



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

**For Board Business Meeting of 2/2/15**

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*Please see directions for completing this document on the next page.*

**DATE:** January 15, 2015

**FROM:** Will Groves                      Community Development Department                      388-6518

**TITLE OF AGENDA ITEM:**

A de novo public hearing on a modification of conditions application (247-14-000401-MC) to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

**PUBLIC HEARING ON THIS DATE?** Yes

**BACKGROUND AND POLICY IMPLICATIONS:**

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) that allowed the siting of a farm-related dwelling more than 300 feet from a public or private road in the Wildlife Area Combining Zone (WA). The administrative approval 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.

A Wildlife Management Plan (WMP) is required because the dwelling was not located near a pre-existing road or driveway in the Metolious Winter Deer Range [see DCC 18.88.060 (B)(1)].

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.

**FISCAL IMPLICATIONS:**

None

**RECOMMENDATION & ACTION REQUESTED:**

Staff recommends that the Board open the public hearing and receive testimony.

**ATTENDANCE:** Will Groves

**DISTRIBUTION OF DOCUMENTS:**

CDD, Legal



## 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:** January 15, 2015

**RE:** A *de novo* public hearing on a modification of conditions application (247-14-000401-MC) to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

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#### Summary

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) that allowed the siting of a farm-related dwelling more than 300 feet from a public or private road in the Wildlife Area Combining Zone (WA). The administrative approval 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.

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)].

#### 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; 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.***

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. Please see the attached notice of appeal for a list of those objections.

**Scheduling**

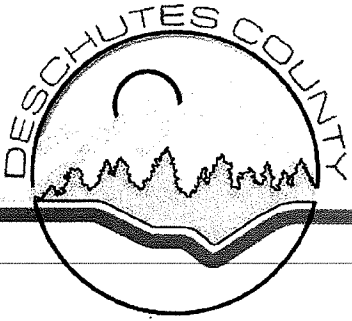
This hearing is scheduled for the Board's morning meeting on February 2, 2015.

Thank you for your consideration of this matter.

**ATTACHMENTS:**

1. Administrative approval of 274-14-000401-MC
2. Central Oregon Landwatch appeal 247-14000454-A

454-A



# Community Development Department

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

## APPEAL APPLICATION

FEE: \_\_\_\_\_

### EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): CENTRAL OREGON LANDWATCH Phone: (541) 429-8455

cl/ PAUL DEWEY, Attorney  
Mailing Address: 1539 NW Vicksburg Ave Bend OR City/State/Zip: BEND OR 97701

Land Use Application Being Appealed: Administrative Decision in File No. 247-14-002401-MC

Property Description: Township 14 Range 11 Section \_\_\_\_\_ Tax Lot 103 7120 Holmes Road

Appellant's Signature: 

**EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

(over)



**APPEAL BY CENTRAL OREGON LANDWATCH OF DESCHUTES COUNTY  
COMMUNITY DEVELOPMENT DEPARTMENT FINDINGS AND DECISION IN FILE  
NO. 247-14-000401-MC (SHEPHERD APPLICATION)**

**NOTICE OF APPEAL**

Central Oregon LandWatch is appealing the Community Development Department's December 18, 2014, decision on File No. 247-14-000401-MC. We want to make clear that we are not opposing a modification of the originally approved wildlife management plan that would make the plan more effective. Also, we appreciate the additional detail provided by the Staff in its proposed conditions of approval.

However, there are still some important ways in which provisions of the proposed wildlife management plan and conditions of approval need to be made more specific to provide the equal or greater protection of habitat values required by DCC 18.88.060(B)(1) (for not siting a dwelling within 300 feet of public roads).

1. Condition #3 requires that a 500' vegetative buffer shall be maintained around the existing house to provide visual screening and forage opportunities for deer. Various tree species are mentioned, but there is no explanation whether this condition requires something other than what is already there. The original plan required the Applicant to plant such a buffer zone, along with a plot of pine trees around 300' to make a larger buffer. Was that done?<sup>1</sup>

2. Condition #4 prescribes thinning of juniper but defers until 30 days after the decision an identification of the juniper thinning areas. It also provides a total thinning area of not less than 25 acres (on scab rock flats) and that the smallest 90% of existing juniper trees will be cut in the thinning areas. Remaining juniper outside the thinned areas will be retained in a natural state to provide cover patches for deer.

The location of the areas to be thinned should be made before a final decision so the public can comment on it. On the original plan, where thinning juniper was also proposed, ODFW specified that the only thinning should be of young trees less than 10 years old. It is not clear that cutting "the smallest 90%" preserves the old juniper that is apparently important for cover. It also isn't clear what are "scab rock flats" or "rock scabble areas," where they are located, and how many juniper acres have already been thinned (and how) under the original plan.

3. Conditions #7 and #8 call for improving forage for deer by reseeding thinned areas with bitterbrush and other brushes and grasses. Though reseeding is to be completed within two years and additional reseeding is to be done within one year after that if the original seeding didn't work, there is no condition requiring that any reseeding actually take hold and provide anticipated forage. Just as the vegetative buffer "shall be maintained at all times," there should be a requirement that the reseeding has actually worked and is providing the anticipated forage at all times, not just that the reseeding was done and redone once.

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<sup>1</sup> One of the difficulties in assessing the wildlife management plan and the conditions of approval is the lack of a description of what was done or not done under the original wildlife management plan.

The original plan said irrigation water would be used to promote natural grasses. Was that done and will it be done?

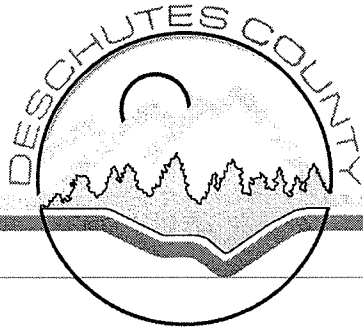
4. The Staff Decision states that the extent of the forage competition “is not a function of the location of the dwelling and thus no restrictions on grazing are required.” That is not correct, where DCC 18.88.050 does not require that improved habitat values must be a function of the location of the dwelling. What is the point of providing more forage if measures aren’t taken to protect it so that it can actually be used by deer? The original wildlife plan called for restrictions on numbers of cattle and time of grazing.

Also, the Applicant’s proposed wildlife management plan included this provision:

“6. The farm and cattle operation would be limited in scope and size so as not to overgraze the native vegetation. See the proposed farm management plan for details.”

It is not clear what that now means, though, since the Applicant withdrew its proposed farm management plan.

5. Another essential assumption of the first wildlife management plan is that “there would be very little vehicular usage of the access driveway” and that human activities will be limited. That should also be clearly stated in the decision on the proposed new wildlife management plan.



## Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925

(541)388-6575 FAX (541)385-1764

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

### FINDINGS AND DECISION

- FILE NUMBER:** 247-14-000401-MC
- APPLICANTS/OWNERS:** John and Stephanie Shepherd  
71120 Holmes Road  
Sisters, OR 97759
- APPLICANT'S ATTORNEY:** Dave Hunnicutt  
Oregonians in Action  
P.O. Box 230637  
Tigard, OR 97281
- REQUEST:** The applicant requests a modification of conditions to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.
- 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

### STANDARDS AND 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 18.128, Conditional Use

Title 22 of the Deschutes County Code, the Development Procedures Ordinance  
Chapter 22.36, Limitations on Approvals

### 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 for the Metolious Winter Deer Range. The property is designated Agriculture on the Deschutes County Comprehensive Plan Map.
- D. **PROPOSAL:** The applicant has proposed to modify an existing conditional use that allowed a farm-related dwelling on the subject property and the siting of the dwelling more than 300 feet from a public or private road in the WA Zone (CU-00-65). That approval included a modification of application (MA-01-9) to change the farm management plan and to move the dwelling location.

In this application, the applicant proposes to wholly replace the previous wildlife management plan with the plan submitted with the application materials and incorporated herein by reference.

Staff notes that the original application materials in this case included a request to also modify the existing farm management plan. Modification of the farm management plan was removed from the present proposal by an email from the applicant dated December 5, 2014.

Staff notes that the applicant has also applied for conditional use and site plan review (247-14-000228-CU and 229-SP) for a private park on the subject property. This decision is specific to the modification of the existing dwelling approval and does not include any analysis or findings relating to the suitability of the subject property for use as a park nor does it include any analysis of potential wildlife impacts that might occur under that use.

- D. **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.
- E. **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 lands to the north along Holmes Road are 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.

F. **PUBLIC COMMENTS:** Notice of this application was provided to all property owners within 750 feet of the property. One public comment was received and is incorporated herein by reference. The public comment letter expressed concerns regarding the specificity and enforceability of the proposed wildlife plan. Staff addresses these issues in detail below.

G. **REVIEW PERIOD:** This application was submitted on November 18, 2014. The application was deemed complete by the Planning Division on December 12, 2014.

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

Oregon Department of Fish and Wildlife: I believe the new proposed Wildlife Management Plan would meet the requirements of [18.88.060]B(1).

The following agencies did not respond or had no comments: Cloverdale Fire Department, Three Sisters Irrigation District, Deschutes County Environmental Solis Division, Deschutes County Assessor, Deschutes County Code Enforcement, Oregon Department of Agriculture.

I. **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.

The applicant has applied for conditional use and site plan review (247-14-000228-CU and 229-SP) for a private park on the approximately 216 acre subject property. The purpose of the private park would be to host weddings, wedding receptions, family reunions, fundraisers, and charity balls. As of the writing of this decision, this application was in incomplete status.

### III. **CONCLUSIONARY FINDINGS:**

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

##### **A. Chapter 22.36, LIMITATIONS ON APPROVALS**

1. Section 22.36.040. Modification of Approval.

- A. ***An applicant may apply to modify an approval at any time after a period of six months has elapsed from the time a land use action approval has become final.***

**FINDING:** The applicant has requested a Modification of Approval to alter the wildlife management plan (WMP) included in the dwelling approval granted under County File Nos. CU-00-65 and MA-01-9. More than six months have elapsed since those approvals became final in 2001.

- B. ***Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.***

**FINDING:** The existing wildlife management plan was developed by the applicant's predecessor and, to date, several requirements in the 2001 WMP were not completed. In addition, several requirements were identified by ODWF on a September 25, 2014 site visit as "not practical to implement". A review by ODWF and the applicant's biologist, Ray Romero, has identified the shortcomings in both clarity and habitat enhancement of the existing WMP and potential advantages to wildlife and wildlife habitat of a modified WMP. Staff finds that this new analysis represents a change of circumstances since the issuance of the existing approval and makes it desirable to make changes to the WMP.

Staff finds that an alteration to the WMP would only change the specific actions required for the approved dwelling to comply with DCC 18.88.060(B)(1). Therefore, this modification request is not a new application for a substantially new proposal.

Both the existing and proposed new WMP include management actions to be taken on the interior of the 216 acre subject property. Therefore, Staff finds that this modification request is not an application that would have significant additional impacts (odor, dust, glare, flashing lights, noise, visual impacts, smoke, or vibrations) on surrounding properties.

- C. ***An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.***

**FINDING:** The proposed modification is addressed only to a discrete aspect of the approval, specifically, the actions identified in the WMP for the approved dwelling to comply with DCC 18.88.060(B)(1). Staff finds that all proposed actions, detailed below, will be located in the interior of the property and will not have significant additional impacts (odor, dust, glare, flashing

lights, noise, visual impacts, smoke, or vibrations) on surrounding properties, when compared with the existing WMP.

Public comment has identified compatibility between the farm management plan (FMP) and proposed WMP as an area of concern. Staff finds that this criterion requires that the proposed modification be reviewed only under the criteria applicable to the particular aspect of the proposal being modified. Specifically, Staff finds that the criteria applicable to the proposed WMP changes are the relevant provisions of DCC 18.88.060(B)(1) identified below.

However, Staff also finds that a modification directed at one discreet aspect of the proposal may impact the ability of the property owner to undertake actions that were proposed and required to address compliance with other criteria. Specifically, a modification of the WMP that made it impossible to complete the actions in the farm management plan (FMP) could not be approved. Therefore, criteria related to the FMP and a finding that the WMP is compatible with the FMP is included below.

Again, the proposed modification is addressed only to a discrete aspect of the approval, specifically, the actions identified in the WMP for the approved dwelling to comply with DCC 18.88.060(B)(1). Therefore, Staff finds that the proposed changes in required actions under the WMP would not modify the existing approval in a scope greater than allowable as a modification.

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

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

1. Section 18.16.025. Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 or DCC Section 18.16.042 and a Review Under DCC Chapter 18.124 where applicable.

**A. *Dwellings customarily provided in conjunction with farm use (farm-related dwellings), subject to DCC 18.16.050.***

**FINDING:** The existing house was approved as dwelling customarily provided in conjunction with farm use. The findings that the dwelling complied with all applicable criteria were, in part, based on findings made under Section 18.16.067, Farm management plans. As discussed above, a modification of the WMP that made it impossible to complete the actions in the farm management plan (FMP) could not be approved. Therefore, criteria related to the FMP and a finding that the WMP is compatible with the FMP is included below.

2. Section 18.16.067, Farm management plans.

**A. *Contents. A farm management plan shall consist of the following components:***

1. ***A written description of existing and/or proposed farm uses, including type of crops or livestock, size and location of areas for each use, and land or soil preparations required.***

**FINDING:** In CU-00-65/MA-01-9 the following findings were made under this criterion:

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 none of the proposed changes to the WMP, as conditioned below, would preclude the property owner from undertaking the actions described in the FMP, as approved in CU-00-65/MA-01-9. A public comment has expressed concern that the actions described in the FMP may not have been undertaken. Staff finds that the provisions governing a modification of approval do not require that the FMP actions be completed. As noted above, staff addresses the FMP to the extent that the modified WMP would affect the FMP.

2. ***An assessment of the soils, climate and irrigation on the parcel demonstrating that the parcel is suitable for the current or proposed use outlined in DCC 18.16.067(A)(1).***
3. ***A business plan, including a demonstration that markets exist for the product; estimates of gross sales or actual gross sales figures; estimated or actual figures concerning necessary expenditures; and a list of capital expenditures incurred or projected to be incurred in establishing the farm use on the parcel.***
4. ***A written description of the farm uses in the area, including acreage, size and type of crop or livestock raised showing that the proposed plan is representative of similar farm uses, if any, in the area and will not conflict with the existing agriculture types.***
5. ***For farm uses not currently practiced in the area, an analysis showing that the plan is representative of the type of agriculture proposed.***

**FINDING:** Staff finds that the proposed modification does not impact prior findings of compliance with these criteria.

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

1. 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; or,***

**FINDING:** 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:

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.

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 applicant has proposed to wholly replace the Wildlife Management (Habitat) Plan approved under CU-00-65/MA-01-9 with the following measures intended to ensure that habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern (location of the dwelling beyond 300 feet from pre-existing public roads):

1. A buffer would be maintained around the existing house. This buffer would consist of various screening trees, including Junipers and Aspen, various shrubs, a large wildflower garden which provides both a visual buffer as well as a habitat for small animals, birds and insects and a large lawn which provides forage and hydration for lactating deer in the fall and winter, as well as forage for rodents which provide food for raptors and carnivores.
2. The Juniper forest would be thinned to promote the return of native bunch grasses, bitter brush and other native vegetation useful to wildlife. Such thinning has been found to also restore natural spring runs.
3. Several areas (at least 25 acres) in the Juniper forest would be cleared to create deer enhancement zones, as per the suggestion of Corey Heath, ODFW Wildlife Biologist. These areas would be located on the sparsely wooded rock scabble areas. In these areas, the small and medium size Juniper trees would be cut down and a sufficient amount of the slash would be piled to provide shelter for rodents and ground birds. The large trees would remain. These zones will provide enhanced winter forage for the large game.
4. No trees will be limbed or removed along the driveway into the homesite, so that a visual buffer remains for wildlife.
5. In the fall following the clearing of the rock scabble areas, native species of vegetation (a mix of bitterbrush, buckwheat, and Sandbergs bluegrass) shall be planted in the cleared areas. Three years after the planting, Deschutes County



staff will schedule a site visit and inspection to ensure that the juniper has been cleared and the rock scabble areas have been seeded.

6. The farm and cattle operation would be limited in scope and size so as to not overgraze the native vegetation. See the proposed farm management plan for details.

In an email dated November 26, 2014, Corey Heath, District Wildlife Biologist for the Deschutes Wildlife District of the Oregon Department of Fish and Wildlife stated that this new proposed Wildlife Management Plan would meet the requirements of B(1).

Paul Dewey of Central Oregon Landwatch, in a letter dated December 9, 2014, comments that the new WMP is "too vague to be enforceable" with several specific examples, incorporated herein by reference. Staff concurs. If any of these provisions are to be meaningfully enforceable by the County as conditions of approval and achieve the goals of this criterion they need to specify:

- Why is this measure being recommended and state the objective of the measure.
- What action or actions must be completed and how will it be implemented, including:
  - Identification of the measure.
  - Description of the steps necessary to complete the measure.
  - Identification of measurable performance standards by which the success of the action can be determined.
  - Provide for contingent mitigation if monitoring reveals that success standards are not satisfied.
- Who is responsible for implementing the actions required by the measure.
- Where is the action to take place.
- When must each action must be implemented
- Who will monitor the actions and how and when monitoring will occur.

To ensure the development of the property will afford equal or greater protection of habitat values and migration corridors staff imposes the following conditions of approval:

1. A vegetative buffer shall be maintained by the property owner at all times around the existing house to provide visual screening and forage opportunities for deer. This buffer shall consist of various screening trees, including Junipers and Aspen, various shrubs, garden and lawn, all located within 500 feet of the dwelling and as configured in the record figure labeled "Google Maps Aerial Photo - 2014". This vegetation shall be maintained, kept alive, or be replaced in-kind within one year in the event of disease or death of the vegetation.
2. To promote the return of native bunch grasses, bitter brush and other native vegetation useful to deer on the subject property, the property owner shall thin the existing juniper trees on the property as follows:

- a. Within 30 days of this decision becoming final, the property owner shall provide Deschutes County with a to-scale figure, based on an aerial photo, identifying juniper thinning areas on the property.
  - b. Juniper thinning areas shall each be comprised of contiguous area of no less than 1 acre and include a total area of no less than 25 acres.
  - c. Juniper thinning areas shall be located on scab rock flats.
  - d. Prior to commencing thinning of juniper trees, the property owner shall provide to Deschutes County written documentation that ODFW has reviewed and approved of the juniper thinning areas, including the number, size and location of the trees.
  - e. In juniper thinning areas, the property owner shall cut down the smallest 90 percent of existing juniper trees with hand chainsaws. A count of cut and retained trees shall be taken and reported to ODFW and Deschutes County.
  - f. Cut down juniper trees shall be hand piled and left on site.
  - g. All required juniper thinning shall be completed within 1 year of this decision becoming final, or June 15, 2015, whichever date is later.
4. The remaining juniper, outside of thinned areas, will be retained in a natural state (not limbed) as cover patches for deer. No juniper trees will be limbed or removed within 100 feet of the existing driveway, so that a visual buffer remains for deer.
  5. To verify that juniper removal activity has taken place, the property owner shall request in writing a site visit from Deschutes County and ODFW within 1 year of this decision becoming final, or June 15, 2015, whichever date is later.
  6. To improve forage for deer, in the year following required juniper thinning, the property owner shall reseed the thinned areas as follows:
    - a. The property owner shall reseed the thinned areas with a mix of bitterbrush, buckwheat, and Sandbergs bluegrass at a minimum density of 5 pounds of seed per acre in the fall or spring. Alternative planting species or seed density may be used with the prior written consent of ODFW.
    - b. All reseeding shall be completed within 2 years of this decision becoming final, or June 15, 2017, whichever date is later.
  7. To verify that the reseeding activity has succeeded, the property owner shall request in writing a site visit from Deschutes County and ODFW within 3 years of this decision becoming final. Additional application of seed to the thinned areas shall be required where deemed necessary at the sole discretion of ODFW and shall be completed by the property owner within one year of notice from Deschutes County or ODFW that reseeding is required.

Both the original WMP and the proposed new WMP include provisions to limit livestock grazing on the property. This is because livestock grazing on the property could compete with the deer for natural forage. Staff finds that livestock grazing is allowed outright in the EFU and WA zones and the extent of that forage competition is not a function of the location of the dwelling. Therefore, Staff does not include any restrictions on grazing of the property as a condition of approval.

**V. CONCLUSION:**

Based on the foregoing Basic and Conclusionary Findings, Staff concludes that the proposed project can meet all applicable criteria for approval. **Other permits may be required. The applicant is responsible for obtaining any necessary permits from the Deschutes County Building Division, the Deschutes County Environmental Soils Division and the Deschutes County Road Department, as well as any required state and federal permits.**

**VI. DECISION:**

APPROVAL, subject to the following conditions of approval

**VII. CONDITIONS OF APPROVAL:**

1. This approval is based upon the information submitted by the applicant. Any substantial change will require a new application.
2. Condition of approval #3 of CU-00-65/MA-01-9 is removed and replaced by the following conditions of approval.
3. A vegetative buffer shall be maintained by the property owner at all times around the existing house to provide visual screening and forage opportunities for deer. This buffer shall consist of various screening trees, including Junipers and Aspen, various shrubs, garden and lawn, all located within 500 feet of the dwelling and as configured in the record figure labeled "Google Maps Aerial Photo - 2014". This vegetation shall be maintained, kept alive, or be replaced in-kind within one year in the event of disease or death of the vegetation.
4. To promote the return of native bunch grasses, bitter brush and other native vegetation useful to deer on the subject property, the property owner shall thin the existing juniper trees on the property as follows:
  - a. Within 30 days of this decision becoming final, the property owner shall provide Deschutes County with a to-scale figure, based on an aerial photo, identifying juniper thinning areas on the property.
  - b. Juniper thinning areas shall each be comprised of contiguous area of no less than 1 acre and include a total area of no less than 25 acres.
  - c. Juniper thinning areas shall be located on scab rock flats.
  - d. Prior to commencing thinning of juniper trees, the property owner shall provide to Deschutes County written documentation that ODFW has reviewed and approved of the juniper thinning areas, including the number, size and location of the trees.
  - e. In juniper thinning areas, the property owner shall cut down the smallest 90 percent of existing juniper trees with hand chainsaws. A count of cut and retained trees shall be taken.
  - f. Cut down juniper trees shall be hand piled and left on site.
  - g. All required juniper thinning shall be completed within 1 year of this decision becoming final, or June 15, 2015, whichever date is later.

5. The remaining juniper, outside of thinned areas, will be retained in a natural state (not limbed) as cover patches for deer. No juniper trees will be limbed or removed within 100 feet of the existing driveway, so that a visual buffer remains for deer.
6. To verify that juniper removal activity has taken place, the property owner shall request in writing a site visit from Deschutes County and ODFW within 1 year of this decision becoming final, or June 15, 2015, whichever date is later.
7. To improve forage for deer, in the year following required juniper thinning, the property owner shall reseed the thinned areas as follows:
  - a. The property owner shall reseed the thinned areas with a mix of bitterbrush, buckwheat, and Sandbergs bluegrass at a minimum density of 5 pounds of seed per acre in the fall or spring. Alternative planting species or seed density may be used with the prior written consent of ODFW.
  - b. All reseeding shall be completed within 2 years of this decision becoming final, or June 15, 2017, whichever date is later.
8. To verify that the reseeding activity has succeeded, the property owner shall request in writing a site visit from Deschutes County and ODFW within 3 years of this decision becoming final. Additional application of seed to the thinned areas shall be required where deemed necessary at the sole discretion of ODFW and shall be completed by the property owner within one year of notice from Deschutes County or ODFW that reseeding is required.

**VIII. DURATION OF APPROVAL:**

**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 18<sup>th</sup> day of December, 2014

Mailed this 18<sup>th</sup> day of December, 2014

SEE MAP  
14 11 08

SEE MAP  
14 11 09

(Z-43)

PT PARCEL 2  
P1  
34.69 AC  
PT P1  
1577.50  
1300.27  
1307.96  
PP-1997-33  
PP-2004-50  
6-51

MOUNTAIN VIEW ROAD

1800  
39.54 AC

2018  
169.75 AC

2017  
150.39 AC

WHYCHUS CREEK

6-34  
(6-33)

SEE MAP  
14 11 17

16

SEE MAP  
14 11 15

15

14

6-42

2004

LOT 2  
40.80

LOT 1  
40.56

SEE MAP  
14 11 20

20

21

SEE MAP  
14 11 21CC

6-23

SEE MAP  
14 11 22

22

SEE MAP  
14 11 2

23

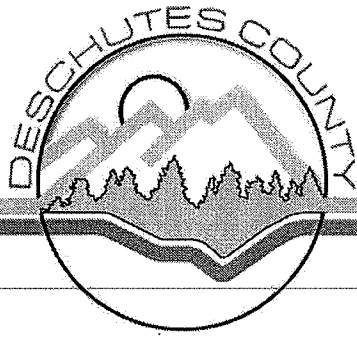
WLT ROAD

MOUNTAIN VIEW ROAD

HOLMES ROAD

GOLDCOACH ROAD

NCSWAIN DRIVE



## 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:** 247-14-000401-MC

**APPLICANTS/OWNERS:** John and Stephanie Shepherd  
71120 Holmes Road  
Sisters, OR 97759

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

**REQUEST:** The applicant requests a modification of conditions to change the wildlife management plan approved for the subject property under County File Nos. CU-00-65 and MA-01-9.

**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

#### STANDARDS AND 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 18.128, Conditional Use

Title 22 of the Deschutes County Code, the Development Procedures Ordinance  
Chapter 22.36, Limitations on Approvals

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

**I. CONDITIONS OF APPROVAL:**

1. This approval is based upon the information submitted by the applicant. Any substantial change will require a new application.
2. Condition of approval #3 of CU-00-65/MA-01-9 is removed and replaced by the following conditions of approval.
3. A vegetative buffer shall be maintained by the property owner at all times around the existing house to provide visual screening and forage opportunities for deer. This buffer shall consist of various screening trees, including Junipers and Aspen, various shrubs, garden and lawn, all located within 500 feet of the dwelling and as configured in the record figure labeled "Google Maps Aerial Photo - 2014". This vegetation shall be maintained, kept alive, or be replaced in-kind within one year in the event of disease or death of the vegetation.
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per acre in the fall or spring. Alternative planting species or seed density may be used with the prior written consent of ODFW.

- b. All reseeding shall be completed within 2 years of this decision becoming final, or June 15, 2017, whichever date is later.
- 
8. To verify that the reseeding activity has succeeded, the property owner shall request in writing a site visit from Deschutes County and ODFW within 3 years of this decision becoming final. Additional application of seed to the thinned areas shall be required where deemed necessary at the sole discretion of ODFW and shall be completed by the property owner within one year of notice from Deschutes County or ODFW that reseeding is required.

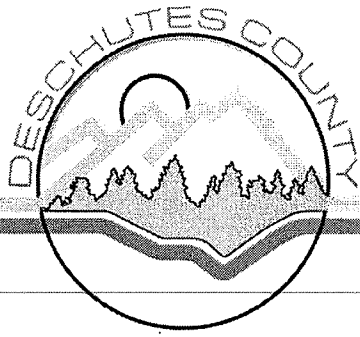
**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings 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 18<sup>th</sup> day of December, 2014      Mailed this 18<sup>th</sup> day of December, 2014





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

## CERTIFICATE OF MAILING

**FILE NUMBER:** 247-14-000401-MC

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

**LOOKUP AREA:** 750 Feet

**MAP/TAX LOT NUMBER:** 14-11 Tax Lot 103

I certify that on the 18<sup>th</sup> day of December, 2014, the attached notice(s)/report(s), dated December 18, 2014, was/were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

Dated this 18<sup>th</sup> day of December, 2014.

## COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

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

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		70955 NW LOWER BRIDGE WAY	TERREBONNE, OR 97760
LHR LTD		71105 HOLMES RD	SISTERS, OR 97759
PITCHFORK-T RANCH LLC		71285 HOLMES RD	SISTERS, OR 97759
SHEPHERD, JOHN H & STEPHANIE J		71120 HOLMES RD	SISTERS, OR 97759
USA			