

For Recording Stamp Only



Deschutes County Board of Commissioners  
1300 NW Wall St., Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## MINUTES OF BUSINESS MEETING

### DESCHUTES COUNTY BOARD OF COMMISSIONERS

**MONDAY, MARCH 2, 2015**

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Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

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*Present were Commissioners Anthony DeBone, Alan Unger and Tammy Baney. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; David Doyle and Laurie Craghead, County Counsel; Nick Lelack, Will Groves and Peter Russell, Community Development; and about a dozen other citizens including media representative Ted Shorack of the Bulletin.*

*Chair DeBone opened the meeting at 10:00 a.m.*

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#### **1. PLEDGE OF ALLEGIANCE**

#### **2. CITIZEN INPUT**

*None was offered.*

#### **3. Before the Board was a Public Hearing on the Shepherd Land Use Application (Private Park).**

Chair DeBone read the opening statement, and Will Groves gave an overview of the process to be followed; and Chair DeBone opened the public hearing.

Regarding disclosure of bias or conflicts of interest, Commissioner Unger indicated he has been involved only through staff. Commissioner Baney said she attended the same work sessions, and also met with the Shepherds at the site to get a feel for the property, but feels she can be objective. Chair DeBone noted that he attended the same work sessions and also toured the property last year, but has no conflicts of interest or bias and can be objective. No challenges were offered from the public.

Mr. Groves then provided an overview of the application and activities. (*A copy of his PowerPoint presentation is attached for reference.*)

He pointed out that the update wildlife management plan is being addressed separately, but generally should not be in conflict with the proposed uses.

In regard to the County's noise ordinance, it is fairly restrictive under separate parts of Code. A condition can be added to the decision to require compliance with the noise ordinance and no variance is to be given.

Cinders are proposed to be used for the driveway and parking areas. Peter Russell stated that they need an all-weather surface, and cinders are not considered as such. Buckhorn Road traffic will be impacted as well with more traffic in a short time than is normally seen in a regular day. Cinders are not an appropriate surface for the amount of use the driveway and parking areas will get. Mr. Groves stated that if they allow cinders, others that now are required to use gravel will want to do the same since it is less expensive.

Commissioner Baney asked about the timeframe allowed; specifically, will there be more time needed the day before and day after for setting up equipment and other activities. Chair DeBone asked if a weekend event is just one day, Saturday or Sunday, or also Friday evening.

Commissioner Unger said that the event defines the park, and is not incidental to activities. As a conditional use in an EFU zone, he asked if this will now become the default for private parks on EFU land. Mr. Groves said this has been done before with paintball parks and similar; there is a question as to whether it is private or a park. It focuses on the activities being held there. If it is appealed, it will be interesting to see how LUBA reacts.

LUBA said the uses need to be fundamentally the same on any such park property. Previous decisions addressed what is the primary activity. The Hearings Officer stated that the wedding itself takes so little time that most of the activities are recreation-related.

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Dave Hunnicut, Oregonians in Action, said he agrees with the presentation. There are three main issues: whether the proposal constitutes a private park, as used in both Code and the ORS. The legislature has allowed this in the EFU zone for decades. The Legislature nor LCDC or County has defined this, so it is subject to definition by LUBA and the Courts. LUBA has done this in the past in a few cases. Essentially LUBA indicated a private park is a tract of land set aside for public recreational use. They do not want to define the intensity of the proposed use.

In those cases, the uses would have been year-round. This proposal is for 18 events a year, just on weekends. They won't be constructing additional structures either. Certainly as found by the Hearings Officer, the bulk of the activity will be recreational in nature. Some won't be weddings but other family-type events, charity events or class reunions. The Hearings Officer stated that the reception events are considered recreational. He believes they have met this definition and meet the necessary standards for a private park.

The next issue is whether the proposed activity will force a significant change in farm or forest practices on surrounding parcels. This is in ORS as well. There is a lot of litigation on this issue with others. There is no impact on nearby lands. To the extent there are farm practices, a map will be submitted showing farm activities in the area with corresponding documents showing the activities for each. The 18 events will not impact this. There will be an amplified sound system and they will make sure there are no impacts to adjacent properties. The property's configuration and vegetation keep the sound from traveling. The events and structures are also not visible from other parcels.

The other potential issue is with traffic. Holmes Road generates little traffic and the amount of trips generated by the events does not require a traffic study. There would be no significant impact on farming or forest practices. An adjacent property is a guest ranch that also holds weddings and other events, and this does not interfere with their cattle operation. No neighbors have objected to this plan.

Compliance with the wildlife management plan and farm management plan is the remaining issue. There is an application in place for the WMP. They believe they are in compliance with the old plan, but it was not well written and it is hard to know how to comply. The new plan is significantly better and staff has recommended approval of this, as does Oregon F&W. He does not believe that there is anything in Code that requires the private park plan be in compliance with the WMP. However, they are in compliance with the wildlife and farm management plan in either case.

The farm management plan was necessary to be able to build a residence on the property, which is non-high value farmland. This does not continue after the dwelling is approved and built. They do not have to prove the income standard every year for low value farmland. Neither the State nor County has instituted this requirement for the farm management plan to be enforced beyond its original approval.

There is evidence exactly what is proposed to do with the farming aspect as well as the WMP. Cattle will not impact the private park uses, and also will not negatively impact the deer winter range.

He asked that the Hearings Officer's decision and WMP modification be included in the record for the Board to review.

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John Shepherd said the events will be between 2 and 10 p.m., on either Saturday or Sunday. There is set up and clean up before or after, but that involves just a few people from the catering companies.

*(He gave a PowerPoint presentation).* He intends to have an affordable venue, which is lacking in this area. They should generate \$1.25 million in local economic activity with the 18 events. It will create jobs for caterers, florists and others. It will allow them to host other events for nonprofits and charities. It will also allow him to use his low-value farmland in a profitable way.

A big question is a definition of recreation. The Hearings Officer said the event needs to be recreational in nature. These are activities done for enjoyment and to relax. The ceremony takes 15 or 20 minutes, and he feels it is recreational. Then the rest of the event is recreational, singing, dancing, eating, music, lawn games such as volleyball and a children's play area. It is six to eight hours of recreation.

Another question was, is it a park. A park is a wooded area with lawns and walkways, and this fits. The slides also show the isolated nature of the property; they can't even see the neighbor's residences from their property. These are gatherings of families and friends and are a reunion as well as a wedding.

Buffers are required, and are in place. *(He showed slides of various events and a video of the historically themed homeschool charity ball which he hopes to be held annually.)* He wanted to stress the recreational nature of what they plan to do, since that was a big part of the

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Jonathan Shepherd testified regarding his participation in music and the arts, and working with children. Central Oregon History Performers is a group that focuses on skits and songs of historical nature, and he is now involved with them. They hope to broaden the homeschool ball to help with fundraising for the other group.

Mr. Shepherd brought up the cinder vs. gravel issue. He asked for latitude to put down cinders. He reads in Code that an exception can be made by the hearings body if it will be maintained as to not create dust problems for neighboring properties or will have dust control continuously. All weather surface and dust control are the factors. The neighboring properties are at least ½ mile away. Using screened cinders is a dust control surface, especially in a parking area. The all-weather base is important for an all-weather situation. The events will only be in the summer so the cinders should be adequate. Some are concerned about precedence, but exceptions can be granted. It will be 30 or 40 cars only 18 times a year. He feels screened cinders would hold up well. The Fairgrounds has overflow traffic on grass and dirt. He requested they exercise discretion to allow cinders, since it is much less expensive for them than gravel.

Commissioner Baney asked Mr. Hunnicut if he has the study showing soils classifications. He replied that it is in the staff report and the Hearings Officer's decision should have this noted. She asked about 30 to 40 cars with up to 250 people. She asked how that computes. Mr. Shepherd stated they can expect one car for four people. They have never had more than 100 people and typically it is 120 or less. He feels an average would be 120, at most 160. They would not expect more than 40 cars for an event.

Chair DeBone asked if others wished to speak.

Paul Dewey of Central Oregon Landwatch requested additional time to review new information. It is important to recognize the context which is to protect resource lands. The Cherry Grove case emphasized that allowed conditional uses in the farm zone should be construed narrowly. The legislature has seen fit to allow additional uses such as agri-tourism.

He feels this proposal is pushing the envelope further than has been seen before, especially County and LUBA decisions relating to paintball or motocross. This is asking for a very broad definition of recreation, which would allow almost anything. It is about weddings primarily. He is troubled by the argument that a wedding is a recreational event and it is a small part of the event. He has been to many weddings and never found them to be recreational in nature, but instead a very solemn event. It is all in the context of a wedding. The comparison to an awards ceremony is not the same thing. He feels this goes too far. If the legislature wants to see events like this to constitute private parks, that is one thing; but to try to contort the definition is too much.

He also disagrees with the argument that the Hearings Officer's decision is applicable here as the wedding being incidental to the park use. The proposal she considered was for a 216 acre park with activities taking place throughout the property. This is 1.6 acres. She denied the application regarding the impact on surrounding lands and using the less suitable sites.

She also focused on the history of the application and uses. She pointed out that there are a number of weddings that were held that were done illegally. The applicant applied for a park, which was modified. This is not a park but an event venue.

He pointed out that Kevin Harrison, planner, was quoted that weddings may be compatible but this does not mean this meets the definition of park since they are not recreational. The Hearings Officer had asked about the evolution of the applications from the applicant. It was said the reasons for changing the applications were irrelevant but that they wanted the public to be able to enjoy his property.

The history of the applications is unique, with RV parking and tents to be allowed. It was thought that tent camping and RV parking could be allowed so those who drank alcohol would not try to drive. This was rejected by staff.

The other proposal was use of the bathroom by guests, but this would be more of a home occupation situation.

He emphasized that the Board has authority to interpret Code more narrowly than LUBA has, and that there is a policy consideration as to whether this might become a default. There were a lot of hearings on event venues and this may allow a go-around the purposes for which rules were established. This is not appropriate for policy reasons. He requested all the other applications be included as part of the record.

In regard to the farm management plan and potential conflicts, the basic argument is that they have to establish a farm is commercial by size and profit to have the home there. The applicant feels that once there is a building in place, you can ignore the farm use. There needs to be ongoing farm use and a person responsible for overseeing this. LUBA did not say it wasn't applicable, but the petitioner is already required to do so. The Hearings Officer said that a non-farm dwelling be applied for if the use changes and it is no longer justified as a farm dwelling. You don't just throw out the farm management plan.

This is not being located on the least suitable site. The deciding factor is the soils.

Steve Simpson lives on Lower Bridge Road. He is a neighbor to this property and can view it from his ranch. He feels the Shepherds have done a great job running their land, and said the property is very low value. He feels the weddings and park are a real plus, and the County needs to see how this benefits them and lets people pay their taxes. Regarding roads, the cinders are a better use in a lot of ways. He does not think gravel is necessary. The Fairgrounds has similar parking already. On private property they should be able to use what is best.

Noise was brought up but has never been a problem. A wedding is one of the happiest times in peoples' lives and the Shepherds provide a service there that is very affordable. He and his family and other neighbors are in favor of this and feel it is a plus for the area.

Commissioner Baney said that the Fairgrounds is under the jurisdiction of the City, but there is a lot of ADA area available there; and this venue needs to be able to accommodate this as well.

Nunzie Gould, citizen, stated she is concerned that a private park is really an event center and destination resort. There is no limit to recreation or activities used. They are assuming a quiet use but this does not prohibit motorized or shooting events. She wants to be sure this is addressed. This should be contemplated or disallowed.

There is assumption about parking, if it is not striped. She asked how they will be able to count the spaces or vehicles.

There are conflicting dates given. There are 22 one-weekend events during that time period. The number of events should be noted and enforced. This gets to the point that it comes down to enforcement. The County relies on voluntary compliance, but this has not been the case with this particular applicant. It needs to have an easy, taxpayer way to handle it.

There has been no thought of cumulative events with this, with the guest ranch and the winery. There needs to be outdoor mass gathering criteria applied.

She asked about the bicycle traffic being exempted. She also asked about transient room tax for any overnight guests and whether it is based on an honor system. There should be no reduction for transportation fees even it is just used part of the year. Deschutes County has limited ability to enforce Code. It should be considered commercial use of the home since most of it will be used for events. Fire sprinklers in a home requires replumbing, and she wondered if this can be handled by the existing well. She asked if there is a DEQ filtration system for this water.

This should be reviewed as an outdoor mass gathering center. They refer to events and setting up and taking down equipment within a set timeframe. It should be clear in a private park setting how this will be done. Does this mean subcontractors can come and go all week long? She wants unlimited subcontractor use considered in Code enforcement.

The applicant and agencies may identify that juniper is a wasteland, but these trees predate the arrival of settlers and there is valuable use of this vegetation. They are an economic asset.

The notion that drunken participants need overnight accommodations is a concern; will those people stop their partying by 10 p.m.?



There are unenforceable criteria that is too vague. What about all necessary permits for buildings and health. What became of the fire department comments or the domestic well use? Code enforcement needs tangible and well-defined criteria.

What happens if the wildlife management plan is not adhered to? Will the County enforce it? If there is more parking, will this mean loss of area for wildlife? Will these documents be in the County records? Will Community Development be able to come out and count the number of vehicles? She feels the wildlife management plan should include required actions that take precedence over the private park aspect.

The Oregon Department of Fish & Wildlife is not tasked with upholding this approval. How will the County monitor this proposal? If there are ongoing required actions, they need to operate only if those are monitored. Will the County monitor the wildlife management plan through hiring a biologist?

She encouraged fewer guests and a closer look on what could happen there. It is not in compliance now. Destination resorts are to accommodate this type of events, and cities have all the services needed. She encouraged denial.

She has followed the wedding event and OMG events, as well as destination resorts, for years. She thinks the Commissioners have a big problem turning down anything that means economic development, and feels they put the entire Code at risk, including transportation, ADA, and repurposing a structure that is not appropriate. She wants to protect the investment and livability of the area, and said if one of these was to be placed near her home, she'd leave.

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Under applicant rebuttal, Mr. Hunnicutt said Mr. Dewey talked about SB 960, the agri-tourism bill. They appreciate this. SB 960 made it clear and the Hearings Officer pointed out that it provides agri-tourism being one way to enhance this. It was clear that SB 960 is not the only way to authorize this type of use. They have not set a policy that this is the only way, but alternatives are available.

Both the Hearings Office and LUBA use a broad definition of events. Case law shows that events and recreational have a broad use. This is what the legislature intended.

Mr. Dewey talks about weddings being the driving force, but the Hearings Officer rejected Mr. Harrison's comments, on page 10 and 11 of her decision. She defined recreation according to Webster, and found that it is reasonable the wedding ceremony itself is not recreation, but concurs with the applicant that the reception and other special events are recreational in nature. Those therefore fall into pirate park use. The application was rejected but not for that reason.

Finally, regarding consistency with the farm management plan and the number of approvals of dwellings in commotion with farming, he asked how many dwellings have been there for years but no longer comply with the FMP, whether big or small. Do they need a new application for a non-farm dwelling? If not approved, do they have to remove the home? It is hard to believe that the legislature or county would require this. The theory is not consistent with the plain language of Code or common sense. It is not just Code enforcement who can enforce. Anyone can file a complaint or sue. This can't be the intent, and you won't find any case law that this has happened.

Mr. Dewey suggested that the dwelling or events be located on the least suitable location. Private parks are governed in Code and this use is under a different section. Mr. Shepherd said that the wildlife biologist reported that the soil on the slopes is better than that on the plateau.

Mr. Hunnicut said that weddings are not held this way. These days it is a new world, and recreation drives the event. Some weddings are in a church but the reception at the property. All parks in Bend allows outdoor weddings. Objections were raised about a lot of things, but the conditional use permit written by Mr. Groves is very clear as to activities. It is also complete in restrictions. They are subject to sanitation and transportation review.

Commissioner Baney asked if the soils study was done by the applicant. Mr. Hunnicut said they can have a separate test done by NRCS. However, all counties have a soils map that details the classifications and where.

Commissioner Baney asked if there were water rights when they purchased the property. Mr. Shepherd said that they just purchased some. It is all in farm deferral except the dwelling. The Assessor has examined this and knows what they plan to do, and will come out and confirm this summer what is going on and where. The tax deferral is based on grazing the entire property to make use of it all.

Mr. Hunnicut said that with the wildlife overlay requirements, all of the property has to be provided for deer range, but they also want to use it for agriculture. They are trying to use the property in that manner and seasonally as required.

Mr. Groves said that set-up and take-down has reasonable hours the day before and day after. The vendors have other things to do so make it quick. Staff will recommend the day before and after. The initial application included emergency camping, but even if this sounds prudent, there was no way under State law to allow this. The applicant is not challenging this and removed it.

Commissioner Baney wants to make sure sanitation and food preparation is properly addressed. Mr. Groves said there is the environmental soils inspection for the septic system, to show whether it is adequate for the use. The applicant will meet with proper staff to talk about this. It is a solvable problem.

The second partner is the building division who has visited the property. There were questions about the deck and fire control. Those staff need to be satisfied this is all done. Environmental Health commented that the applicant anticipates using licensed caterers who prepare the food off-site. It will be warming and serving, which is felt to be adequate. There may be obligations for permitting for water quality. It might be helpful to specify all this, but he believes each agency will do its job.

Commissioner Baney asked if this is approved, she hopes that there are no important issues not addressed at that time. Mr. Groves said they can require no events be held until all conditions are handled, or as appropriate. Mr. Lelack said they can identify the necessary standards and preclude from use something that is not yet handled, such as the railing on the deck.

Commissioner Baney wants to protect both the public and the property owner by this being done. She also noted that anyone serving alcohol should be OLCC approved, and they should not over-serve customers resulting in them becoming impaired.

Mr. Lelack stated that the season is nearly here, so a lot of people are aware of what is there and what needs to be done for them to operate, should this be approved.

Commissioner Unger said that private parks are a conditional use on non-high value farmland. Mr. Groves said that MUA-10 can also have this, but most comes from State statute. A private park allowed here might be allowed in another zone that is stated for that use as well.

Chair DeBone closed the oral record, with the written left open for seven days for testimony, and seven days for rebuttal, and by March 23 the applicant should submit a final written response. The Board will make a decision after that at a regularly scheduled Board meeting.

#### 4. ADDITIONS TO THE AGENDA

*None were offered.*

*Being no other items brought before the Board, the meeting was adjourned at 12:05 p.m.*

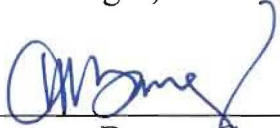
DATED this 11<sup>th</sup> Day of March 2015 for the  
Deschutes County Board of Commissioners.

  
\_\_\_\_\_  
Anthony DeBone, Chair

  
\_\_\_\_\_  
Alan Unger, Vice Chair

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Tammy Baney, Commissioner

## **HEARING PROCEDURES: QUASI-JUDICIAL PUBLIC HEARING**

- Timely notice of this hearing has been provided as required by ORS 197.763.
- Applicable criteria from the laws and regulations that apply to this application will be verbally identified by staff at the outset of the hearing. In addition, they are listed in the Staff Report, copies of which are available at this hearing, from the Community Development Department, and on the County's website.
- The applicants have the burden of proving that they are entitled to the approval requested.
- Testimony, arguments and evidence at this hearing must be directed toward the applicable criteria, as well as toward any other criteria in the comprehensive land use plan of the County or land use regulations which any person believes apply to this decision.
- Failure on the part of any person to raise an issue, in person or by letter, with sufficient specificity to afford this hearings body and parties to this proceeding an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue. Additionally, failure of the applicant to raise constitutional or other issues relating to the approval with sufficient specificity to allow the Board to respond to the issue precludes an action for damages in Circuit Court.
- The decision of the hearings body on this application will be based upon the record before it, including as applicable, the Hearings Officer's decision, the Staff Report, additional material within the record and the testimony and evidence presented at this hearing.
- Any participant at this hearing may request that the hearing or record or both be held open for an additional seven (7) days. If the request is granted, the hearings body will identify a date and time certain for the continuance or open record period.
- Unless waived by the applicant, the hearings body will allow the applicant at least seven (7) days after the record is closed to all other parties and participants to submit final written arguments in support of the application. Final written argument shall not include any new evidence.



BOARD OF COMMISSIONERS' MEETING

REQUEST TO SPEAK

Agenda Item of Interest Recreational Nature of Private Parks Date 3-2-15

Name Jonathan Shepherd

Address 2241 NE Hight Ct.  
Bend, OR 97701

Phone #s (541) 815-4160

E-mail address JShepherd87@gmail.com

In Favor       Neutral/Undecided       Opposed

Submitting written documents as part of testimony?  Yes       No



BOARD OF COMMISSIONERS' MEETING

REQUEST TO SPEAK

Agenda Item of Interest Shepherd Date 3/2/15

Name PAUL DEWEY Central Oregon Land Watch

Address 1539 NW Vicksburg Ave  
Bend OR 97701

Phone #s 541-420-8453

E-mail address pdewey@bendcable.com

In Favor       Neutral/Undecided       Opposed

Submitting written documents as part of testimony?  Yes       No



BOARD OF COMMISSIONERS' MEETING

REQUEST TO SPEAK

Agenda Item of Interest Park Date \_\_\_\_\_

Name Steve Simpson

Address 71330 NW Lower Bridge Rd  
TERREbonne OR 97760

Phone #s 541-548-5800

E-mail address \_\_\_\_\_

In Favor       Neutral/Undecided       Opposed

Submitting written documents as part of testimony?  Yes       No



BOARD OF COMMISSIONERS' MEETING

REQUEST TO SPEAK

Agenda Item of Interest Sheperd Park Date 3/2/2015

Name Nunzie Gould

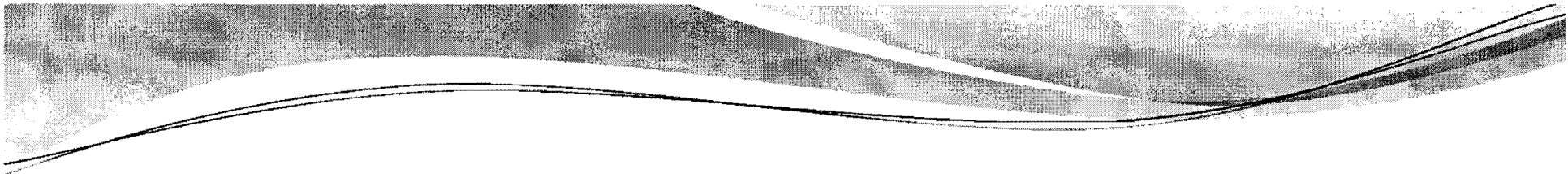
Address \_\_\_\_\_

Phone #s 541-420 3325

E-mail address \_\_\_\_\_

In Favor       Neutral/Undecided       Opposed

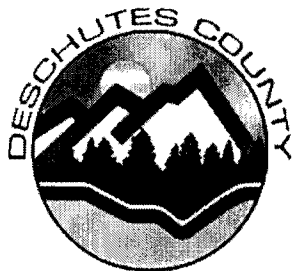
Submitting written documents as part of testimony?  Yes       No



**Public Hearing**  
**247-14-000 228-CU and 229-SP**

**BOCC**

**March 2, 2015**







## **HEARING PROCEDURE**

- **The Board's decision on this application will be based upon the record before the Hearings Officer, the Hearings Officer's decision, the Staff Report and the testimony and evidence presented at this hearing.**
- **The hearing will be conducted in the following order.**
  1. **Staff will provide a brief report.**
  2. **The applicant will present its testimony and evidence.**
  3. **Opponents and proponents will testify and present evidence.**
  4. **Other interested persons will then present testimony or evidence.**
  5. **The applicant presents rebuttal testimony.**
  6. **Staff will be afforded an opportunity to make any closing comments.**



# Staff Report

- Proposal
- Subject Property
- Staff Decision
- Analysis and Issues
- Alternative Courses Action
- Questions



# Proposal

- Applicant requested conditional approval to establish a private park on an EFU-zoned parcel
  - For the purpose of hosting weddings, wedding receptions, special events, and recreational activities.
  - Events would be conducted on a 1.6-acre lawn area with parking is provided on a contiguous 1-acre parking area, accessed from a driveway to Holmes Road.
  - Event participants would have limited access to the existing dwelling and full access to a gazebo on the property.



# Proposal

- Limited to one weekend day per week (early May through early October) not to exceed 18 days per calendar year.
- Events last no more than 8 hours and conclude by 10 p.m.
- Limit of 250 guests per event would be enforced by the applicant.
- Applicant describes the following activities that will occur during events:
  - Wedding Ceremony (which typically lasts only 15-20 minutes)
  - Outdoor eating
  - Public speaking using a sound system
  - Listening to amplified music
  - Singing, including karaoke
  - Dancing in the pavilion (gazebo)
  - Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, and ring toss.

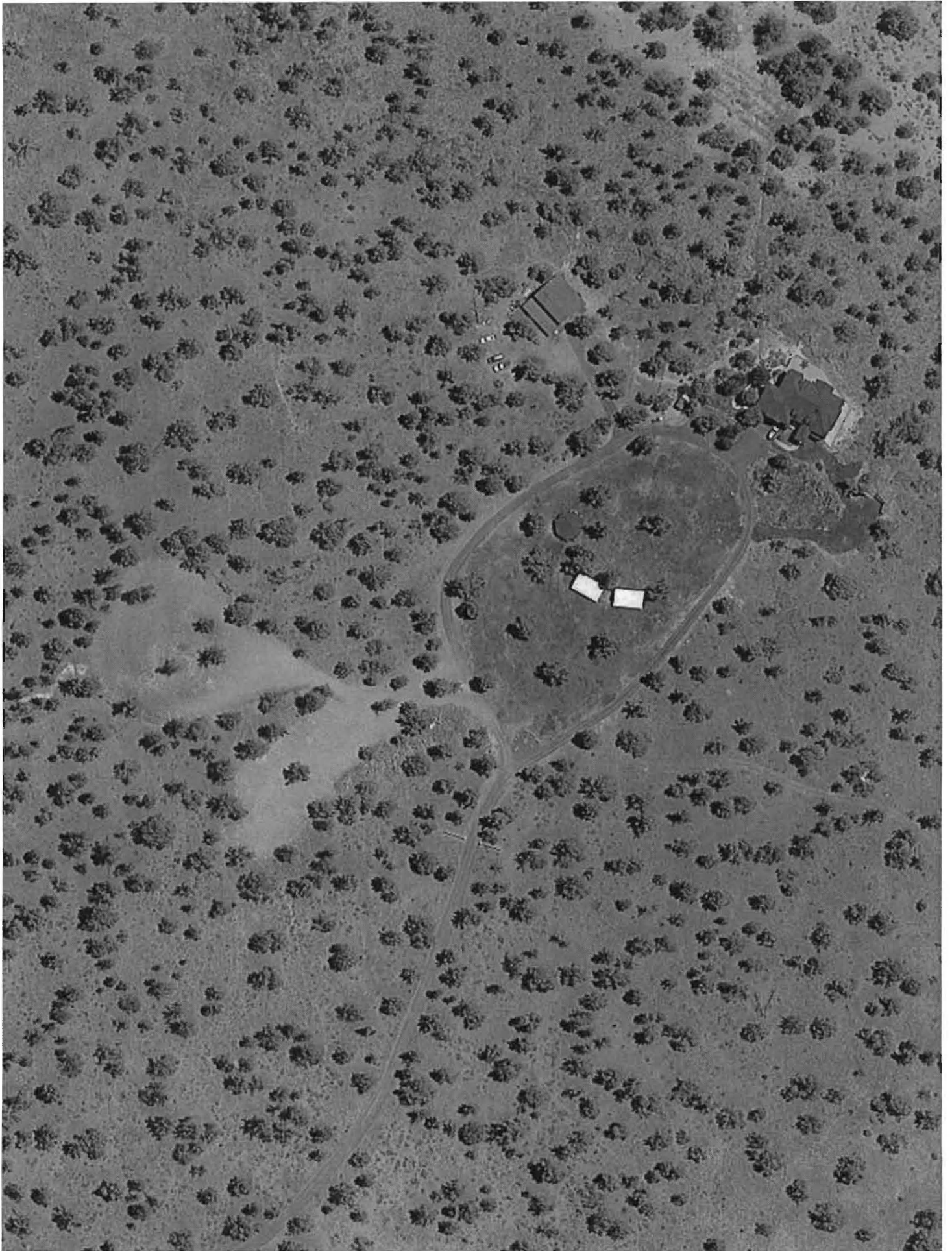


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  - Public speaking using a sound system
  - Listening to amplified music
  - Singing, including karaoke
  - Dancing in the pavilion (gazebo)
  - Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, and ring toss.



NW LOWER BRIDGE





## Staff Decision

- On February 3, 2015 staff issued an administrative approval
  - The proposed use is a “private park”.
  - The park would not preclude or significantly interfere with any existing farm use, prior farming practices, or the applicant-proposed future farm use.
  - The park would not preclude or significantly interfere with either the 2001 Wildlife Management Plan (WMP), the proposed modified WMP, or the Deer Winter Range generally.
  - Cinder is not a required “all-weather surface”.





# Wildlife Management Plan (WMP)

- The 2001 Wildlife Management Plan (WMP) includes required actions on the part of the land owner as part of the dwelling location approval.
- Applicable criteria requires that the park relate harmoniously to existing development.
- A proposed modification of the Wildlife Management Plan (247-14-000401-MC) is under appeal and has not received final local approval.
- Staff concluded that:
  - the 2001 WMP does not presently impose any required actions that are incompatible with the proposed park use
  - it is unlikely that the modified WMP, if approved, will include any incompatibilities with the proposed private park.



## Metolius Deer Winter Range

- Located within a WA Zone and the Metolius Deer Winter Range, signifying it has natural resource value as wildlife habitat.
- No changes to the existing scrub juniper woodland habitat are required or proposed for operation of the private park.
- Proposed use of the private park would occur:
  - between late May and early October
  - outside the period when deer would be using the mapped Metolius Winter Deer Range on the subject property.



# Noise Ordinance

- The applicant has proposed that events will include amplified music up to 90 decibels.
- 8.08.070. Acts Prohibited...no person shall make any unreasonable loud or raucous noise which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the legal boundaries of the County.
  - D. The playing, using or operating of any radio, musical instrument, phonograph, television set, tape recorder or other machine or device for the producing or reproducing of sound in such a manner as to disturb the sleep, peace, quiet, comfort or repose of other persons, or at any time with louder volume than is necessary for convenient hearing by the person or persons who are in the room, vehicle or chamber in which the machine or device is operated and others who are voluntary listeners thereto. The operation of any such machine or device in such a manner so as to be plainly audible to a peace officer at a distance of 50 feet from the building, room, structure or vehicle in which it is located shall be prima facie proof of a violation of DCC 8.08.040;
- Suggested additional condition of approval: This approval does not grant any exemption from or variance to the Noise Ordinance of DCC 8.08.



## Road and Parking Surface

- The applicant proposed a cinder surface for the driveway and the parking area.
- Deschutes County Transportation Planner:
  - cinder is not a required “all-weather surface”.
- As a condition of approval, staff required that areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties.



## ALTERNATIVE COURSES OF BOARD ACTION

- After conducting the public hearing and receiving testimony, the Board's options include the following:
- Continue the public hearing to a date and time certain:
  - To the next BOCC hearing/meeting date or a subsequent BOCC hearing/meeting date.
- Close the oral record and keep the written record open to a date and time certain.

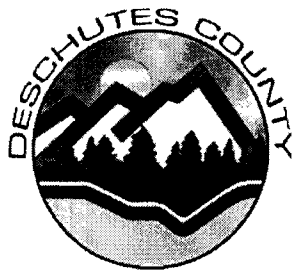


## ALTERNATIVE COURSES OF BOARD ACTION

- Close the public hearing (oral and written records), and:
  - Begin deliberations, or
  - Direct staff to schedule time on a future agenda to conduct deliberations, or
  - Make a decision on the appeal.
    - direct Staff to draft findings.



**QUESTIONS?**



# Continuances or Record Extensions

## 22.24.140. Continuances or Record Extensions.

### A. Grounds.

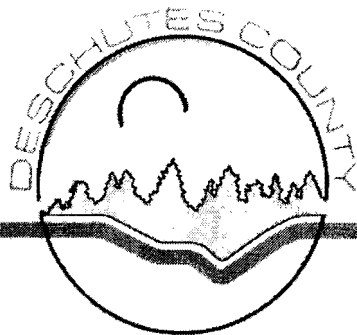
1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request. If a continuance request is made after the published or mailed notice has been provided by the County, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.
2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
  - a. Where additional documents or evidence are submitted by any party; or
  - b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.  
For the purposes of DCC 22.24.140(A)(2), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.
3. The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.





## Leaving record open

- D. Leaving record open.
- If at the conclusion of the initial hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.
- E. A continuance or record extension granted under DCC 22.24.140 shall be subject to the 150-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 150-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

### MEMORANDUM

**TO:** Deschutes Board of County Commissioners

**FROM:** Will Groves, Senior Planner

**DATE:** February 18, 2015

**RE:** A *de novo* public hearing on a conditional permit (247-14-000 228-CU and 229-SP) to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

---

#### Summary

On February 3, 2015 staff issued an administrative approval of a conditional permit (247-14-000 228-CU and 229-SP) to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

By Order 2015-011, dated February 4, 2015, the Board initiated review of this application under DCC 22.28.050 through a *de novo* hearing.

The present application is similar in many ways to a 2013 application on the subject property for a private park (CU-13-13) that was denied by the Hearings Officer. Denial was based on several issues, including that the application did not include a site plan review application. While the present application does include a site plan application, staff believes many of the contentious issues from the 2013 decision will be revisited in the Board's hearing on the present application. Issue areas include:

**Is the proposed use a "private park":** The threshold question presented by this application is whether the applicant's proposal constitutes a "private park." In her decision in CU-13-13/MA-13-3, the Hearings Officer provided extensive analysis of this topic for a similar, prior application for a private park on the subject property. Following that analysis, staff concluded that with the exception of weddings, the term "park" clearly includes the types of recreational activities that the applicant proposes for the private park, including:

- Outdoor eating with family and friends
- Public speaking using a sound system
- Listening to amplified music
- Singing, including karaoke
- Dancing in the pavilion (gazebo)

- Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

Staff concluded that a private park designed and operated for outdoor recreation can host weddings and similar ceremonies so long as they are incidental and subordinate to the recreational activities – i.e., minor and secondary activities relative to the recreational activities.

**Farm Management Plan (FMP):** The existing farm-related dwelling on the property was approved in conjunction with a Farm Management Plan (FMP). The prior approval (MA-01-9/CU-00-65), granted to the applicant's predecessor, required that the property be "...currently employed in farm use, as evidenced by a farm management plan...". In the administrative approval of present park application, staff found that there is nothing in the dwelling approval that requires the applicant to continue the prior owner's agricultural operations or to complete the future activities described in the 2001 FMP. Applicable criteria requires that the proposed development relate harmoniously to existing development. Staff concluded that the park would not preclude or significantly interfere with any existing farm use, prior farming practices, or the applicant-proposed future farm use.

**Wildlife Management Plan (WMP):** The 2001 Wildlife Management Plan (WMP) approved under (MA-01-9/CU-00-65) includes required actions on the part of the land owner as part of the dwelling location approval. To the extent that the proposed park use could somehow preclude or significantly interfere with the land owner's ability to complete those required actions, the private park proposal would not relate harmoniously with the residential use of the subject property. A proposed modification of the Wildlife Management Plan (247-14-000401-MC) is under appeal and has not received final local approval. Staff concluded that the 2001 WMP does not presently impose any required actions that could result in incompatibilities with the proposed private park. Should the modification of the Wildlife Management Plan receive final approval in the future, Staff is uncertain if the final conditions of that approval will include any incompatibilities with the proposed private park. Staff notes, however, that the modified WMP, to date, has focused on deer forage enhancement outside of the developed private park site. For this reason, Staff concluded that it is unlikely that the modified WMP, if approved, will include any incompatibilities with the proposed private park.

**Metolius Deer Winter Range:** The Hearings Officer found in CU-13-13/MA-13-3, "The subject property is located within a WA Zone and the Metolius Deer Winter Range, signifying it has natural resource value as wildlife habitat." No changes to the existing scrub juniper woodland habitat are required or proposed for operation of the private park. Proposed use of the private park would occur between late May and early October, outside the period when deer would be using the mapped Metolius Winter Deer Range on the subject property. For these reasons, staff concluded that the proposed private park use would be compatible with the natural resource values of the subject property.

**Road and Parking Surface:** The applicant proposed a cinder surface for the driveway from Holmes Road and the parking area. However, based on the comment by the Deschutes County Transportation Planner, Staff concluded that cinder is not a required "all-weather surface". As a condition of approval, staff required that areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties.

### **Scheduling**

This hearing is scheduled for the Board's morning meeting on March 2, 2015. A work session is scheduled for February 25, 2015.

Thank you for your consideration of this matter.

**ATTACHMENTS:**

1. Administrative approval of 247-14-000 228-CU and 229-SP



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
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### FINDINGS & DECISION

**FILE NUMBER:** 247-14-000 228-CU and 229-SP

**APPLICANT:** John Shepherd  
71120 Holmes Road  
Sisters, Oregon 97759

**PROPERTY OWNERS:** John and Stephanie Shepherd  
71120 Holmes Road  
Sisters, Oregon 97759

**APPLICANT'S ATTORNEY:** Dave Hunnicutt  
Oregonians in Action  
P.O. Box 230637  
Tigard, Oregon 97281

**REQUEST:** The applicant requests conditional approval to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

**LOCATION:** The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.

**STAFF CONTACT:** Will Groves, Senior Planner

#### I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance  
Chapter 18.04, Title, Purpose and Definitions  
Chapter 18.16, Exclusive Farm Use  
Chapter 18.88, Wildlife Area Combining Zone  
Chapter 18.116, Supplementary Provisions  
Chapter 18.124, Site Plan Review  
Chapter 18.128, Conditional Use  
Title 22 of the Deschutes County Code, the Development Procedures Ordinance

II. **BASIC FINDINGS:**

- A. **LOCATION:** The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.
- B. **LOT OF RECORD:** The record indicates the county determined the subject property is a legal lot of record through a 1995 lot-of-record verification (LR-95-44).
- C. **ZONING:** The subject property is zoned Exclusive Farm Use–Lower Bridge Subzone (EFU-LB), and is within a Wildlife Area (WA) Combining Zone. The property is designated Agriculture on the Deschutes County Comprehensive Plan map.
- D. **PROPOSAL:** The applicant is proposing to establish a private park on the subject property. The purpose of the private park would be to host wedding, wedding receptions, family reunions, fundraisers, and charity balls. The applicant describes the following activities that will occur during events:
- Wedding Ceremony (which typically lasts only 15-20 minutes)
  - Outdoor eating with family and friends
  - Public speaking using a sound system
  - Listening to amplified music
  - Singing, including karaoke
  - Dancing in the pavilion (gazebo)
  - Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

The events would be conducted on an approximately 1.6-acre lawn area that is a 350-foot by 250' oval which includes some juniper trees. Parking is provided on a contiguous 1-acre parking area, which is accessed from a driveway that connects to Holmes Road. Event participants would have limited access to the existing dwelling and full access to a gazebo on the property. The wedding party (including bridesmaids, groomsmen, and immediate family) will have access to the main floor of the home and two upstairs rooms. Weddings will not be conducted inside the dwelling. Temporary tents and the gazebo will be used in the event of inclement weather.

Restrooms will be provided through portable restrooms and guest access provided to an existing downstairs restroom in the dwelling. Food is either prepared off site or cooked on-site by licensed caterers using their own equipment. The existing kitchen in the dwelling will be used for food assembly only.

The private park would be open to event participants one weekend day per week beginning in late May of each year and end in early October, not to exceed 18 days per calendar year. Each reception would last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event would be enforced by the applicant.

The applicant has proposed that guests will be allowed to tent camp or stay in recreational vehicles following events as a precaution against unsafe driving. The applicant states that this uses does not constitute a commercial campground.

The remainder of the parcel would remain in its current use including the residential use approved under County File Nos. MA-01-9/CU-00-65 and farm use. At the time of application, approximately 2 acres were used to raise poultry for-profit and small-scale livestock grazing (limited to a single ewe at the time of application). In the applicant's January 12, 2015 Incomplete Letter Response, the applicant indicated that 3.5 acres of Three Sisters Irrigation District water rights are being obtained and will be applied to the existing lawn area (0.9 acres) and a new fenced grazing area in the southeast corner of the property. The grazing area will encompass approximately 17 acres that include 2.5 acres of future irrigation. No fewer than 10 head of cattle will be kept in this grazing area during the months of park operation.

During winter months (outside of park operations), the cattle will be penned and hayed in an area adjacent to the applicant's barn. During the spring, the cattle would graze other areas of the property, but not the private park area.

The applicant also proposes an indoor/outdoor penned chicken operation on the property, to be located within the existing barn area. The chicken operation will not occur in the area set aside for park use.

The remainder of the property has been characterized by the applicant as "wasteland", including dry lands, with no history of irrigation, that are covered in juniper trees, scrub vegetation and rock.

- E. SITE DESCRIPTION:** The subject property is approximately 216 acres in size and irregular in shape. It is developed with a single-family dwelling, gazebo and access driveway. The property takes access from Holmes Road, a designated rural collector road, which abuts the property along its northern property boundary. The property contains steep north-facing slopes and has vegetation consisting of juniper trees and native brush and grasses. The developed area consists of approximately two acres located at the highest elevation on the property, approximately 180 feet above Holmes Road, and includes the dwelling, gazebo, a large grassy area and a circular driveway. The Assessor's records indicate the subject property has no irrigated land. The record indicates the subject property has received farm tax deferral.
- F. SURROUNDING LAND USES:** The subject property is surrounded by properties zoned EFU in both public and private ownership. To the north is an approximately 540-acre property engaged in cattle grazing and developed with a guest ranch (Long Hollow Ranch). Other land to the north along Holmes Road is generally engaged in farm use. To the south is a large undeveloped, publicly-owned tract owned and managed by the US Bureau of Land Management (BLM) that consists of juniper woodland. Also to the south is an approximately 80-acre parcel engaged in farm use and developed with a single-family dwelling. Adjacent to and east of the subject property is a 77-acre parcel engaged in farm use and developed with a dwelling. Adjacent to the west are two 40-acre parcels, each of which is developed with a single-family dwelling. Further to the west are two approximately 100-acre parcels engaged in farm use.

- G. SOILS:** According to Natural Resources Conservation Service (NRCS) maps of the area and the soil map included in the County packet, there are five soil units mapped on the subject property:

Map Unit Symbol	Map Unit Name	Rating	Percent
63C	Holmzie-Searles complex, 0 to 15 percent slopes	6	54.8%
101E	Redcliff-Licksillet-Rock outcrop complex, 30 to 50 percent south slopes	6	9.0%
106D	Redslide-Licksillet complex, 15 to 30 percent north slopes	6	30.0%
138B	Stukel sandy loam, 3 to 8 percent slopes	6	5.8%
141C	Stukel-Deschutes-Rock outcrop complex, 0 to 15 percent slopes	6	0.4%
<b>Totals for Property</b>			<b>100.0%</b>

The proposed private park is located on soils mapped as 63C, Holmzie-Searles complex (0-15% slopes), with a capability class of 6 without irrigation. The property does not presently have any irrigation rights. The applicant has proposed to purchase 3.5 acres of irrigation water from the Sisters Irrigation District. As of the writing of this decision, Staff believes that purchase had not been completed.

- H. PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice to several public agencies and received the following comments:

- 1. US Fish and Wildlife Service:** The Service has reviewed the proposed "private park" (228 CU) and has no ESA or eagle concerns regarding this proposed wedding event site.
- 2. County Transportation Planner: (5/23/14)** I used your figures and even with a worst-case scenario, the daily trips are still less than 50 and thus no traffic study would be required. I'm assuming all park activities occur on those 2.6 acres.

Going with 2.6 acres and the Institute of Traffic Engineers (ITE) Trip Generation handbook, City Park (LU 411) has a Sunday trip generation rate of 16.74 per acre, which is 43.5 daily trips. County Park (LU 412) has a Saturday trip generation rate of 12.14 trips per acre, which is 31.5 daily trips. State Park has a Sunday rate of 1.10 trips per acre which is 2.86 daily trips.

You will still have to pay a transportation system development charge (SDC). Our base rate for an SDC as set forth in BOCC Resolution 20130-020 is \$3,578 per p.m. peak hour trip. Looking at our SDC table, we charge \$338 an acre for a Local Park and \$752 an acre for a Regional Park. We have in the past accounted for seasonal uses such as farm stands. Say for instance the farm stand was only open three months out of the year, we calculate the full SDC based on our rate, then multiply that amount by 0.25 as the farmstand is only open 25% of the year. If the private park is open year round, we'd charge the full SDC. If the private park is only open for six months as a condition of approval, then we'd multiply the SDC by 0.50.

**(8/15/14)** As County Planning and Road Department staff have previously informed the applicant, cinder is not considered an all-weather surface, let alone suitable for this proposed land use. DCC 18.116.030(F)(4) requires all surfaces



used for standing or maneuvering of vehicles "...shall be paved surfaces adequately maintained for all weather use..." While the applicant may have an opinion that cinders are adequate to meet that requirement, the County's code at 17.48, Table A, lists the surface types acceptable to the County, which includes asphaltic concrete, aggregate, or an oil mat. Cinder is not listed as an acceptable surface type. Additionally, if cinders were considered an all weather element, they would be allowed under federal, state, and the County's construction specifications for roads. They are not due to the impermanent nature of cinders, their relatively poor performance vis a vis gravel roads in rainy and snowy weather, and the increased dust in the summer, and cinders do not bind as well.

The County code allows cinders for partitions of more than 10 acres as that land use generates little traffic. Notice for all other land uses the roads are required to be paved. A private park will generate far more traffic than a partition and thus the road and parking lots will be subjected to more vehicular use. Partitions generate little traffic. The applicant has indicated the driveway and parking lot will be used by several hundred vehicles during the summer season. Given these anticipated volumes, the County should require the applicant adhere to the code and surface the parking lot and driveway wither either pavement or gravel, not cinders.

2. **Deschutes County Building Safety Division:** Due to the mixed use with Residential and Business occupancies, if the buildings are to be considered Commercial, they will need to be sprinkled to a minimum of a 13R level of protection. Once any B area exceeds 49 occupants, it would be considered an A-3 occupancy and that occupancy triggers a full 13 system at 300 occupants. Section 3408.

A State of Oregon Fire Protection Engineer may be able to lessen the some of the requirements for this mixed use structure through calculations in Section 3412.

ADA upgrades will need to be per Section 3411, 25% rule for Architectural Barrier Removal for any altered area. If no alterations will occur, then structure may remain as is per Section 3408.

Additional items of concern noted during my visit are the residential height guards on the deck and the unpermitted electrical installation for the gazebo and party lights.

Recreational Parks, once allowed by Planning, are covered by Division 650 (918-650-0000) and will require permits and plan review from our division. The allowance of overnight of RV's would also be considered during this review.

3. **Deschutes County Road Department:** Holmes Road is classified as a rural collector in the County maintenance system. Traffic volumes on this section of Holmes Road are less than 400 ADT. There will be no adverse impact to Holmes Road from this application.

4. **Deschutes County Environmental Health:**

- 1) The owner must satisfy Drinking Water requirements for his private well. Contact: Jeff Freund, 541-388-6563
- 2) Any food provided to wedding (or other event) guests must be from a licensed Deschutes County Foodservice Establishment. If owner provides/prepares food, then the kitchen on-site must satisfy Oregon Health Authority plan review and licensure requirements. The Oregon Food Sanitation Rules and a Public Health Plan Review Packet are available in the link below:

<http://www.deschutes.org/Health-Services/Environmental-Health.aspx>

- 3) The septic system should be reviewed by Deschutes County Environmental Soils for the proposed change of use.

5. **Oregon Department of Fish and Wildlife:** The Oregon Department of Fish and Wildlife submitted a comment dated August 22, 2014, that is incorporated herein by reference.

6. **Deschutes County Environmental Soils:** Events served with portable toilets are recommended to have a toilet for every 50 – 100 persons at the event, particularly longer duration events. Given the proposal and submitted information, a minimum of two portable toilets are necessary for most events. At least one portable toilet should be ADA accessible. These are guidelines and not outlined by code, but industry standards found online indicate ranges of 2-6 portable toilets for similar events up to eight hours in duration. Events that include food and alcohol recommend additional toilets.

The proposal to include use of the bathroom in the residence for events will require an authorization notice. An authorization notice is required because of the proposed change in use and the potential increase in flow to the onsite system. Depending on the specific proposal and potential impacts to the onsite wastewater system, a construction-installation may be necessary.

7. **No comment:** The following agencies either responded with “no comment” or did not respond to a request for comment: Oregon Department of Agriculture, Deputy State Fire Marshal, Deschutes County Code Enforcement, Deschutes County Assessor, and Three Sisters Irrigation District.

I. **PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property. No comments were received in response to the notice.

J. **REVIEW PERIOD:** These applications were submitted on July 28, 2014. An incomplete letter was mailed on August 25, 2014. The applicant supplied the requested information and these files were accepted as complete on January 16, 2015.

K. **LAND USE HISTORY:** In July of 2001, the applicant’s predecessor Darlene Woods received conditional use approval to establish a farm-related dwelling on the subject

property and to site the dwelling more than 300 feet from a public or private road in the WA Zone (CU-00-65). Subsequently Ms. Woods applied to modify the conditional use application (MA-01-9) to modify her farm management plan and to move the dwelling location. The modified application was approved by an administrative decision. The approval was based in part on findings that the property was currently engaged in farm use consisting of cattle grazing, Ms. Woods' submission of a farm management plan, and her submission of a wildlife management plan which stated, among other provisions, that human activity would be limited to the southeast corner of the plateau at the top of the property and that there would be very little vehicular usage of the access driveway. The farm dwelling approval was conditioned on implementation of the farm management plan. This Hearings Officer dismissed an appeal of the decision (A-01-15).

In 2013 the applicant was denied conditional use approval (CU-13-13 and MA-13-3) to establish a private park on the subject property to be called "Shepherdsfield Park." The park would host weddings, wedding receptions, special events and recreational activities. Denial was based on several issues, including that the application did not include a site plan review application.

On December 18, 2014 staff issued an administrative approval of a modification (247-14-000401-MC) to an existing conditional use decision (CU-00-65/ MA-01-9). A Wildlife Management Plan (WMP) is required because the dwelling was not located near a pre-existing road or driveway in the Metolius Winter Deer Range [see DCC 18.88.060 (B)(1)].

The modification wholly removed the Wildlife Management Plan (WMP) required under the previous decision and replaced it with six conditions of approval designed to protect and enhance deer habitat on the property. By Order 2014-046, dated December 29, 2014, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing. On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application. The notice of appeal identifies six objections to the administrative decision. Since this modification is under appeal and has not received final local approval, Staff finds that the existing 2001 Wildlife Management Plan applies for the purposes of this decision. However, Staff analyzes compatibility of the private park proposal with the 2001 WMP and the one proposed under modification (247-14-000401-MC) in this decision, as the WMP modification may receive final approval in the future.

### III. CONCLUSIONARY FINDINGS:

#### TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

##### A. CHAPTER 18.16, EXCLUSIVE FARM USE ZONES.

###### 1. 18.16.020. Uses Permitted Outright.

***The following uses and their accessory uses are permitted outright:***

###### ***A. Farm use as defined in DCC Title 18.***

**FINDING:** Staff finds that the proposed cattle and poultry operations, described in the "Proposal" section above and incorporated herein by reference, are "farm use" as defined in DCC Title 18 and allowed outright.

2. Section 18.16.031, Nonresidential Conditional Uses on Nonhigh Value Farmland Only

***The following uses may be established only on tracts in the Exclusive Farm Use Zones that constitute nonhigh value farmland subject to applicable provisions of the Comprehensive Plan and DCC 18.16.040 and other applicable sections of DCC Title 18.***

\* \* \*

***E. Private parks, playgrounds, hunting and fishing preserves, and campgrounds.***

**FINDING:** The record indicates the soils on the subject property are not high value soils. Title 18 does not define “nonhigh value farmland.” However, the Hearings Officer found in County File No. CU-13-13/MA-13-3 that it was reasonable to interpret this term to mean EFU-zoned land that does not contain high value soils. Therefore, Staff finds the subject property constitutes nonhigh value farmland, and “private park” is a use permitted conditionally on the subject property.

The applicant has proposed a private park on the subject property. Staff incorporates herein by reference the “Proposal” section, above, which describes the proposed park uses and periods of operation.

In her decision in CU-13-13/MA-13-3, the Hearings Officer provided extensive analysis of this topic for a similar, prior application for a private park on the subject property. In the following findings, staff closely follows that analysis and applies it to the present application.

The threshold question presented by this application is whether the applicant’s proposal constitutes a “private park,” a term that is not defined in Section 18.04.030. In ascertaining the meaning of this term, staff must examine its text and context and may consider any relevant legislative history. If the drafter’s intent remains unclear after examining text, context, and legislative history, staff may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty. *State v. Gaines*, 346 Or 606, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993).

**1. Text.** On two previous occasions a Hearings Officer has addressed what types of uses might be encompassed by the term “private park.” In *Bend Trap Club* (CU-07-63, SP-07-32, MA-07-12) the applicant requested conditional use approval to establish a private trap club shooting range on a privately-owned 160-acre EFU-zoned parcel. In *Dorsett* (CU-07-79), the applicant requested conditional use approval to establish a private paintball park on a privately-owned 18.7-acre EFU-zoned parcel. In both cases, the proposed private park would be used by members of a private club of which the property owner was a member.

In approving the Bend Trap Club conditional use permit, the Hearings Officer found as follows:

*“The staff report states counties previously have approved trap shooting ranges as ‘private parks’ in the EFU Zones, citing approval of the applicant’s facility in Crook County, as well as Union County’s 1983 approval of a trap club which was upheld by LUBA (Okeson v. Union County, 10 Or LUBA 1 (1983)). The zoning ordinance does not define ‘park.’ However, the ordinary definition of that term includes: ‘an area of public land with walks, playgrounds, etc. for recreation.’ Webster’s New World Dictionary and Thesaurus, Second Edition. **The Hearings Officer finds the***

**key component of this definition is the land's design and use for recreation and not whether it is public or private.** Therefore, I find it is reasonable to apply this definition in interpreting the language in Subsection (E) of this section, and to find the applicant's proposal constitutes a private park." (Bold emphasis added.)

In granting conditional use approval for the private paintball park in *Dorsett*, the Hearings Officer quoted the above language from *Bend Trap Club* and stated:

*"I find there is no meaningful distinction between the characteristics of the trap club and the characteristics of the proposed paintball facility. Both involve the use of a private parcel by members of a private club and their guests for an organized recreational activity involving shooting at targets – shooting lead pellets at clay targets in the case of the trap club, and shooting paintball pellets at game participants in the case of the proposed paintball facility. Therefore, I find the paintball park also constitutes a 'private park' permitted conditionally on the EFU-zoned subject property."* (Bold emphasis added.)

LUBA also has held that a paintball park constitutes a "private park" permitted conditionally on EFU-zoned land under ORS 215.213(2)(e). In *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993), LUBA cited the following definitions of "park" from several sources, including Webster's Third New World Dictionary, the Second Edition of the American Heritage Dictionary, the 1991 Uniform Zoning Code, and the 1989 Survey of Zoning Definitions:

- a tract of land maintained by a city or town as a place of beauty or of public recreation;
- a large area often of forested land reserved from settlement and maintained in its natural state for public use (as by campers or hunters) or as a wildlife refuge;
- a large enclosed area used for sports; esp: ball park;
- an area of land set aside for public use, as for recreation;
- a stadium or enclosed playing field;
- a baseball park;
- a public or private area of land, with or without buildings, intended for outdoor active or passive recreation;
- any public or private land available for recreational, educational, cultural, or aesthetic use; and
- an area open to the general public and reserved for recreational, educational, or scenic purposes.

LUBA stated that all of the above definitions recognize a tract of land set aside for public recreational use as a "park," that none of the definitions nor any provision in ORS 215.213 excludes the concept of a privately owned and managed recreational "park," and that there is nothing in ORS 215.213 that limits the intensity of the uses allowed thereunder. As to the last finding, LUBA noted that schools, churches, golf courses and living history museums are allowed in EFU zones under ORS 215.213(1)(a) and (b) and (2)(f) and (v), all of which could involve gatherings of people as large as those proposed for the paintball park.

Based on the definitions cited by LUBA in *Spiering*, and those cited by the Hearings Officer in *Bend Trap Club* and *Dorsett*, staff find that with the exception of weddings, the term "park" clearly includes the types of recreational activities set forth above that the applicant proposes for the private park, including:

- Outdoor eating with family and friends
- Public speaking using a sound system
- Listening to amplified music
- Singing, including karaoke
- Dancing in the pavilion (gazebo)
- Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

The next question is whether the applicant's proposal constitutes a "private park" because it would host weddings. Former Hearings Officer Ed Fitch issued a decision in 1991 denying a conditional use permit for a private park for weddings on an EFU-zoned parcel under former Section 4.040(3)(3) of PL-15, the county's previous zoning ordinance (*Grund*, CU-91-59). That ordinance, like current Section 18.16.031(E), allowed "private parks, playgrounds, hunting and fishing preserves and campgrounds" as conditional uses in the EFU-20 Zone.

The decision in *Grund*, the applicant requested approval "to have a wedding and reception facility" for up to 200 guests. Hearings Officer Fitch cited the following definition of "park" from *Webster's Dictionary*:

*"An area of public lands; specifically, (a) an area in or near a city, usually laid out with walks, drives, playgrounds, etc. for public recreation; (b) an open square . . . (c) a large area known for its natural scenery and preserves for public recreation by state and national government . . . (d) a level of open areas surrounded by mountains or forests . . . an area of lands containing pasture, woods, lakes, etc. surrounding a large country house or private estate."*

Based on this definition, he made the following findings:

*"6. After reviewing the proposal of the applicant, it does appear that although the applicant's property does establish a park like setting for wedding receptions, **the type of commercial use proposed by the applicant does not fall within the parameters of a 'park use' that is contemplated by the ordinance.** For this reason, the conditional use cannot be approved."* (Bold emphasis added.)

Hearings Officer Fitch focused on the nature of the proposed use – weddings and receptions – and not on the nature of the property itself in determining whether the proposal could be approved. However, because his analysis is so limited, it is not clear whether he concluded weddings and receptions did not constitute a "private park" use in the EFU Zone because they are "commercial," or because they are not "recreation" of the type identified in the ordinary definition of "park." Moreover, the *Grund* decision predates *Spiering* and therefore LUBA's reasoning in that case was not available to Hearings Officer Fitch.

The staff report for CU-13-13/MA-13-3 discussed the *Grund*, *Bend Trap Club* and *Dorsett* decisions and stated:

*"[W]hile weddings may be compatible with park activities and, while weddings may take place on park land, that does not mean that a wedding or other special events as proposed by the applicant meet the definition of park **because they are not primarily a recreational activity.** In the opinion of this reviewer, **the land's design***

**and use is primarily for weddings and other special events and not primarily for recreational use.** The use of the property for these gatherings is more akin to an outdoor mass gathering or commercial events, as those terms are used in DCC 18.16.020(R) and 18.16.042, respectively.” (Bold emphasis added.)<sup>1</sup>

The staff report for CU-13-13/MA-13-3 concluded, as did Hearings Officer Fitch in *Grund*, that a venue established *solely* for weddings and wedding receptions does not constitute a “private park.” However in CU-13-13/MA-13-3 and in the present application, the applicant argues that *all* proposed park activities *including weddings* would constitute “recreation.” Title 18 does not define the terms “recreation” and “wedding.” According to *Webster’s Dictionary and Thesaurus, Second Edition*, their ordinary definitions are:

“Recreation. 1. Refreshment in body or mind, as after work, by some form of play, amusement, or relaxation. 2. Any form of play, amusement or relaxation used for this purpose, as **games, sports, hobbies, reading, walking, etc.**”

“Wedding. 1. a) the act or **ceremony** of becoming married; marriage; b) **the marriage ceremony with its attendant festivities.**” (Bold emphasis added.)

Applying these definitions, the staff finds it is reasonable to find the wedding *ceremony* itself is not “recreation” because it does not typically involve “play” or “amusement” such as the listed activities. However, staff finds that the other types of activities that could occur during wedding *receptions* and other special events would fall within the definition of “recreation” and therefore would be encompassed in the “private park” use.

**2. Context.** Staff finds that there is nothing in this context of the “private park” use that requires staff to interpret that term to exclude weddings, wedding receptions, and similar events. Staff bases this conclusion on the analysis provided by the Hearings Officer in CU-13-13/MA-13-3:

LandWatch argues the context in which the “private park” use is permitted -- the statutes, administrative rules and ordinances governing uses in the EFU Zone -- precludes holding weddings and wedding receptions in a “private park” because both the legislature and the county adopted provisions to allow weddings as “agri-business” in certain circumstances. In his November 1, 2013 letter, Mr. Dewey points to 2011 Senate Bill 960, codified in ORS 215.283(4), which authorizes counties to allow “agri-tourism and other commercial events or activities that are related to and supportive of agriculture.” Mr. Dewey asserts that because this statute “explicitly” allowed weddings and other events on EFU land under strict conditions designed to protect EFU land it is the exclusive means by which the applicant can obtain approval to host weddings on his property.

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<sup>1</sup> Section 18.16.020(T) allows “outdoor mass gathering described in ORS 197.015(10)(d)” as a permitted use in the EFU Zone “subject to DCC Chapter 8.16.” Section 8.16.010 defines “outdoor mass gathering” in relevant part as:

**\* \* \* an assembly of persons, including but not limited to spectators, whose actual cumulative number is or is reasonably anticipated to be less than 3,000 persons but more than 500 persons for a period that continues or can reasonably be expected to continue for more than 4 but less than 240 hours, \* \* \* \***

The Hearings Officer finds there is nothing in ORS 215.283(4), or Sections 18.16.042 and 18.16.043 of the county's zoning ordinance governing "agri-tourism," that expressly addresses weddings or makes "agri-tourism" the only means by which weddings may be authorized on EFU-zoned land. In fact, as Mr. Hunnicutt points out, the statute makes clear "agri-tourism" is not the sole basis for approval of weddings or similar commercial events on EFU land. Section 215.283(6)(c) states:

**The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015(10)(d), do not include agri-tourism or other commercial events and activities.**

Nor do the county's "agri-tourism" provisions provide the exclusive method for authorizing weddings on EFU-zoned land. Section 18.16.042(A) states the section applies to commercial events or activities "related to and supportive of agriculture." Section 18.16.043 prohibits the combining of agri-tourism and "other commercial events or activities on a lot or tract" to "the total number of commercial events **allowed by any individual land use approval.**" (Emphasis added.) The Hearings Officer finds this language acknowledges there are multiple means by which commercial events or activities such as weddings may be permitted on EFU-zoned land. Therefore, I find there is nothing in this context of the "private park" use that requires me to interpret that term to exclude weddings, wedding receptions, and similar events.

**3. Interpretation.** The remaining question is whether the applicant's proposed use can be a "private park" if it includes wedding *ceremonies*. Staff finds that a private park designed and operated for outdoor recreation can host weddings and similar ceremonies so long as they are incidental and subordinate to the recreational activities – i.e., minor and secondary activities relative to the recreational activities. Staff bases this conclusion on the analysis provided by the Hearings Officer in CU-13-13/MA-13-3:

I find there is nothing in Title 18 or the existing case law that establishes any particular amount or percentage of outdoor recreational activity that must occur on the subject property in order for it to qualify as a "private park." Nevertheless, even the applicant seems to acknowledge some minimum amount of recreational activity is necessary to qualify as a "private park" use. In his final argument, Mr. Hunnicutt stated:

*"Mr. Dewey claims that Mr. Shepherd is arguing that as long as there is any recreational aspect to an event, it qualifies as an activity allowed in a private park. That is not what Mr. Shepherd argues. As we have stated previously, the events being proposed in this application may or may not contain a ceremony. If they do contain a ceremony, the ceremony is brief, and is a very small portion of the overall time spent for the event. Mr. Shepherd has testified that the ceremony is also recreational, but even if it is not considered to be recreational, it is akin to an awards ceremony at a baseball field or soccer event. A*



*baseball game does not cease to be a recreational event that can be held in a park due to the fact that the players are presented with an award at a ceremony held after the game. **The fact that a ceremony plays a part in the event does not make the event 'non-recreational,' when the remainder of the activities consist of recreational events** which we have outlined in our previous testimony, even if the ceremony is not considered recreational activity, especially when the recreational events occur for nearly the entirety of the event. **Mr. Shepherd is not arguing, however, that a non-recreational activity can immediately transform itself into a recreational activity by incorporating a nanosecond of recreational activity.**" (Bold emphasis added.)*

...

The Hearings Officer finds Mr. Hunnicutt's analogy to a baseball or soccer event awards ceremony provides a useful construct for determining whether and to what extent the applicant's proposed "private park" may host non-recreational activities such as wedding ceremonies. In those examples, the awards ceremony is related, but is clearly incidental and subordinate, to the underlying recreational activity – i.e., the sports event. The venue, a baseball or soccer field, is designed for the outdoor recreational activity and the ceremony is a minor offshoot of that recreational activity. Using this analogy, a private park designed and operated for outdoor recreation could host weddings and similar ceremonies so long as they are incidental and subordinate to the recreational activities – i.e., minor and secondary activities relative to the recreational activities.

The applicant's burden of proof indicates wedding *ceremonies* would be minor and secondary to the proposed recreational activities, described in his burden of proof as follows:

- Outdoor eating with family and friends
- Public speaking using a sound system
- Listening to amplified music
- Singing, including karaoke
- Dancing in the pavilion
- Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

The applicant proposes to hold up to 18 events during the late spring, summer and early fall. The events will occur on Saturday. Only one event will occur each week. The events may include a wedding ceremony or they may not. Some events, such as family reunions, school reunions, community dances, and fundraisers will not have any ceremony and some weddings will be held off-site, with only the reception held on the subject property. However, even if a ceremony is part of the event, the ceremony lasts for just a fraction of the time in which the event is held. During the remainder of the event, recreational uses would occur.

Based on the above discussion, staff finds that the proposed events (such as family reunions, school reunions, community dances, wedding receptions and fundraisers) are recreational in nature and that the proposed use constitutes a private park. Staff also finds that the applicant may host wedding ceremonies and similar ceremonies to the extent they are incidental and subordinate to the recreational activities for which the park is designed and operated.

## Camping Use

The applicant has proposed that guests be allowed to tent camp or stay in recreational vehicles following events as a precaution against unsafe driving. The applicant states that this use does not constitute a commercial campground. DCC 18.04.030 defines campground as:

***“Campground” means an area devoted to overnight, temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor amenity that is accessible for recreational use by the occupants of the campground. It is also where facilities are provided to accommodate camping for two or more tents, travel trailers, yurts or recreational vehicles. A campground shall not include campsite utility hook-ups, intensely developed recreational uses such as swimming pools or tennis courts or commercial activities such as retail stores or gas stations. A private campground may provide yurts for overnight camping. The yurt shall be located on the ground or on a wood floor with no permanent foundation. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. Overnight temporary use in the same campground by a camper or camper’s vehicle shall not exceed a total of 30 days during any consecutive 6 month period.***

For any campground use to be allowed on the property, that use would need to fall within the definition of campground and comply with DCC 18.128.320. The applicant did not address this definition or DCC 18.128.320. Staff understands that the applicant does not intend to apply for a campground, but simply make non-commercial camping available on site “...as a precaution against unsafe driving”. As such, staff finds that the applicant has neither applied for nor met the burden-of-proof required for any campground use and that campground use is not allowed under this land use decision.

### 2. Section 18.16.040, Limitations on Conditional Uses.

***A. Conditional uses permitted by DCC 18.16.030 may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:***

- 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***
- 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and***
- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

**FINDING:** The applicant argues and staff concurs that these criteria apply to DCC 18.16.030 uses. “Private park” is allowed under DCC 18.16.031. Therefore, these criteria do not apply. However, the applicant notes and staff concurs that criteria (A)(1) and (A)(2) impose requirements independently required under ORS 215.296:

**215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:**

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or**
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

The record indicates the dominant tree species in the area surrounding the subject property is juniper which is not a commercial tree species. Therefore, Staff finds there are no surrounding lands devoted to forest uses.

The subject property is surrounded by farm uses on the north, east and west. Typical farm operations in the area include livestock grazing (horses and cattle) on irrigated pasture and grass hay production. Based on staff's measurements from aerial photography, the park site is located approximately 1,600 feet from the farm use to the north (Long Hollow Ranch), 4,200 feet from the farm use to the west, and 2,500 feet from the farm use to the east.

A private park could significantly change accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use if some externality from the proposed park use adversely impacted these farm operations. Staff finds that potential adverse externalities include noise and traffic impacts. Staff notes that the park site is significantly screened from adjacent properties and finds that there is no evidence that visual impacts would adversely impact surrounding farm operations.

Based on comments submitted by the Deschutes County Road Department and Deschutes County Traffic Planner and incorporated herein by reference, Staff finds that Holmes Road is adequate to handle traffic from the proposed use and that the one-day-a-week additional traffic would not significantly change in accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

The applicant has proposed that events will include amplified music up to 90 decibels. Staff finds that typical noise attenuation over distance for 90 decibels is as follows<sup>2</sup>:

<b>Distance in Feet</b>	<b>Decibels</b>	<b>Equivalent Sound</b>
50	90	Heavy Truck
150	80	Pneumatic Drill
500	70	Vacuum Cleaner
1500	60	Conversational speech
5000	50	Average Home
15000	40	Quiet Library

Staff notes that these numbers are based on a flat topography, no vegetation, and a clear line-of-sight between the amplified music and receiving location. The applicant submitted decibel measurements taken with a handheld meter during 90 decibel playback of amplified music at the park site. Reported measurements included 20 decibels at the east fence line (approximately 800 feet from the park site), 30 decibels at the south fence line (approximately 200 feet from the park site), and undetectable at the north fence line. Staff's research indicates

<sup>2</sup> <http://chcheating.org/noise/common-environmental-noise-levels/>

that vegetation and topography can significantly reduce sound intensity. Staff notes that the nearest dwelling is approximately 1,400 feet south of the park site and the nearest farm use is approximately 1,600 feet northwest of the park site.

Staff's research efforts produced little information on the adverse impacts of noise to agricultural activities. One research summary<sup>3</sup> recommended that noise exposure to horses should be limited to those levels recommended for humans and concluded poultry and pigs would not be significantly adversely affected by noise not to exceed 90 decibels.

Staff finds that, at minimum, noise from amplified music will be reduced to a volume typical of conversational speech before reaching nearby agricultural activities and that the applicant's test sound measurements, in combination with the topographic changes and vegetation, suggest much lower off-site volumes. Therefore, Staff finds that there is no evidence that the proposed amplified music will significantly change accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

## **B. CHAPTER 18.88, WILDLIFE AREA COMBINING ZONE**

### **1. Section 18.88.040, Uses Permitted Conditionally**

- A. *Except as provided in DCC 18.88.040(B), in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, DCC 18.128 and other applicable sections of this title.***

**FINDING:** A private park is permitted conditionally in the underlying EFU zone and therefore is permitted conditionally in the WA Zone.

- B. *The following uses are not permitted in that portion of the WA Zone designated as deer winter ranges, significant elk habitat or antelope range:***
- 1. *Golf course, not included in a destination resort;***
  - 2. *Commercial dog kennel;***
  - 3. *Church;***
  - 4. *Public or private school;***
  - 5. *Bed and breakfast inn;***
  - 6. *Dude ranch;***
  - 7. *Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;***
  - 8. *Timeshare unit;***
  - 9. *Veterinary clinic;***
  - 10. *Fishing lodge.***

**FINDING:** The subject property is located within a WA Zone established to protect the Metolius Deer Winter Range. The applicant's proposed private park is not one of the uses prohibited by

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<sup>3</sup> [http://www.epa.govt.nz/resource-management/NSP000033/NSP000033\\_BoD\\_Volume\\_4\\_31\\_Siiri\\_Wilkening\\_\(10\\_March\\_2014\)\\_Summary\\_of\\_research\\_of\\_noise\\_effects\\_on\\_animals.pdf](http://www.epa.govt.nz/resource-management/NSP000033/NSP000033_BoD_Volume_4_31_Siiri_Wilkening_(10_March_2014)_Summary_of_research_of_noise_effects_on_animals.pdf)

this section. In MA-13-3/CU-13-13 an opponent argued the applicant's proposed use is essentially the same as the recreation use in Subsection (7) and therefore cannot be permitted. The Hearings Officer disagreed. She found that the plain language of Subsection (7) limits the prohibited recreational uses to those "owned and operated by a government agency or a nonprofit community organization," neither of which applies to the applicant. Staff finds this analysis applies equally to the present application.

2. Section 18.88.060, Siting Standards

- A. ***Setbacks shall be those described in the underlying zone with which the WA Zone is combined.***
- B. ***The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:***
  - 1. ***Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; or,***
  - 2. ***The siting within 300 feet of such roads or easements for vehicular access would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least possible impact on wildlife habitat considering browse, forage, cover, access to water and migration corridors, and minimizing length of new access roads and driveways; or,***
  - 3. ***The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.***

**FINDING:** No new dwelling is included in this proposal. These criteria do not apply.

3. Section 18.88.070. Fence Standards.

***The following fencing provisions shall apply as a condition of approval for any new fences constructed as a part of development of a property in conjunction with a conditional use permit or site plan review.***

- A. ***New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:***
  - 1. ***The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.***
  - 2. ***The height of the fence shall not exceed 48 inches above ground level.***
  - 3. ***Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.***
- B. ***Exemptions:***
  - 1. ***Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.***

2. **Corrals used for working livestock.**

**FINDING:** To the extent that the cattle fencing might be viewed "...constructed as a part of development of a property in conjunction with a conditional use permit or site plan review" staff finds that the fencing constitutes "corrals used for working livestock" and is exempt from these criteria.

C. **CHAPTER 18.116, SUPPLEMENTARY PROVISIONS**

1. Section 18.116.020, Clear Vision Areas.

A. ***In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the grade.***

B. ***A clear vision area shall consist of a triangular area on the corner of a lot at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines adjoining the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:***

1. ***In an agricultural, forestry or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.***
2. ***In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:***

Right-of-Way Width	Clear Vision
80 feet or more	20 feet
60 feet	30 feet
50 feet and less	40 feet

**FINDING:** No new structures are proposed. The proposed park will not impact a clear vision area at the intersection of two streets or a street and a railroad.

2. Section 18.116.030, Off-street Parking and Loading.

A. ***Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall***

**be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.**

**FINDING:** Staff finds that the applicant has presented plans to show how the off street parking requirements are to be met in a 95-space parking area. As a condition of approval, subsequent use of the property for which this permit is issued shall require the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

**B. Off-Street Loading. Every use for which a building is erected or structurally altered to the extent of increasing the floor area to equal a minimum floor area required to provide loading space and which will require the receipt or distribution of materials or merchandise by truck or similar vehicle, shall provide off-street loading space on the basis of minimum requirements as follows:**

**FINDING:** Staff finds that this proposal does not include a “use for which a building is erected or structurally altered” and that DCC 18.116.030(B) does not apply to this proposal.

**C. Off-Street Parking. Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts. Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.**

**FINDING:** The applicant argues that DCC 18.116.030(C) does not apply, as this section only requires parking spaces “be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.” The applicant notes that no structural changes are proposed.

DCC 18.116.030(C) first requires that, “Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts.” Staff finds that provision of parking spaces is plainly required under this section. The second portion of this criterion states, “Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.” Staff finds that the second sentence of the criterion specifies the timing for the provision of parking for certain specified uses, but does not negate the requirement that parking be “provided and maintained as set forth in DCC 18.116.030 for all uses”. As a condition of approval, all required parking shall be in place prior to initiation of the use.

**D. Number of Spaces Required. Off-street parking shall be provided as follows:**

**1. Residential.**

Use	Requirements
One, two and three family dwellings	2 spaces per dwelling unit

...

**9. Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.**

**FINDING:** As proposed, the private park would be open to event participants one weekend day per week beginning in late May of each year and end in early October, not to exceed 18 days per calendar year. Each reception would last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event would be enforced by the applicant.

The existing dwelling unit requires 2 spaces. The private park use falls under “other uses not specifically listed”. As such, Staff uses the listed uses, “as a guide for determining requirements for said other uses.” Staff finds that this use is somewhat similar to the use “church”, in that church use typically includes weddings. DCC 18.116.030(D)(4) requires 1 space per 4 seats for church use. As such, Staff finds that a minimum of 63 spaces ( $250 / 4 = 62.5$ ) must be provided for the private park and two spaces for the dwelling, for a total of 65 spaces. Staff finds that the proposed 95 spaces will provide adequate parking for the private park use as well as the existing dwelling.

**E. General Provisions. Off-Street Parking.**

- 1. More Than One Use on One or More Parcels. In the event several uses occupy a single structure or parcel of land, the total requirement for off-street parking shall be the sum of requirements of the several uses computed separately.**

**FINDING:** The total requirement for off-street parking equals the sum of the requirements of the several uses (park and residential) computed separately.

- 2. Joint Use of Facilities. The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.**

**FINDING:** No joint use facilities are proposed.

- 3. Location of Parking Facilities. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.**

**FINDING:** All parking is located on the subject parcel.



4. ***Use of Parking Facilities. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.***

**FINDING:** As a condition of approval, required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.

5. ***Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District and the La Pine UUC Business Park (LPBP) District and the LaPine UUC Industrial District (LPI), but such space may be located within a required side or rear yard.***

**FINDING:** No parking in a required front yard is included in this approval.

- F. ***Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:***

1. ***Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.***

**FINDING:** The proposed parking is located over 400 feet from any property line. Staff finds that vegetation and topography will effectively screen the parking area from any adjacent residential use.

2. ***Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.***

**FINDING:** No adjoining property is in a residential zone. This criterion does not apply.

3. ***Groups of more than two parking spaces shall be located and designed to prevent the need to back vehicles into a street or right of way other than an alley.***

**FINDING:** Parking spaces are located and designed to prevent the need to back vehicles into a street or right-of-way.

4. ***Areas used for standing and maneuvering of vehicles shall be paved surfaces adequately maintained for all weather use***

**and so drained as to contain any flow of water on the site. An exception may be made to the paving requirements by the Planning Director or Hearings Body upon finding that:**

- a. A high water table in the area necessitates a permeable surface to reduce surface water runoff problems; or**
- b. The subject use is located outside of an unincorporated community and the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties; or**
- c. The subject use will be in a Rural Industrial Zone or an Industrial District in an unincorporated community and dust control measures will occur on a continuous basis which will mitigate any adverse impacts on surrounding properties.**

**FINDING:** The applicant has proposed a cinder surface for the driveway from Holmes Road and the parking area. Since the use is located outside of an unincorporated community, an exception to the paving requirement is allowed provided the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties. However, based on the comment by the Deschutes County Transportation Planner, quoted above and incorporated herein by reference, Staff finds that cinder is not an all-weather surface that complies with this criterion. As a condition of approval, areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties.

Staff also finds that any storm water drainage from the driveway and parking area will drain to adjacent pervious surfaces and so be contained on-site.

**5. Access aisles shall be of sufficient width for all vehicular turning and maneuvering.**

**FINDING:** Table 1 at the end of Chapter 18.116 requires, at minimum, a twenty-four-foot-wide surface for two-way traffic and 12-foot-wide surface for one-way traffic. The applicant has proposed a minimum of a thirty-two-foot-wide surface for two-way traffic and 16-foot-wide surface for one-way traffic. Staff finds that the proposed parking area includes travel surfaces of sufficient width for all vehicular turning and maneuvering.

**6. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will accommodate and serve the traffic anticipated. Service drives shall be clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers. Service drives to drive in establishments shall be designed to avoid backing movements or other maneuvering within a street other than an alley.**

**FINDING:** No service drives are proposed.

7. ***Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.***

**FINDING:** No service drives are proposed.

8. ***Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail placed to prevent a motor vehicle from extending over an adjacent property line or a street right of way.***

**FINDING:** The proposed parking is located over 400 feet from any property line or a street right of way. Staff finds that no curbs or bumper rails are required to prevent a motor vehicle from extending over an adjacent property line or a street right of way.

- G. ***Off-Street Parking Lot Design. All off-street parking lots shall be designed subject to County standards for stalls and aisles as set forth in the following drawings and table:***

***(SEE TABLE 1 AT END OF CHAPTER 18.116)***

1. ***For one row of stalls use "C" + "D" as minimum bay width.***
2. ***Public alley width may be included as part of dimension "D," but all parking stalls must be on private property, off the public right of way.***
3. ***For estimating available parking area, use 300-325 square feet per vehicle for stall, aisle and access areas.***
4. ***For large parking lots exceeding 20 stalls, alternate rows may be designed for compact cars provided that the compact stalls do not exceed 30 percent of the total required stalls. A compact stall shall be eight feet in width and 17 feet in length with appropriate aisle width.***

**FINDING:** The applicant has proposed nine-foot-wide by twenty-foot-deep head-in parking spaces. The applicant has proposed a minimum of a thirty-two-foot-wide surface for two-way traffic and 16-foot-wide surface for one-way traffic. The proposed spaces comply with County standards for stalls and aisles as set forth Table 1.

3. Section 18.116.031. Bicycle Parking.

***New development and any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005 shall comply with the provisions of DCC 18.116.031.***

- A. ***Number and Type of Bicycle Parking Spaces Required.***
  1. ***General Minimum Standard.***

- a. **All uses that require off-street motor vehicle parking shall, except as specifically noted, provide one bicycle parking space for every five required motor vehicle parking spaces.**
- c. **When the proposed use is located outside of an unincorporated community, a destination resort, and a rural commercial zone, exceptions to the bicycle parking standards may be authorized by the Planning Director or Hearings Body if the applicant demonstrates one or more of the following:**
  - i. **The proposed use is in a location accessed by roads with no bikeways and bicycle use by customers or employees is unlikely.**
  - ii. **The proposed use generates less than 50 vehicle trips per day.**
  - iii. **No existing buildings on the site will accommodate bicycle parking and no new buildings are proposed.**
  - iv. **The size, weight, or dimensions of the goods sold at the site makes transporting them by bicycle impractical or unlikely.**
  - v. **The use of the site requires equipment that makes it unlikely that a bicycle would be used to access the site. Representative examples would include, but not be limited to, paintball parks, golf courses, shooting ranges, etc.**

**FINDING:** The proposed private park is located outside of an unincorporated community, a destination resort, or a rural commercial zone. An exception to the bicycle parking standards is warranted since the use of the site (formal events in a park setting), requires equipment (formal attire, catering equipment) that makes it unlikely that a bicycle would be used to access the site. Staff finds that no bicycle parking is required for this use.

**C. CHAPTER 18.124, SITE PLAN REVIEW**

1. Section 18.124.030. Approval Required.

- A. **No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.**
- B. **The provisions of DCC 18.124.030 shall apply to the following:**
  - 1. **All conditional use permits where a site plan is a condition of approval;**
  - 2. **Multiple family dwellings with more than three units;**
  - 3. **All commercial uses that require parking facilities;**
  - 4. **All industrial uses;**
  - 5. **All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community**

- buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and*
6. *As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).*

**FINDING:** The site is a park and recreation facility that requires parking facilities. The provisions of this chapter apply.

2. Section 18.124.060. Approval Criteria.

***Approval of a site plan shall be based on the following criteria:***

- A. ***The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.***

**FINDING:** No new structures or earthmoving are included in this proposal. Topography, vegetation and distance will either completely or significantly buffer the park use visually from nearby properties. Therefore, staff finds this proposal minimizes visual impacts and preserves views and topographical features.

Staff divides the remaining findings under this criterion into those pertaining to the natural environment and those pertaining to existing development.

## **NATURAL ENVIRONMENT**

The natural environment on the property consists of juniper scrub woodland in the mapped Tumalo Winter Deer Range. Under DCC 18.128.015(A)(3), below, staff finds that the proposed private park is compatible with the natural resources, including wildlife habitat and deer, on the property. Staff finds that those findings also demonstrate that the proposed private park would relate harmoniously to the natural environment, as required under this criterion, and incorporate those findings herein by reference.

Findings regarding the Wildlife Management Plan are included in the Existing Development section below, as this plan was required in association with the farm related dwelling.

## **EXISTING DEVELOPMENT**

Existing development of the property consists of residential and agricultural use. Existing structures include a dwelling, barn, and gazebo. The existing farm-related dwelling was approved under County File Nos. MA-01-9/CU-00-65 and included a Farm Management Plan (FMP) and Wildlife Management Plan (WMP). Staff finds that a private park proposal would not relate harmoniously to existing development if it precluded or significantly interfered with residential use of the property, agricultural use of the property, or compliance with the WMP.

### **Residential Use**

The private park would be open to event participants one weekend day per week beginning in late May of each year and end in early October, not to exceed 18 days per calendar year. Each

reception would last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event would be enforced by the applicant.

Event participants would have limited access to the existing dwelling and full access to a gazebo on the property. The wedding party (including bridesmaids, groomsmen, and immediate family) will have access to the main floor of the home and two upstairs rooms. Weddings will not be conducted inside the dwelling. Temporary tents and the gazebo will be used in the event of inclement weather.

Restrooms will be provided through portable restrooms and guest access provided to an existing downstairs restroom in the dwelling. Food is either prepared off site or cooked on-site by licensed caterers using their own equipment. The existing kitchen in the dwelling will be used for food assembly only.

Staff finds that the proposed private park use will only occur at the discretion of the applicant, is of limited duration, and involves no significant changes to the residence. Therefore, the proposed private park use would not preclude or significantly interfere with residential use of the property.

## **Agricultural Use**

### ***Prior Approvals***

The existing farm-related dwelling was approved in conjunction with a Farm Management Plan (FMP). The prior approval (MA-01-9/CU-00-65), granted to the applicant's predecessor, required that the property be "...currently employed in farm use, as evidenced by a farm management plan...". In CU-00-65/MA-01-9 the following findings were made regarding farm use of the property:

The applicant has proposed to modify the submitted application for a conditional use permit (CU-00-65) to allow the establishment of a farm-related dwelling on an approximate 216 acre, unirrigated, non-high value parcel. The applicant proposes to modify CU-00-65 by proposing a new homesite location and modifying the farm management plan. The modified application indicates that the property currently supports 24 head of cattle, has perimeter fencing and watering troughs. The applicant has submitted financial documents, photographs, soils and irrigation maps, a site plan and burden of proof statement in support of this application, which are incorporated herein by reference. According to the modified farm management plan and business plan, and verified by staff during a visit to the property on May 31, 2001, the subject property currently supports 24 head of cattle, has perimeter fencing along the boundary of the subject property, watering troughs for livestock that are filled with water that according to the applicant will be hauled onto the property until such time a well is installed and electricity provided to the property. The applicant also indicates that they intend to obtain water rights from Squaw Creek Irrigation District. In addition, the applicant indicates that they propose to incorporate approximately 30 hogs into the livestock operation following occupancy of the proposed farm dwelling. The applicant's plot plan depicts the location of areas that are used for livestock grazing. Based on the above findings and the applicant's burden of proof statement, staff finds this criterion to be satisfied.

Staff finds that there is nothing in the dwelling approval that requires the applicant to continue the prior owner's agricultural operations or to complete the future activities described in the FMP. This criterion requires that the proposed development relate harmoniously to existing development. Since neither the previous cattle operation nor the contemplated hog operation is "existing" on the property, Staff finds there is no requirement under this criterion that the private park be harmonious with those farm uses.

### ***Current Farm Use***

The current agricultural use of the property includes approximately 2 acres used to raise poultry for-profit and small-scale livestock grazing (limited to a single ewe at the time of application). Staff finds that these farm uses are conducted outside of the proposed private park area and that they would not be precluded or significantly interfered with by the private park.

### ***Future Farm Use***

In the applicant's January 12, 2015 Incomplete Letter Response, the applicant indicated that 3.5 acres of Three Sisters Irrigation District water rights are being obtained and will be applied to the existing lawn area (0.9 acres) and a new fenced grazing area in the southeast corner of the property. The grazing area will encompass approximately 17 acres that include 2.5 acres of future irrigation. No fewer than 10 head of cattle will be kept in this grazing area during the months of park operation.

During winter months (outside of park operations), the cattle will be penned and hayed in an area adjacent to the applicant's barn. During the spring, the cattle would graze other areas of the property, but not the private park area.

The applicant also proposes an indoor/outdoor penned chicken operation on the property, to be located within the existing barn area. The chicken operation will not occur in the area set aside for park use.

Since these farm uses are not "existing" on the property, Staff finds there is no requirement under this criterion that the private park be harmonious with those farm uses. However, Staff finds that the private park use will be separated spatially and/or temporally from contemplated farm use of the property and that the private park would not preclude or significantly interfere with the contemplated farm use.

### **Wildlife Management Plan**

The Wildlife Management Plan (WMP) approved under (MA-01-9/CU-00-65) includes required actions on the part of the land owner as part of the dwelling location approval. To the extent that the proposed park use could somehow preclude or significantly interfere with the land owner's ability to complete those required actions, the private park proposal would not relate harmoniously with the residential use of the subject property.

Under DCC 18.128.015(A)(1) below, staff finds that the proposed private park is compatible with both the 2001 WMP and will likely be compatible with the proposed modification of the WMP that has not yet received final land use approval. Staff finds that those findings also demonstrate that the proposed private park would relate harmoniously to the existing dwelling and its wildlife obligations, as required under this criterion, and incorporate those findings herein by reference.

- B. *The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.***

**FINDING:** No new structures or topographical changes are included in this proposal. The existing structures and lawn area were developed in association with residential use of the property and are not part of this proposal. Staff finds that the approximately 1-acre parking area preserves the existing landscape to the greatest extent possible, considering development constraints (required parking needed to accommodate the proposed use). No removal of vegetation outside the “park site” is proposed for the park use.

- C. *The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.***

**FINDING:** Transitions from public to private spaces occur at the driveway entering the property, the long vegetated drive to the park site, and in the existing dwelling, which will be partially used in support of the private park.

#### **Safety – Waste Water**

The Deschutes County Environmental Soils division has identified that an Authorization Notice is required prior to park use of the existing restrooms in the dwelling for park use. Septic system upgrades may be required. Staff includes a condition of approval requiring the applicant to provide documentation from the Deschutes County Environmental Soils Division that the septic system is adequate for the proposed park use, prior to the initiation of the use. In addition, Deschutes County Environmental Soils Division has recommended that portable toilets be provide for events at a rate of one toilet for every 50 – 100 persons at the event. Staff includes a condition of approval that, at minimum, one portable toilet be provided per 100 attendees) at park events.

#### **Safety – Structural**

Staff understands the Deschutes County Building Division comment, quoted above and incorporated herein by reference, to identify required electrical, fire safety, and perhaps structural requirements. As a condition of approval, the applicant shall provide written documentation from the Building Division that the on-site structures and electrical systems are suitable for the park use, prior to initiation of the use.

#### **Safety- Fire**

A January 27, 2015 email from Cloverdale Fire Department stated that the department has, “...no issues with allowing...” the proposed private park.

- D. *When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.***



**FINDING:** The County Building Division will notify the applicant of any accessibility requirements.

- E. *The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.***

**FINDING:** The site plan provides a single point of access to the site via the driveway from Holmes Road. Interior circulation includes a driveway circling the lawn area and accessing the barn, park vehicle parking area, and existing dwelling. Given the significant setback between the “park area”, property lines, and adjacent uses, Staff finds that there will be no conflict with off-site uses regarding access and circulation. Staff finds the proposed site plan will result in access and circulation that is harmonious with on- and off-site development.

- F. *Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets or surface and subsurface water quality.***

**FINDING:** Storm water drainage will continue to be directed to undeveloped juniper scrub woodland. Staff finds this will prevent adverse impacts on neighboring properties, streets or surface and subsurface water quality.

- G. *Areas, structures and facilities for storage, machinery and equipment services (mail, refuse, utility wires, and the like), loading and parking and similar accessory structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.***

**FINDING:** No new structures or facilities regulated under this criterion are proposed. The parking area will be screened by existing vegetation, minimizing adverse impacts on the site and neighboring properties.

- H. *All aboveground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.***

**FINDING:** No new aboveground utility installations are proposed.

- I. *Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.)***

**FINDING:** Specific zoning standards for the site have been addressed above.

- J. *All exterior lighting shall be shielded so that direct light does not project off-site.***

**FINDING:** A condition of approval requires that any exterior lighting in association with this project comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the Deschutes County Code (DCC).

- K. Transportation access to the site shall be adequate for the use.**
- 1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.**
  - 2. Mitigation for transportation-related impacts shall be required.**
  - 3. Mitigation shall meet applicable County standards in DCC 17.16 and DCC 17.48, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.**

**FINDING:** The Deschutes County Road Department commented in response to this application, "Holmes Road is classified as a rural collector in the County maintenance system. Traffic volumes on this section of Holmes Road are less than 400 ADT. There will be no adverse impact to Holmes Road from this application." The County Transportation Planner concluded in his comment, quoted above and incorporated herein by reference, that no traffic study is required. Staff, therefore, finds that transportation access is adequate to the site.

2. Section 18.124.070. Required Minimum Standards.

**B. Required Landscaped Areas.**

- 1. The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:**
  - a. A minimum of 15 percent of the lot area shall be landscaped.**
  - b. All areas subject to the final site plan and not otherwise improved shall be landscaped.**

**FINDING:** Staff finds the proposed park is not a multi-family, commercial<sup>4</sup>, or industrial development and is not subject to the provisions of 18.124.070(B).

- 2. In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas:**
  - a. A parking or loading area shall be required to be improved with defined landscaped areas totaling no less than 25 square feet per parking space.**

**FINDING:** The 95 parking spaces require 2,375 square feet of landscaping under this criterion. The proposed parking is wholly surrounded with natural landscaping<sup>5</sup> and will comply with this criterion.

<sup>4</sup> DCC 18.04.030 - "Commercial use" means the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals or wholesale distribution centers.

<sup>5</sup> DCC 18.04.030 - "Landscaping" means trees, grass, bushes, shrubs, flowers, and garden areas, and incidental arrangements of fountains, patios, decks, street furniture and ornamental concrete or stonework and artificial plants, bushes or flowers.

- b. *In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscaped strip at least five feet in width.*
- c. *A landscaped strip separating a parking or loading area from a street shall contain:*
  - i. *Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.*
  - ii. *Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.*
  - iii. *Vegetative ground cover.*

**FINDING:** The proposed parking area is located over 400 feet from any property line and is separated from those lot lines by extensive natural and introduced landscaping.

- d. *Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.*
- e. *The landscaping in a parking area shall have a width of not less than five feet.*
- f. *Provision shall be made for watering planting areas where such care is required.*
- g. *Required landscaping shall be continuously maintained and kept alive and attractive.*
- h. *Maximum height of tree species shall be considered when planting under overhead utility lines.*

**FINDING:** The proposed parking is wholly surrounded with natural landscaping and will comply with this criterion.

**C. Nonmotorized Access.**

- 1. *Bicycle Parking. The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.*

**FINDING:** As discussed above, staff finds that no bicycle parking is required for this use under DCC 18.116.031.

**2. Pedestrian Access and Circulation:**

- a. *Internal pedestrian circulation shall be provided in new commercial, office and multi-family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.*

**FINDING:** The proposed private park is not a new commercial, office, or multi-family residential development. This criterion does not apply.

- b. Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.**
- c. Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.**
- d. Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.**
- e. To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings**

**FINDING:** Staff finds that (b) through (e) apply to any use subject to site plan review. The applicant did not show pedestrian walkways at the proposed park. Staff follows the Hearings Officer decision in CU-14-7 where the Hearings Officer found that, "...these criteria have limited application to the applicants' proposal inasmuch as there is only one commercial use proposed for the subject property, and there will be a single building entrance for that use. Therefore, I find there is no need to apply these criteria to require particular pedestrian circulation or walkways on the property." Staff finds that there is no need to provide pedestrian walkways in this case as 1) there is only a single building entrance, 2) it is very unlikely that anyone would access the site on foot, and 3) there are no existing or planned transit facilities in the area.

**D. Chapter 18.128, Conditional Use**

- 1. Section 18.128.015. General standards governing conditional uses.

**Except for those conditional uses permitting individual single-family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:**

- A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:**

**FINDING:** Staff finds that these criteria require the applicant to demonstrate that the subject property is capable of being put to the proposed use. To the extent that another current or required use of the property could somehow preclude or significantly interfere with the proposed park use, the applicant is required to reconcile these competing uses.

**1. *Site, design and operating characteristics of the use;***

**FINDING:** The applicant has proposed a private park on the subject property. Staff incorporates herein by reference the "Proposal" section, above, which describes the proposed park siting on the property, design of the park, and operating characteristics of the park.

Existing use of the subject property (the "site under consideration") consists of a residential and agricultural use. Existing structures include a dwelling, barn, and gazebo. The existing farm-related dwelling was approved in County File Nos. MA-01-9/CU-00-65 and that approval was granted under a Farm Management Plan (FMP) and Wildlife Management Plan (WMP). Staff finds that subject property would not be suitable for the proposed use if the private park proposal would preclude or significantly interfere with residential use of the property, agricultural use of the property, or compliance with the required WMP.

**Residential Use**

Under DCC 18.124.060(A), Staff found that the proposed private park use will only occur at the discretion of the applicant, is of limited duration, and involves no permanent changes to the residence. Therefore, the proposed private park use would not preclude or significantly interfere with residential use of the property.

**Agricultural Use**

***Prior Approvals***

Under DCC 18.124.060(A), Staff found that there is nothing in the dwelling approval (MA-01-9/CU-00-65) that requires the applicant to continue the prior owner's agricultural operations or to complete the future activities described in the FMP. Therefore, staff finds that the private park is not required to be compatible with those specific agricultural operations.

***Current Farm Use***

The current agricultural use of the property includes approximately 2 acres used to raise poultry for-profit and small-scale livestock grazing (limited to a single ewe at the time of application). Staff finds that these farm uses are conducted outside of the proposed private park area and that they would not be precluded or significantly interfered with by the private park use.

***Future Farm Use***

In the applicant's January 12, 2015 Incomplete Letter Response, the applicant described contemplated future farm use of the property. Since those farm uses are not a current or required use of the property, Staff finds there is no requirement under this criterion that the private park be compatible with those farm uses. However, Staff finds that the private park use will be separated spatially and/or temporally from the contemplated future farm use of the property and that the private park would not preclude or significantly interfere with the contemplated future farm use.

## Wildlife Management Plan

### *Original Wildlife Management Plan*

Staff finds that the Wildlife Management plan approved under (MA-01-9/CU-00-65) includes required actions on the part of the land owner as part of the dwelling location approval. To the extent that the proposed park use could somehow preclude or significantly interfere with the land owner's ability to complete those required actions, the private park proposal would be incompatible with the residential use of the subject property.

The subject property is located in a Wildlife Area Combining Zone designated as a Metolius Deer Winter Range. The site of the existing dwelling was approved under CU-0065/MA-01-9, which included the following findings under DCC 18.88.060(B)(1)<sup>6</sup>:

The applicant previously proposed to situate the homesite within 300 feet of an existing road identified as a "jeep" road. As part of the modified application, the applicant proposes to situate the homesite beyond 300 feet from a public road, private road or recorded easements for vehicular access existing as of August 5, 1992. The applicant's burden of proof statement provides the following in response to this criterion:

Applicant proposes to locate the dwelling site and human activity areas, outside the 300 foot area, fact is the jeep road area is in the center of the corridor where the wildlife travel and browse. The new dwelling site is proposed to be at the East and South edge of the plateau rimrock area. This location will provide the least impact on the wildlife habitat considering browse, forage, cover, access to water and migration corridors. The subject property has a unique topography in that there is a plateau atop a rimrock cliff along the East and South side. This is the least productive area for the natural bunch grass that covers the property. The remainder of the property will be used for cattle grazing and a hog operation/pinned area. The wildlife will have full access to the property in the same manner as they do now. As this location will not change their corridors or natural habits they have now and the past many years. Due to the fact that the home and human activities will be all on the rimrock area. And not located in the middle of their corridor. The proposed driveway from the jeep road will also provide a fire break road and this will benefit the wildlife as well as home owner and BLM properties. Applicant feels this dwelling location will provide the least possible impact on wildlife habitat, considering browse, forage cover, access to water and migration corridors. Applicant is in the process of purchasing Squaw Creek Irrigation water.

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<sup>6</sup> Section 18.88.060. Siting Standards.

B. The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:

1. Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; ...

On 3-19-01, conference with Steven George from ODFW, developing a management plan for Wildlife on my property. My desire to put the home and farm operation area away from the middle of the property to enable me to stay out of the corridor area used by the wildlife. We have agreed to a plan that works with cattle management and wildlife management. This property is large enough to handle one residence, a small cattle operation and hog farm, but still not hinder the natural habitats of any wildlife that is already established there or will come there. The plan outline to be as stated below:

1. Browsing area would not be disturbed by any building along the middle of the property, also along the road in and out. This keeps the corridor open.
2. Human activities and barn area and pinned [sic] areas will be located totally on the S.E. corner of the plateau near the rimrock, follow-all regulations for set-backs.
3. Applicant would plant a buffer zone of mixed trees to provide a buffer zone for the wildlife and the human activities. This would include, but not limited to Aspens, Birch, Ponderosa pines, Maples, and Dogwoods. Middle size shrubs would be included in the landscape buffer plan. Applicant would stay with a lot of the natural shrubs that Steven mentioned. The buffer would be on the south, west and north sides of the human activity area and farm operations area.
4. Management of this acreage would follow along the lines to keep it in its natural state. Cutting the many small juniper trees, to promote the natural growth of the sagebrush, bitter brush and bunch grasses.
5. Applicant is in the process of purchasing irrigation water from Squaw Creek Irrigation District, using this water to promote natural grasses to grow. Applicant is planting a plot of pine trees around 300 feet to make a larger buffer from the center of the property.
6. Steven George would like it, if the cattle could be moved to another area during the months of September through February each year. This would allow some growth for winter feeding needs for the wildlife. He asked how large a herd I would have, I state about 25 head at any one time. He liked the idea of a smaller herd. I agreed to taking the cattle to another grazing area in the in the fall and winter months. I want the grazing areas to not be over grazed either as it benefits my cattle operations to have that natural vegetation coming back each year. A farm plan is a better plan if it benefits all resources, private and natural.
7. Fencing is about to start and will be built according to regulations for wildlife friendly according to Section 18.88.070, Fencing standards Distance between the

ground and bottom strand or board is 15 inches. Height will not exceed 48 inches.

8. This property will have one family home on it and only one road to the home. There will be very little road usage on the property due to the type of farming operation present there. This works well due to the type of farming operation present there. This works well on this rocky type of land and yet it can still produce a profit and benefit the local community and merchants. By clearing out the small juniper trees this operation will also help the wildlife in the area. We all will benefit from this site location.

The record includes a letter from Steve George, District Wildlife Biologist with the Oregon Department of Fish and Wildlife, dated April 5, 2001, which states, "The applicant's plans, as outlined in her March 21 letter with attachments, will provide for equal or greater protection for wildlife with the following recommendation. I would like the following recommendation considered in addition to the referenced plan by the applicant. The natural vegetation growing on her property should be maintained as stated in number 5 of her plan. This should be expanded to only allow the thinning of young juniper, less than 10 years old. Bitterbrush and sagebrush would not be removed. Pruning of juniper would not be allowed."

Included as part of the applicant's plans "in her March 21st letter", as referenced in the letter from Steven George, is the applicant's plot plan submitted with this modified application. According to the applicant's plot plan, the proposed farm dwelling would be situated approximately 1,050 feet from the east property line, 112 feet from the south property line, 2,100 feet from the north property line and 1,591 feet from the west property line. This proposed homesite is beyond 300 feet from a public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992, however, based on ODFW's review and recommendation of the proposed homesite location, staff finds that the proposal can afford habitat values (i.e., browse, forage, cover, access to water) and migration corridors equal or greater protection though the proposed development pattern through compliance with the Wildlife Management Plan and the additional recommendation by ODFW referenced in his April 5, 2001 letter.

Staff finds that in order to be afforded "equal or greater protection," compliance with the Wildlife Habitat Plan (Included as Exhibit "A" of this decision), and the recommendations of the wildlife biologist with ODFW is necessary, thus, they will be made conditions of approval. Based on the above findings, and through compliance with conditions of approval, staff finds that this criterion can be satisfied.

The existing wildlife management plan was developed by the applicant's predecessor and, to date, several requirements in the 2001 WMP have not been completed. In addition, several requirements were identified by ODFW on a September 25, 2014 site visit as "not practical to implement". A review by ODFW and the applicant's biologist, Ray Romero, has identified the shortcomings in both clarity of required actions and overall habitat enhancement value of the existing WMP.



On December 18, 2014 staff issued an administrative approval of a modification (247-14-000401-MC) to an existing conditional use decision (CU-00-65/ MA-01-9). A Wildlife Management Plan (WMP) was required because the dwelling was not located near a pre-existing road or driveway in the Metolius Winter Deer Range [see DCC 18.88.060 (B)(1)] in the Wildlife Area Combining Zone (WA). The modification wholly removed the Wildlife Management Plan (WMP) required under the previous decision and replaced it with six conditions of approval designed to protect and enhance deer habitat on the property. By Order 2014-046, dated December 29, 2014, the Board initiated review of this application under DCC 22.28.050 through a *de novo* hearing. On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application. The notice of appeal identifies six objections to the administrative decision. Since this modification is under appeal and has not received final local approval, Staff finds that the existing Wildlife Management Plan applies for the purposes of this decision.

Staff finds that, with the possible exclusion of 2001 WMP #8, the proposed park would not preclude or significantly interfere with the land owner's ability to complete the required actions of the 2001 WMP, as the required actions would occur on land outside of the developed private park site.

Item #8 of the 2001 WMP states, in part, "There will be very little road usage on the property due to the type of farming operation present there." The proposed park use, with up to 250 guests on 18 days would not constitute "very little road usage". However, the events would occur between late May and early October. Based on information provided by the applicant's Wildlife Biologist, Ray Romero, and staff discussions with Corey Heath of ODFW, Staff finds that the operating period of the private park falls outside the period when deer would be using the mapped Metolius Winter Deer Range on the subject property. Use of the property, including the access road, during the park's off season would be limited in scope and only include residential and agricultural activities. Therefore, Staff finds that the proposed private park is not incompatible with the 2001 WMP.

### ***Modified Wildlife Management Plan***

Since the proposed modification of the Wildlife Management Plan (247-14-000401-MC), is under appeal and has not received final local approval, Staff finds that it does not presently impose any required actions that could result in incompatibilities with the proposed private park.

Should the modification of the Wildlife Management Plan receive final approval in the future, Staff is uncertain if the final conditions of that approval will include any incompatibilities with the proposed private park. Staff notes, however, that the modified WMP, to date, has focused on deer forage enhancement outside of the developed private park site. For this reason, Staff finds that is unlikely that the modified WMP, if approved, will include any incompatibilities with the proposed private park. To ensure that the proposed private park is not incompatible with a final WMP, modified or not, Staff imposes a condition of approval requiring the land owner to comply with the current final Wildlife Management Plan (WMP) for the subject property. Where the final WMP for the subject property includes required actions that conflict spatially or temporally with the private park operations, the required actions of that WMP shall take precedence and the operations of the private park shall be curtailed to the extent necessary to allow full compliance with the WMP. Where the final WMP for the subject property includes required actions and the WMP does not specify a completion date or timeline, those actions shall be completed prior to initiation of the private park use. Where the final WMP for the subject property includes required ongoing actions, the private park shall only operate while in compliance with those required ongoing actions.

The subject property will be suitable for the proposed private park, as conditioned, based on the characteristics of the site and the design and operating characteristics of the use.

**2. Adequacy of transportation access to the site; and**

**FINDING:** The Deschutes County Road Department commented in response to this application, "Holmes Road is classified as a rural collector in the County maintenance system. Traffic volumes on this section of Holmes Road are less than 400 ADT. There will be no adverse impact to Holmes Road from this application." The County Transportation Planner concluded in his comment, quoted above and incorporated herein by reference, that no traffic study is required. Staff, therefore, finds that transportation access is adequate to the site.

**3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** The proposed park site is generally level and suitable topographically for park use. No changes to topography are proposed. The property is not subject to flooding and is served by the Cloverdale Fire Protection District. The site does not contain natural resources such as mineral resources or merchandisable tree species. The Hearings Officer found in CU-13-13/MA-13-3, "The subject property is located within a WA Zone and the Metolius Deer Winter Range, signifying it has natural resource value as wildlife habitat." Staff concurs. Staff finds that the proposed private park use could be incompatible with the wildlife habitat on the property if that use would adversely impact deer or the on-site habitat on which they depend.

Specifically, Staff finds that analysis under this criterion is limited to the direct and indirect impacts to deer and their on-site habitat from the private park use. The private park use will be limited to the existing developed park area and access driveway. No changes to the existing scrub juniper woodland habitat are required or proposed for operation of the private park. Therefore, staff finds that the park will have no direct or indirect impacts to the existing habitat values on the property.

Proposed use of the private park would occur between late May and early October. Based on information provided by the applicant's Wildlife Biologist, Ray Romero, and staff discussions with Corey Heath of ODFW, Staff finds that the operating period of the private park falls outside the period when deer would be using the mapped Metolius Winter Deer Range on the subject property. Therefore, Staff finds that the proposed private park use would not result in direct impacts to deer, as the deer would be not be on-site during the park's operating season. Staff found the park use would not impact on-site habitat, therefore, Staff finds that the private park use would not indirectly impact deer. For these reasons, staff finds that the proposed private park use is compatible with the natural resource values of the subject property.

**B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in (A) above.**

**FINDING:** The subject property is surrounded by properties zoned EFU in both public and private ownership. To the north is an approximately 540-acre property engaged in cattle grazing and developed with a guest ranch (Long Hollow Ranch). Other land to the north along Holmes Road is generally engaged in farm use. To the south is a large undeveloped, publicly-owned

tract owned and managed by the US Bureau of Land Management (BLM) that consists of juniper woodland. Also to the south is an approximately 80-acre parcel engaged in farm use and developed with a single-family dwelling. Adjacent to and east of the subject property is a 77-acre parcel engaged in farm use and developed with a dwelling. Adjacent to the west are two 40-acre parcels, each of which is developed with a single-family dwelling. Further to the west are two approximately 100-acre parcels engaged in farm use. Staff, therefore, finds that projected uses on surrounding properties include agriculture, rural residential, and federally-owned open space.

### **Site, Design and Operating Characteristics of the Use**

Staff finds that the proposed park use could be incompatible with nearby agriculture, rural residential, and open space uses where some externality of the park use would adversely impact those uses. Staff finds that potential adverse externalities include noise and traffic impacts. Staff notes that the park site is significantly screened from adjacent properties and finds that there is no evidence that visual impacts would adversely impact surrounding agriculture, rural residential, and open space uses. Staff has previously found that, at minimum, noise from amplified music will be reduced to a volume typical of conversational speech before reaching surrounding properties and that the applicant's test sound measurements, in combination with the topographic changes and vegetation, suggest much lower off-site volumes. In addition, a condition of approval requires park events, including all amplified music, to conclude by 10 p.m. Therefore, staff finds that the proposed park would be compatible with surrounding agriculture, rural residential, and open space uses based on the site, design, and operating characteristics of those uses.

### **Adequacy of Transportation Access to the Site**

Staff has found, above, that Holmes Road has adequate capacity for the proposed park use. Staff finds that the proposed park use would not significantly adversely impact transportation access to surrounding agriculture, rural residential, and open space uses.

### **Natural and Physical Features of the Site, Including, but Not Limited to, General Topography, Natural Hazards and Natural Resource Values**

Staff finds that the proposed private park use would not impact the topography, create new natural hazards, or exacerbate any existing natural hazard on surrounding properties. Surrounding properties do not contain natural resources such as mineral resources or merchandisable tree species. Property to the south and west falls within the Wildlife Area Combining Zone (WA) and the Metolius Deer Winter Range. The proposed private park use would not indirectly impact deer or their habitat off-site, as there would be no habitat changes off-site. Potential direct off-site impact to deer would be limited to noise, however, the proposed private park use would not result in direct impact to deer, as the deer would not be on surrounding properties during the park's operating season.

2. Section 1818.128.090, Medical Clinic, Veterinary Clinic, Club, Lodge, Fraternal Organization, Community Center, Grange Hall, Golf Course, Horse Stable and Horse Events Requiring Conditional Uses, Grounds and Buildings For Games or Sports, Country Club, Swimming, Boating, Tennis Clubs and Similar Activities, Government Structures and Land Uses, Parks, Playgrounds.

*In considering the above, the Planning Director or Hearings Body may authorize the conditional use after it has been determined that the following will be provided:*

**A. Access from principal streets subject to Deschutes County Road Department standards.**

**FINDING:** The subject property has access from Holmes Road, a designated rural collector road improved to county standards.

**B. Off street parking subject to DCC 18.116.030.**

**FINDING:** Relevant standards of DCC 18.116.030 are discussed in detail above. Those findings are incorporated herein by reference.

**C. Building and site design provisions, including landscaping, that will effectively screen neighboring uses from noise, glare, odor and other adverse impacts.**

**FINDING:** Staff has previously found that potential adverse externalities from the private park use include noise and traffic impacts. Staff notes that the park site is significantly screened from adjacent properties and finds that there is no evidence that visual impacts would adversely impact neighboring uses. Staff has previously found that, at minimum, noise from amplified music will be reduced to a volume typical of conversational speech before reaching surrounding properties and that the applicant's test sound measurements, in combination with the topographic changes and vegetation, suggest much lower off-site volumes. In addition, a condition of approval requires park events, including all amplified music, to conclude by 10 p.m. Therefore, staff finds that the proposed park would be compatible with surrounding agriculture, rural residential, and open space uses based on the site, design, and operating characteristics of those uses.

**D. Playgrounds, recreation facilities and community centers in the Wildlife Area Combining Zone are subject to the provisions of DCC 18.88.**

**FINDING:** In MA-13-3/CU-13-13, the Hearings Officer found the "playgrounds" and "recreation facilities" prohibited in the WA Zone protecting deer winter ranges are those owned and operated by government agencies and nonprofit organizations, and therefore the applicant's proposal is not subject to that prohibition. Other relevant standards of DCC 18.88 are discussed in detail above. Those findings are incorporated herein by reference.

#### **IV. CONCLUSION:**

The proposed conditional use application can meet the requirements of Title 18 of the Deschutes County Code.

#### **V. DECISION:**

APPROVAL, subject to the following conditions.

**VI. CONDITIONS OF APPROVAL:**

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.
2. The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use.
3. Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
4. All areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties..
5. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
6. Any exterior lighting in association with this project shall comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the Deschutes County Code (DCC).
7. Subsequent use of the property for which this permit is issued is conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.
8. All required parking shall be in place prior to initiation of the use.
9. The private park shall only be open to event participants one weekend day per week beginning on May 15 of each year and ending on October 15, not to exceed 18 days per calendar year. Each event shall last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event shall be enforced by the applicant. Any park use on the property by non-residents shall count as an "event".
10. The land owner shall comply with the current final Wildlife Management Plan (WMP) for the subject property. Where the final WMP for the subject property includes required actions that conflict spatially or temporally with the private park operations, the required actions of that WMP shall take precedence and the operations of the private park shall be curtailed to the extent necessary to allow full compliance with the WMP. Where the final WMP for the subject property includes required actions and the WMP does not specify a completion date or timeline, those actions shall be completed prior to initiation of the private park use. Where the final WMP for the subject property includes ongoing required actions, the private park shall only operate while in compliance with those required ongoing actions.

11. The applicant to provide documentation from the Deschutes County Environmental Soils Division that the septic system is adequate for the proposed park use, prior to the initiation of the use.
12. At minimum, one portable toilet shall be provided per 100 attendees (or fraction thereof) at park events.

**VII. DURATION OF APPROVAL:**

The applicant shall initiate the private park use within two (2) years of the date this decision becomes final, or obtain an extension under Title 22 of the County Code, or this approval shall be void.

**This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.**

**DESCHUTES COUNTY PLANNING DIVISION**



Written by: Will Groves, Senior Planner



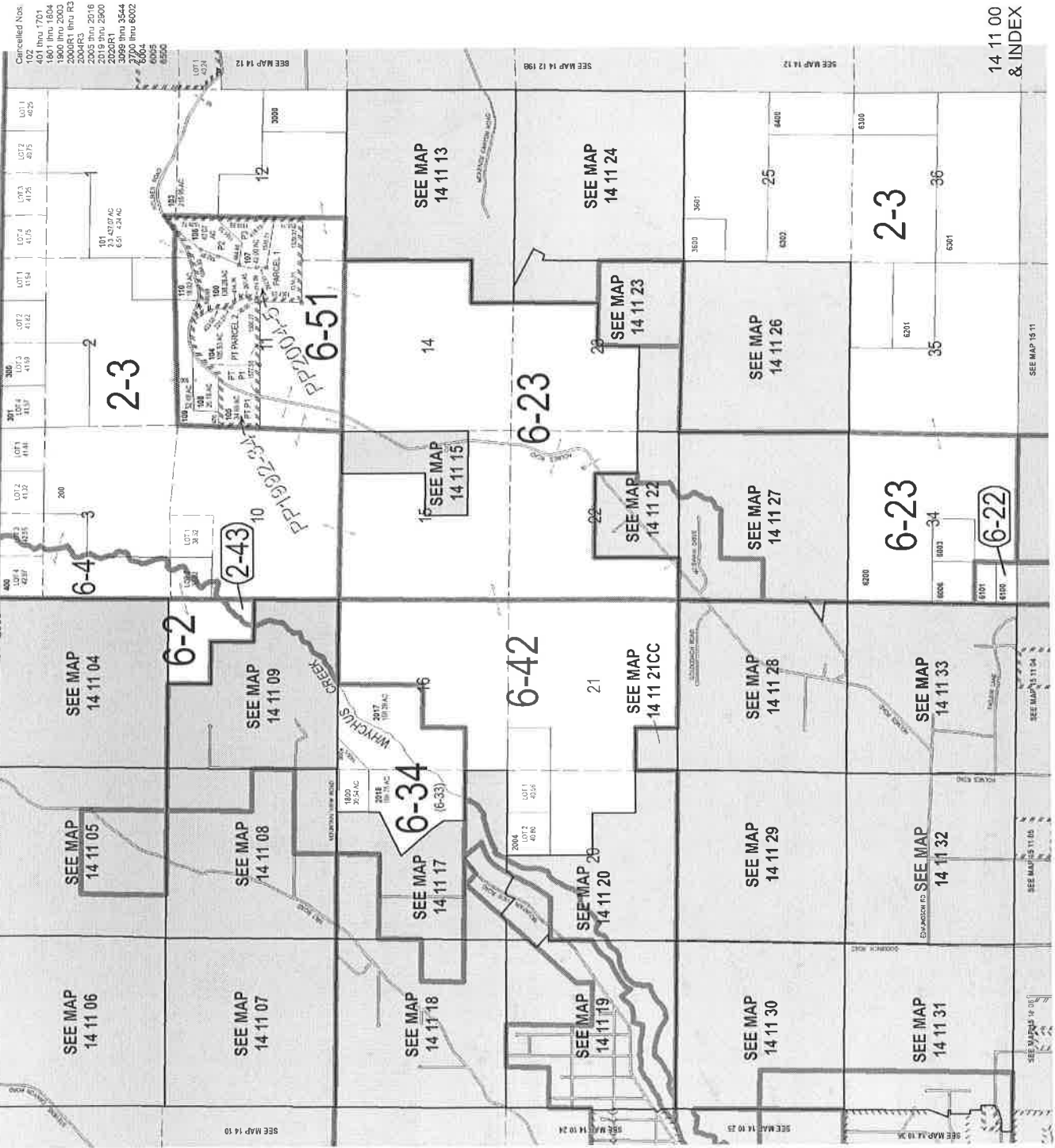
Reviewed by: Peter Gutowsky, Planning Manager

Dated this 3<sup>rd</sup> day of February, 2015

Mailed this 3<sup>rd</sup> day of February, 2015

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

6/24/2014





## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

### NOTICE OF DECISION

The Deschutes County Planning Division has approved the land use application(s) described below:

**FILE NUMBER:** 247-14-000 228-CU and 229-SP

**APPLICANT:** John Shepherd  
71120 Holmes Road  
Sisters, Oregon 97759

**PROPERTY OWNERS:** John and Stephanie Shepherd  
71120 Holmes Road  
Sisters, Oregon 97759

**APPLICANT'S ATTORNEY:** Dave Hunnicutt  
Oregonians in Action  
P.O. Box 230637  
Tigard, Oregon 97281

**REQUEST:** The applicant requests conditional approval to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

**LOCATION:** The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.

**STAFF CONTACT:** Will Groves, Senior Planner

#### **I. APPLICABLE CRITERIA:**

Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance  
Chapter 18.04, Title, Purpose and Definitions  
Chapter 18.16, Exclusive Farm Use  
Chapter 18.88, Wildlife Area Combining Zone  
Chapter 18.116, Supplementary Provisions  
Chapter 18.124, Site Plan Review  
Chapter 18.128, Conditional Use



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

**DECISION:** Staff finds that the application meets applicable criteria, and approval is being granted subject to the following conditions:

**I. CONDITIONS OF APPROVAL:**

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.
2. The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use.
3. Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
4. All areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties..
5. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
6. Any exterior lighting in association with this project shall comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the Deschutes County Code (DCC).
7. Subsequent use of the property for which this permit is issued is conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.
8. All required parking shall be in place prior to initiation of the use.
9. The private park shall only be open to event participants one weekend day per week beginning on May 15 of each year and ending on October 15, not to exceed 18 days per calendar year. Each event shall last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event shall be enforced by the applicant. Any park use on the property by non-residents shall count as an "event".
10. The land owner shall comply with the current final Wildlife Management Plan (WMP) for the subject property. Where the final WMP for the subject property includes required actions that conflict spatially or temporally with the private park operations, the required actions of that WMP shall take precedence and the operations of the private park shall be curtailed to the extent necessary to allow full compliance with the WMP. Where the final WMP for the subject property includes required actions and the WMP does not specify a completion date or timeline, those actions shall be completed prior to initiation

of the private park use. Where the final WMP for the subject property includes ongoing required actions, the private park shall only operate while in compliance with those required ongoing actions.

11. The applicant to provide documentation from the Deschutes County Environmental Soils Division that the septic system is adequate for the proposed park use, prior to the initiation of the use.
12. At minimum, one portable toilet shall be provided per 100 attendees (or fraction thereof) at park events.

**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

**NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

Dated this 3<sup>rd</sup> day of February, 2015

Mailed this 3<sup>rd</sup> day of February, 2015



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

### CERTIFICATE OF MAILING

**FILE NUMBER:** 247-14-000228-CU / 229-SP

**DOCUMENT/S MAILED:** Findings and Decision  
Notice of Decision

**LOOKUP AREA:** 750 Feet

**MAP/TAX LOT NUMBER:** Tax Lot 103 Assessor's Map 14-11

I certify that on the 3<sup>rd</sup> day of February, 2015, the attached notice(s)/report(s), dated February 3, 2015, was/were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

Dated this 3<sup>rd</sup> day of February, 2015.

### COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

John Shepherd 71120 Holmes Road Sisters, Oregon 97759	Dave Hunnicutt Oregonians in Action P.O. Box 230637 Tigard, Oregon 97281
Paul Dewey 1539 NW Vicksburg Ave Bend, OR 97701	Corey Heath Oregon Department Fish and Wildlife 61374 Parrell Road Bend OR 97702
11 Lookups	

ALBERT J BLAYLOCK INSURANCE TRUST	BLAYLOCK, BRANDON A TTEE	327 WHITE OAK SHADE RD	NEW CANAAN, CT 06840
BAKER, GARY T & DIXIE LEE		2015 SE COLUMBIA RIVER DR #320	VANCOUVER, WA 98661
BAKER, GARY T & DIXIE LEE		2015 SE COLUMBIA RIVER DR #320	VANCOUVER, WA 98661
ELISABETH B SPARKS REVOCABLE TRUST	SPARKS, ELISABETH B & STEPHEN M TTEES	8723 PERSIMMON TREE RD	POTOMAC, MD 20854
HOLGER HOLDINGS ELEVEN		4110 MISSION BLVD #200	SAN DIEGO, CA 92109
LAWRENCE, DAVID & CHRISTINE		RT 1 BOX 246	TERREBONNE, OR 97760
LAWRENCE, DAVID & CHRISTINE LHR LTD		70955 NW LOWER BRIDGE WAY	TERREBONNE, OR 97760
PITCHFORK-T RANCH LLC		71105 HOLMES RD	SISTERS, OR 97759
SHEPHERD, JOHN H & STEPHANIE J		71285 HOLMES RD	SISTERS, OR 97759
USA		71120 HOLMES RD	SISTERS, OR 97759



Deschutes County Board of Commissioners  
1300 NW Wall St., Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **BUSINESS MEETING AGENDA**

### **DESCHUTES COUNTY BOARD OF COMMISSIONERS**

**10:00 A.M., MONDAY, MARCH 2, 2015**

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Commissioners' Hearing Room - Administration Building - 1300 NW Wall St., Bend

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#### **1. PLEDGE OF ALLEGIANCE**

#### **2. CITIZEN INPUT**

*This is the time provided for individuals wishing to address the Board, at the Board's discretion, regarding issues that are not already on the agenda. Please complete a sign-up card (provided), and give the card to the Recording Secretary. Use the microphone and clearly state your name when the Board calls on you to speak.*

*PLEASE NOTE: Citizen input regarding matters that are or have been the subject of a public hearing will NOT be included in the official record of that hearing.*

#### **3. PUBLIC HEARING on Shepherd Land Use Application (Private Park) – Will Groves**

*Suggested Actions: Open hearing, take testimony; consider deliberations if appropriate.*

#### **4. ADDITIONS TO THE AGENDA**

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Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please call (541) 388-6572, or send an e-mail to [bonnie.baker@deschutes.org](mailto:bonnie.baker@deschutes.org).

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PLEASE NOTE: At any time during this meeting, an executive session could be called to address issues relating to ORS 192.660(2) (e), real property negotiations; ORS 192.660(2) (h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2) (b), personnel issues; or other executive session items.

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**FUTURE MEETINGS:**

*(Please note: Meeting dates and times are subject to change. All meetings take place in the Board of Commissioners' meeting rooms at 1300 NW Wall St., Bend, unless otherwise indicated. If you have questions regarding a meeting, please call 388-6572.)*

**Monday, March 2**

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

**Wednesday, March 4**

10:00 a.m. Board of Commissioners' Business Meeting

**Wednesday, March 11**

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

**Monday, March 16**

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

**Tuesday, March 17**

10:00 a.m. 911 Executive Board Meeting, **at 911**

**Monday, March 23**

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

**Wednesday, March 25**

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, March 30

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, April 1

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, April 6

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, April 7

3:30 p.m. Public Safety Coordinating Council Meeting

Wednesday, April 8

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, April 20

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, April 20

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Tuesday, April 21

10:00 a.m. 911 Executive Board Meeting, **at 911**

Wednesday, April 22

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Monday, April 25

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

Wednesday, April 27

10:00 a.m. Board of Commissioners' Business Meeting

1:30 p.m. Administrative Work Session – could include executive session(s)

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