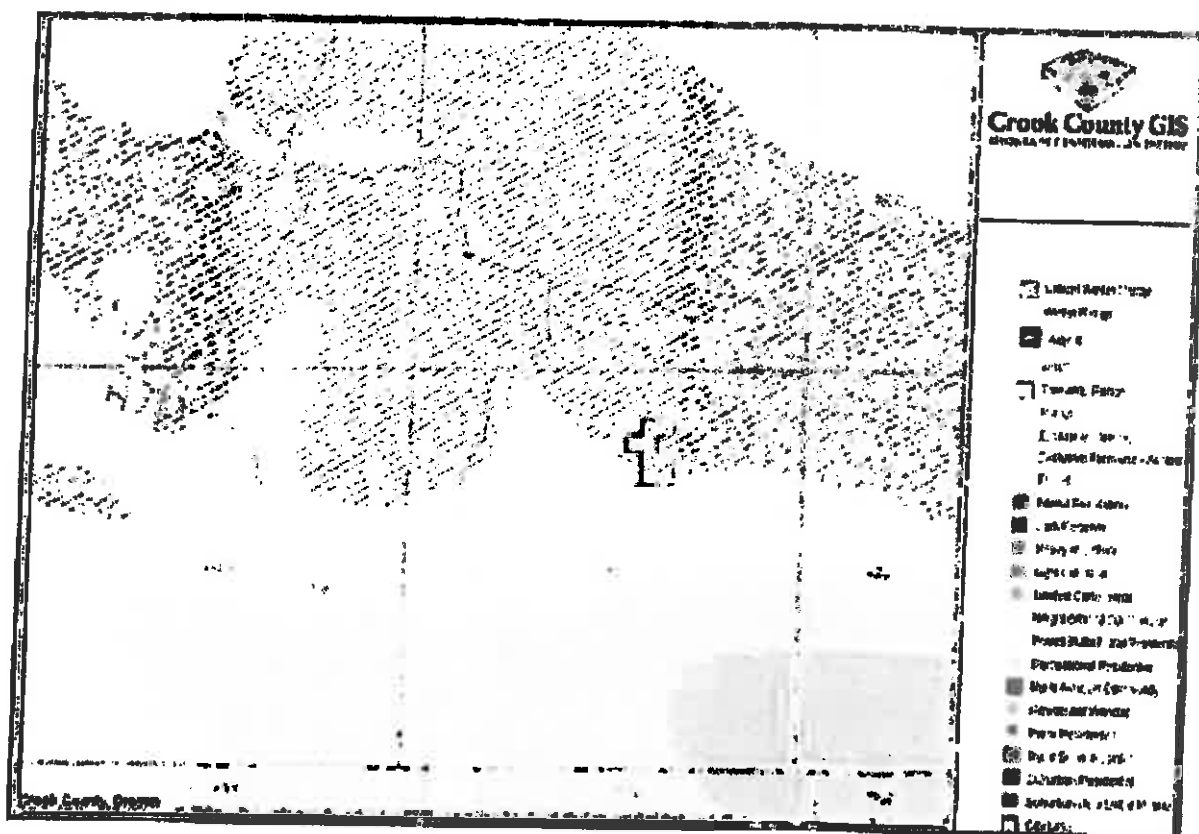
A. BACKGROUND AND INTRODUCTION

The Applicant is the owner of two parcels of property in the EFU-1 Zone that are each 160-acres in size. The two parcels were created by the United States under the 1862 Homestead Act. Copies of the two federal homestead patents are labeled as Exhibits 1 and 2. The two federal homestead patents represent legal parcels under ORS 215.010(1)(a)(C) and 92.017 (see discussion below). In approximately 1930, J.E. Staley and Frank Towner identified mercury bearing ore (cinnabar) in the Maury Mountain area and staked a number of mining claims on federally owned lands. One such claim was located on federal lands immediately south of the subject property in portions of Sections 10 and 15, T17S, R19E. Mining operations proceeded on this adjacent BLM parcel and eventually encroached on a portion of the subject property. An 18.12 portion of the subject property was ultimately utilized in connection with mercury/cinnabar mining and processing operations.

With this application, the Applicant seeks approval of a boundary line adjustment that would isolate those portions of the subject property that were utilized in connection with historical mining and processing operations into a distinct legal parcel. The proposed boundary line adjustment would result in one parcel that is 301.88 acres in size ("Parcel 1") and a second parcel that is 18.12 acres in size ("Parcel 2" or the "Mine Parcel"). The Mine Parcel (Parcel 2) is designated as "general deer winter range" under the Crook County Comprehensive Plan. Crook County Code

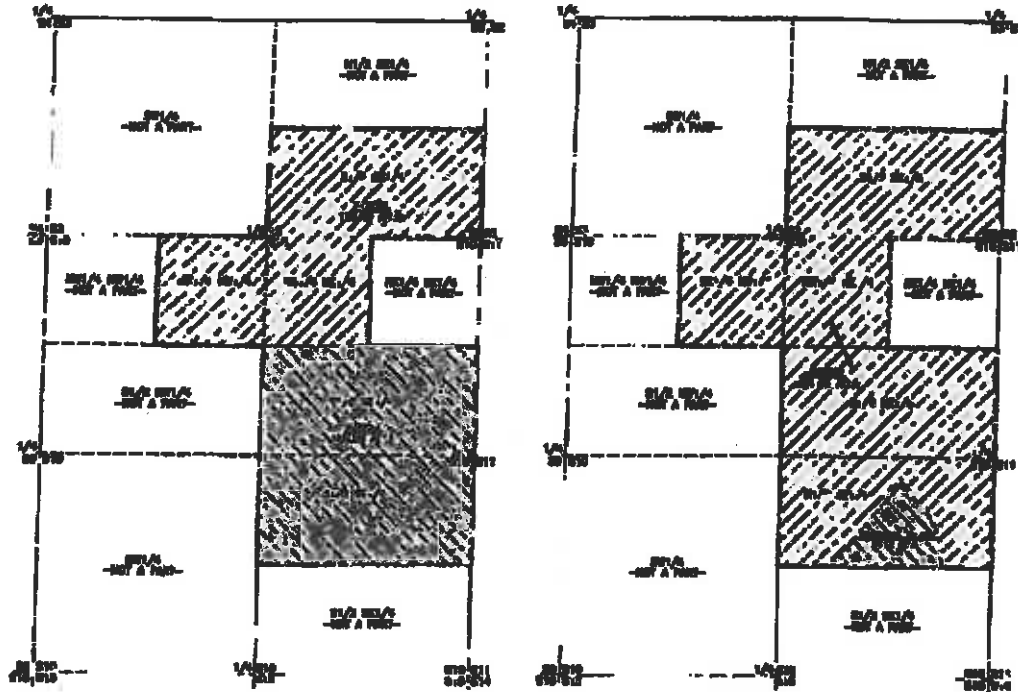
("CCC") Section 18.16.070(3) provides that the minimum parcel size for lands designated for general winter range is 80-acres. This 80-acre minimum parcel size was established by Crook County under the Goal 5 element of its Comprehensive Plan. The Applicant seeks a "reasons" exception to Goal 5 to establish a minimum parcel size for the Mine Parcel that is less than the 80-acres that is specified under CCC 18.16.070(3).

VICINITY MAP SHOWING ZONING AND DEER RANGES



BEFORE BOUNDARY LINE ADJUSTMENT

AFTER BOUNDARY LINE ADJUSTMENT



B. APPROVAL CRITERIA

1. LEGAL PARCEL VERIFICATION

Applicant Proposed Finding: The two parcels that are the subject of this boundary line adjustment were created by federal homestead patents. The patents issued under the 1862 Homestead Act are attached as Exhibits 1 and 2. ORS 215.010(1)(a)(C) defines a lawful "parcel" to include a unit of land created by "deed or land sales contract" if there were no applicable planning, zoning or partitioning ordinances or regulations. In this case, the United States created distinct legal parcels through the issuance of the two homestead patents in 1909 (Exhibit 1) and 1917 (Exhibit 2). At the time the patents were issued, neither the State of Oregon nor Crook County had rules, regulations or ordinances governing the creation or conveyance of legal parcels. The subject parcels are legal parcels under ORS 215.010 and their legal status has not been altered since the date the patents were originally issued. Under ORS 92.017, a lawfully created parcel remains a discrete parcel unless and until parcel lines are vacated or the parcel is further divided. No such actions have occurred on the subject property.

2. ORS 215 COUNTY PLANNING AND AGRICULTURAL LAND USE

ORS 215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties. (1) The following uses may be established in any area zoned for exclusive farm use:

(h) Operations for the exploration of minerals as defined by ORS 517.750.

Applicant Proposed Finding: Mining and associated operations are a permitted "non farm" use in the exclusive farm use zone. ORS Chapter 517.570 through 517.951 define the rules for the "reclamation of mining lands." The term, "exploration" is broadly defined to include, "all activities conducted on or beneath the surface of the earth for the purpose of determining presence, location, extent, grade or economic viability of a deposit" ORS 517.750(4). The term "minerals" is defined to include any solid material or substance excavated for commercial, industrial or construction use from natural deposits situated within or upon lands in this state. ORS 517.750(7). In this case, the proposed "Mine Parcel" will be utilized exclusively for purposes related to the exploration and reclamation of minerals. The Applicant's are prepared to accept a condition of approval limiting the future use of the Mine Parcel consistent with this criterion.

ORS 215.263(3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use.

Applicant Proposed Finding: As noted above, mining and reclamation are an authorized non farm use in the EFU zone. The Applicant proposes the creation of the Mine Parcel at 18.12 acres in size. The boundaries of the Mine Parcel have been established to include all areas of the subject property that have been utilized in connection with historical mining operations. The parcel is configured in a manner that will facilitate the ongoing reclamation of the Mine Parcel. The proposed parcel is not larger than the minimum size necessary for its proposed non farm use. No dwellings have been permitted on the proposed Mine Parcel. The Applicant is prepared to accept a condition of approval that would preclude the construction and/or occupancy of any dwelling on the Mine Parcel.

3. OREGON ADMINISTRATIVE RULES- EXCEPTIONS PROCESS

660-004-0000 Purpose

(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local governments' comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

Applicant Proposed Finding: Documentation and findings supporting the proposed Goal 5 exception are provided herein. The "reasons" supporting the exception are consistent with

applicable legal standards as provided below. The record contains substantial evidence supporting the Applicant's request.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide Goal.

Applicant Proposed Finding: Affected citizens and governmental units will be provided with notice of the application and supporting materials consistent with the requirements of state and local regulations. Public hearings will be conducted consistent with the requirements of CCC Chapter 18.168, providing interested parties with opportunities to participate in the goal exception process. The proposed findings are supported by substantial evidence contained in the record.

660-004-0005 Definitions

For the purpose of this Division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with the provisions of this Division.

(2) "Resource Land" is land subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

(3) "Nonresource Land" is land not subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.

Applicant Proposed Finding: *The Applicant's request is applicable only to a specific portion of the subject property, seeking an exception to Goal 5 based minimum parcel size requirements for the Mine Parcel. The proposed exception will not create a planning or zoning policy of general applicability. The Applicant's proposal to create the 18.12 acre Mine Parcel does not comply with the minimum parcel size for general winter range as specified in CCC 18.16.070(3).*

660-004-0010 Application of the Goal 2 Exception Process to Certain Goals

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses permitted in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands" ;

Applicant Proposed Finding: The Applicant seeks to create the Mine Parcel for a nonfarm use that is permitted in the EFU zone under ORS chapter 215. As a result, no exception to Goal 3 "Agricultural Lands" is required to facilitate this proposal.

(2) The exceptions process is generally not applicable to those statewide goals which establish planning procedures and standards that do not prescribe or restrict certain uses of resource land or limit the provision of certain public facilities and services, because these goals contain general planning guidance or their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:

(a) Goal 5 "Natural Resources"

Applicant Proposed Finding: The County adopted the minimum parcel sizes in CCC 18.16.070(3) to comply with the requirements of statewide planning Goal 5 "Natural Resources". The requirements of the County code restrict certain uses on resource based lands.

(3) An exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

Applicant Proposed Finding: An exception to Goal 5 is the only exception required to facilitate approval of the Applicant's proposal.

660-004-0015 Inclusion as Part of the Plan

(1) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons which demonstrate that the standards for an exception have been met. The applicable standards are those in Goal 2, Part II(c), OAR 660-004-0020(2), and 660-004-0022. The reasons and facts shall be supported by substantial evidence that the standard has been met.

Applicant Proposed Finding: The "reasons" justifying the requested goal exception are provided herein. The terms, conditions and findings related to the Applicant's request will be adopted as part of the County's Comprehensive Plan on approval.

660-004-0018 Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

Applicant Proposed Finding: The proposed goal exception is justified by the need to depart from established minimum parcel sizes to create a parcel for mining and reclamation activity. As provided in more detail below, the parcel would be utilized only for purposes related to mining and reclamation activity. No dwellings, overnight occupancy or recreational activity would be authorized on the proposed Mine Parcel. These use and development limitations would facilitate the protection of Goal 5 resources in a manner that is consistent with the minimum parcel size requirements that have been implemented by the County as part of CCC 18.16.070(3). The Applicant is prepared to accept conditions of approval that limit the future use and occupancy of the Mine Parcel in a manner that is consistent with Goal 5.

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;

Applicant Proposed Finding: Any future change in the types or intensities of uses will be consistent with the requirements of this section.

660-004-0020 Goal 2, Part II(c), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land;

Applicant Proposed Finding: The County has established an 80-acre minimum parcel size for parcels in the general winter deer range in an effort to minimize potential conflicts between dwellings and winter wildlife range. CCC Chapter 18.16 authorizes a number of different types of dwellings that can be authorized on parcels that are less than 80-acres in size. County EFU regulations authorize farm dwellings, nonfarm dwellings, lot of record dwellings and other forms of dwellings permitted under ORS Chapter 215. EFU rules further allow the division of properties into smaller parcels to facilitate the siting of non farm dwellings and other uses that are potentially inconsistent with the protection of deer winter range. The Applicant seeks to depart from the applicable minimum parcel size to facilitate the creation of a parcel for mining and reclamation activity. The Applicant is prepared to accept a condition of approval that would prohibit the siting of a dwelling and/or any overnight occupancy on the Mine Parcel. This prohibition on future development provides adequate protection for Goal 5 resources at the site. At the same time, they facilitate the creation of a Mine Parcel where historical mining operations may be reclaimed and/or remediated in the future.

(b) "Areas which do not require a new exception cannot reasonably accommodate the use":

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

Applicant Proposed Finding: The proposed goal exception is site specific. Mining activity was initiated on the Mine Parcel beginning in the 1930's. The site contains mining areas, processing areas, mine workings, mine shafts, mine adits and the structures associated with mining and processing. The proposed goal exception is required to facilitate the creation of a separate parcel for future mine reclamation activity. The subject property and all surrounding parcels are zoned exclusively for resources uses. There are no potential alternative sites. The location of the historical mine operation and surrounding zoning make it impossible for the Applicant to evaluate any alternative locations.

(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

(c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

Applicant Proposed Finding: As noted above, there are no alternative sites that can accommodate the Applicant's proposal. Mining activity has been conducted on the proposed Mine Parcel since the 1930's. The Oregon Department of Environmental Quality has added the historical mining facility to its Confirmed Release List and Inventory and determined that the site is a medium priority for additional assessment and remedial action according to Oregon regulations and statutes. DEQ has determined that direct contact with mercury

contaminated soils and processing equipment at the site is the primary pathway of concern for human health and safety. The Applicant seeks an exception from applicable minimum parcel size requirements to create a specific parcel that will encompass all areas of historical mining operations. As noted above, the creation of a smaller parcel that is subject to future development restrictions is consistent with the requirements of Goal 5. Moreover, the Applicant's proposal provides a mechanism for the long term over-site, management and eventual remediation of the historical mining operation.

(d) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. A compatible use is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

***Applicant Proposed Finding:** The Applicant's proposal is intended to create additional compatibility between the Mine Parcel and surrounding agricultural and grazing operations. The Applicant will create a separate legal parcel to facilitate the long range management and remediation of historical mining activity. Use of the parcel will be restricted to preclude future dwellings and/or occupancy. The creation of a separate parcel will facilitate long term management and remediation in a manner that does not conflict with grazing activity on the ranch parcel that surrounds the mine. The proposed development restrictions will insure that future uses are not developed that will impact agricultural operations.*

660-004-0022 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

Applicant Proposed Finding: Mining and associated reclamation activity is a permitted non farm use on the resource lands at issue in this application. Goal 5 (Natural Resources, Scenic and Historical Areas, and Open Spaces) requires local governments to adopt programs that will protect natural resources and conserve scenic, historic and open space resources for present and future generations. The resources to be protected under Goal 5 include, wildlife habitat, groundwater resources and natural areas. In this case, Crook County has implemented a minimum parcel size for deer winter range (CCC 18.16.070(3)) that is intended to protect wildlife habitat from encroachment related to dwellings and other human development. The Applicant seeks to depart from the established minimum parcel size to facilitate the creation of a legal parcel that can be utilized for the eventual reclamation of past mining activity at the site. The proposed "Mine Parcel" has been listed by DEQ on its Confirmed Release List and Inventory. Based on testing at the site conducted by the U.S. Environmental Protection Agency, DEQ has documented the presence of environmental contaminants on the Mine Parcel. The proposed goal exception and boundary line adjustment will facilitate the creation of a parcel for long term monitoring and remediation consistent with DEQ rules and regulations.

As noted above, the Applicant is prepared to accept conditions of approval that would limit the future use and occupancy of the Mine Parcel to mining and reclamation related activities. Conditions can be prepared to preclude future dwellings, overnight occupancy or other development on the Mine Parcel. Such conditions would provide protections to wildlife habitat that are consistent with the minimum parcel size specified in 18.16.070(3). In fact, such limitations may even provide wildlife habitat with a greater degree of protection than is currently available under the applicable parcel size limitation. Moreover, the creation of a separate parcel for the Mine Parcel will facilitate the long term monitoring and remediation of a mine site that is listed with the DEQ. This provides additional protection for other Goal 5 resources.

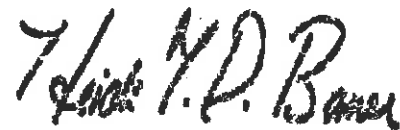
4. BOUNDARY LINE ADJUSTMENT

Crook County Code 17.24.080 permits boundary line adjustments. If the Planning Commission recommends approval of the Goal 5 exception, the Planning Commission may approve the Boundary Line Adjustment with a condition that it will not be effective until the goal exception is approved by the County Court. Boundary Line adjustments are normally approved administratively by staff. Because this application requires a Goal 5 exception it has come before the Planning Commission.

V. CONCLUSION

Based on the information presented in the record and at the hearing(s) the Planning Commission should determine whether to recommend approval or denial of the goal exception and corresponding boundary line adjustment to the Crook County Court.

Respectfully submitted,

A handwritten signature in black ink that reads "Heidi Y. P. Bauer". The signature is written in a cursive style with a large initial 'H'.

**Heidi Bauer
Assistant Planning Director &
Land Use Counsel**

EXHIBIT C

List of conditions to be imposed upon the boundary line adjustment and other land uses, incorporated into Ordinance 242.

1. No new dwellings or residential structures can be constructed on the 18-acre parcel.
2. No existing structures on the 18-acre parcel can be replaced or used as habitable dwellings or structures.
3. No further subdivision or partition of the 18-acre parcel is allowed.
4. Access to the 18-acre parcel shall be provided through a recorded easement of no more than 20 feet in width. Such access to the 18-acre parcel shall be only over applicant/owner's property, not the property of adjacent landowners.
5. No trailer, campers, or temporary structures are allowed on the 18-acre parcel.
6. Any fencing surrounding the 18-acre parcel shall be consistent with applicable wildlife protection/passage standards required by ODFW (3 strand fencing, top wire no higher than 38 inches, bottom wire no lower than 20 inches). Wildlife fencing standards would be applicable unless and until alternative standards are required by DEQ and/or U.S. Environmental Protection Agency, or other competent authority, in connection with environmental remediation efforts.
7. No further mining of the site shall be permitted except that incidental mining as part of remediation or reclamation efforts is permitted.
8. The applicants and/or owners of the property are to sign a letter of non-remonstrance to area farm operations, such letter complying with the requirements of ORS 215 and is binding on all future owners of the property.
9. The applicant/owner shall comply with all applicable DEQ regulations and requirements.
10. A survey will be conducted to ascertain the location of the mining operation structures, vis-à-vis the 18-acre parcel/BLM parcel boundary line, a copy of which shall be provided to the County and incorporated into the record.
11. An agreement by the applicant/owner to escrow taxes for a period of 100 years for the 18-acre parcel, if practicable. Further, a condition running with the land shall bind the 302-acre parcel to pay all real property taxes attaching to the 18-acre parcel and shall be noted on the boundary line survey plat.
12. A berm will be constructed on the 302-acre parcel, located on the downhill side of the 18-acre parcel so as to prevent water run-off onto other portions of land, evidence of which shall be provided by the applicant.
13. All fences and signs on the fencing required by number 6 above will be maintained and periodically updated, as is required by the competent authority, such obligation being binding on all future owners of the property.
14. The covenants and obligations referenced in numbers 1 through 11 above shall be binding on all future owners of the 18-acre parcel.
15. The covenants and obligations referenced in numbers 6, 8, 11, 12, and 13 above shall be binding on all future owners of the 302-acre parcel.