DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS:	247-14-000246-CU, 247-14-000247-TP
APPLICANT:	The Tree Farm LLC 409 N.W. Franklin Avenue Bend, Oregon 97701
PROPERTY OWNER:	Miller Tree Farm 110 N.E. Greenwood Avenue Bend, Oregon 97701
APPLICANT'S ATTORNEY:	Jeffrey G. Condit - Miller Nash LLP 111 S.W. 5th Avenue, Suite 3400 Portland, Oregon 97204
OPPONENTS' ATTORNEYS:	Myles A. Conway - Marten Law 404 S.W. Columbia Street, Suite 212 Bend, Oregon 97702 Attorney for Rio Lobo Investments Paul Dewey - Central Oregon LandWatch 50 S.W. Bond Street, Ste. 4 Bend, Oregon 97702 Attorney for Central Oregon LandWatch
REQUEST:	The applicant requests conditional use, tentative plan and site plan approval for a ten-lot cluster/planned unit development (PUD) on a 106.9-acre parcel in the UAR-10, RR-10 and WA Zones north of Skyliners Road and west of Skyline Ranch Road on the west side of Bend. **This proposal is identified as "Tree Farm 3."** It is part of a proposed 50-lot cluster/PUD on five contiguous legal lots totaling approximately 533 acres, identified as "The Tree Farm." The applicant submitted four other applications for The Tree Farm (Tree Farms 1, 2, 4 and 5), with the following file numbers: Tree Farm 1: 247-14-000242-CU, 247-14-000243-TP Tree Farm 2: 247-14-000244-CU, 247-14-000245-TP Tree Farm 4: 247-14-000248-CU, 247-14-000249-TP Tree Farm 5: 247-14-000250-CU, 247-14-000251-TP.
STAFF REVIEWER:	Anthony Raguine, Senior Planner
HEARING DATES:	November 6 and 20, 2014
RECORD CLOSED:	January 13, 2015

I. APPLICABLE STANDARDS AND CRITERIA:

A. Title 17 of the Deschutes County Code, the Subdivision/Partition Ordinance:

1. Chapter 17.08, Definitions and Interpretation of Language

   * Section 17.08.030, Definitions Generally

2. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans

   * Section 17.16.100, Required Findings for Approval
   * Section 17.16.105, Access to Subdivisions
   * Section 17.16.115, Traffic Impact Studies

3. Chapter 17.36, Design Standards

   * Section 17.36.020, Streets
   * Section 17.36.040, Existing Streets
   * Section 17.36.050, Continuation of Streets
   * Section 17.36.060, Minimum Right-of-Way and Roadway Width
   * Section 17.36.070, Future Resubdivision
   * Section 17.36.080, Future Extension of Streets
   * Section 17.36.100, Frontage Roads
   * Section 17.36.110, Streets Adjacent to Railroads, Freeways and Parkways
   * Section 17.36.120, Street Names
   * Section 17.36.130, Sidewalks
   * Section 17.36.140, Bicycle, Pedestrian and Transit Requirements
   * Section 17.36.150, Blocks
   * Section 17.36.160, Easements
   * Section 17.36.170, Lots – Size and Shape
   * Section 17.36.180, Frontage
   * Section 17.36.190, Through Lots
   * Section 17.36.200, Corner Lots
   * Section 17.36.210, Solar Access Performance
   * Section 17.36.220, Underground Facilities
   * Section 17.36.260, Fire Hazards
   * Section 17.36.280, Water and Sewer Lines
   * Section 17.36.290, Individual Wells
   * Section 17.36.300, Public Water System

4. Chapter 17.44, Park Development

   * Section 17.44.010, Dedication of Land
   * Section 17.44.020, Fee in Lieu of Dedication

5. Chapter 17.48, Design and Construction Specifications

   * Section 17.48.140, Bikeways
   * Section 17.48.160, Road Development Requirements – Standards

* Section 17.48.180, Private Roads
* Section 17.48.190, Drainage

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

1. Chapter 18.04, Title, Purpose and Definitions

* Section 18.04.030, Definitions

2. Chapter 18.60, Rural Residential Zone – RR-10

* Section 18.60.030, Conditional Uses Permitted
* Section 18.60.060, Dimensional Standards

3. Chapter 18.88, Wildlife Area Combining Zone – WA

* Section 18.88.010, Purpose
* Section 18.88.020, Application of Provisions
* Section 18.88.040, Uses Permitted Conditionally
* Section 18.88.050, Dimensional Standards
* Section 18.88.060, Siting Standards
* Section 18.88.070, Fence Standards

4. Chapter 18.128, Conditional Uses

* Section 18.128.015, General Standards Governing Conditional Uses
* Section 18.128.040, Specific Use Standards
* Section 18.128.200, Cluster Development (Single-Family Residential Uses Only)
* Section 18.128.210, Planned Development

C. Title 19 of the Deschutes County Code, the Bend Urban Area Zoning Ordinance

1. Chapter 19.12, Urban Area Reserve Zone – UAR-10

* Section 19.12.030, Conditional Uses
* Section 19.12.040, Height Requirements
* Section 19.12.050, Lot Requirements

2. Chapter 19.76, Site Plan Review

* Section 19.76.070, Site Plan Criteria
* Section 19.76.080, Required Minimum Standards

3. Chapter 19.100, Conditional Use Permits

* Section 19.100.030, General Conditional Use Criteria

4. Chapter 19.104, Planned Unit Development Approval

* Section 19.104.010, Purpose
* Section 19.104.040, Minimum Size for Planned Unit Developments
* Section 19.104.070, Standards for Approval
* Section 19.014.080, Standards and Requirements

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

1. Chapter 22.04, Introduction and Definitions

* Section 22.04.020, Definitions

2. Chapter 22.08, General Provisions

* Section 22.08.020, Acceptance of Application
* Section 22.08.030, Incomplete Applications
* Section 22.08.030, False Statements on Application and Supporting Documents
* Section 22.08.070, Time Computation

3. Chapter 22.20, Review of Land Use Action Applications

* Section 22.20.055, Modification of Application

4. Chapter 22.24, Land Use Action Hearings

* Section 22.24.140, Continuances and Record Extensions

E. Deschutes County Comprehensive Plan

1. Chapter 2, Resource Management

F. Bend Area General Plan

1. Chapter 5, Housing and Residential Lands

G. Oregon Administrative Rules (OAR) Chapter 660, Land Conservation and Development Commission

1. Division 4, Goal 2 Exceptions Process

* OAR 660-004-0040(7), Application of Goal 14 (Urbanization) to Rural Residential Areas

2. Division 11, Public Facilities Planning

* OAR 660-011-0065, Water Service to Rural Lands

II. FINDINGS OF FACT:

A. Location: The Tree Farm including Tree Farm 3 has an assigned address of 18900 Skyliners Road, Bend. The Tree Farm consists of Tax Lots 6202, 6205, 6207, 6208, 6209, 6210, 6211 and 6213 on Deschutes County Assessor's Map 17-11.

B. Zoning and Plan Designation: The western approximately 393 acres of The Tree Farm are zoned Rural Residential (RR-10) and Wildlife Area Combining Zone (WA) associated with the Tumalo Deer Winter Range, and are designated Rural Residential Exception Area (RREA) on the Deschutes County Comprehensive Plan map. The eastern approximately 140 acres of The Tree Farm are zoned Urban Area Reserve (UAR-10) and are designated Urban Area Reserve (UAR) on the Bend Area General Plan map. Tree Farm 3 is zoned UAR-10, RR-10 and WA and is designated UAR and RREA.

C. Site Description: The Tree Farm, of which the proposed Tree Farm 3 is a part, is approximately 533 acres in size, irregular in shape, vacant, and with varying topography. The dominant topographical feature of The Tree Farm property is a ridge running from southwest to northeast forming the southeast rim of Tumalo Creek Canyon. The top of this ridge is generally flat to rolling, with steeper slopes in the northwest where it drops off toward Tumalo Creek, and also on the southeast-facing slopes in the middle of the property. There are views of the Cascade Mountains from the western part of this central ridge and views of Bend from the southeast side of the central ridge. The property has scattered rock outcrops. Elevation ranges from approximately 3,700 feet above mean sea level (AMSL) on the east side of the property to approximately 4,000 feet AMSL in the center of the property. The western part of the property drains west to Tumalo Creek; the eastern part drains east to the Deschutes River.[1]

The western portion of The Tree Farm is covered with a mature forest consisting of ponderosa pine and western juniper trees and native brush and grasses. The record indicates The Tree Farm property has been managed for timber production. The applicant's burden of proof states, and the Hearings Officer's site visit observations confirmed, that there is very little old growth timber on The Tree Farm. Much of the eastern part of The Tree Farm is covered with sage-steppe vegetation and few trees. This part of the property was burned in the 1990 Awbrey Hall Fire. Portions of the burned area have been replanted with trees, although my site visit observations confirmed these trees are too small to be harvested. The property is traversed by dirt roads that were part of a logging road network. These roads can be seen on aerial photographs included in the record and I observed them during my site visit. The applicant proposes to obliterate much of this dirt road network and to revegetate the old road beds. The property has wire fencing, most of which would be removed.

Tree Farm 3 is 106.9 acres in size and is in the middle of The Tree Farm. It abuts Tree Farm 2 on the east, Skyliners Road on the south, Tree Farms 4 and 5 on the west, and undeveloped UAR-10 zoned property on the north.

D. Surrounding Zoning and Land Uses:

[1] The Tree Farm topography is described in detail in the Hearings Officer's site visit report dated December 8, 2014, and included in the record.

West. Abutting The Tree Farm on the west is Shevlin Park, a 652-acre regional park consisting of open space, an extensive trail network, and some developed amenities. Shevlin Park is owned and managed by the Bend Metropolitan Park and Recreation District (park district), and is zoned Open Space and Conservation (OS&C). Near the southwest corner of the subject property is the City of Bend's Outback Water Facility, consisting of groundwater wells, pumps, above-ground water storage facilities, and water pipes conveying water into the city. Existing utility poles and overhead lines run along the north side of Skyliners Road to serve this facility. To the west and southwest across Skyliners Road is public forest land zoned Forest Use (F-1) and managed by the USFS as part of the Deschutes National Forest (DNF). West of Shevlin Park is private forest land zoned F-1. As of the date the record in this matter closed, the largest part of this private forest land, approximately 33,000 acres in multiple tax lots, was owned and managed by Cascade Timberlands Oregon LLC (Cascade Timberlands). Other private forest-zoned parcels to the northwest of Shevlin Park are much smaller.

North. To the north of The Tree Farm is a 376-acre tract of vacant land zoned UAR-10 and owned by Rio Lobo Investments LLC (Rio Lobo).

East. To the east are Tree Farms 1 and 2 and vacant land owned by Miller Tree Farm and zoned UAR-10. Farther east are three public schools within the Bend-LaPine School District (school district) – Miller Elementary School, Pacific Crest Middle School (under construction), and Summit High School. The schools are located within the Bend Urban Growth Boundary (UGB) and city limits and are zoned Public Facilities (PF). Also to the east within the Bend UGB is NorthWest Crossing, a mixed-use development including residential, commercial, industrial, and public facility uses on land within multiple city zoning districts.

South. To the southeast across Skyliners Road is The Highlands at Broken Top PUD, zoned UAR-10 and developed with thirty-seven roughly 10-acre lots with dwellings. Farther southeast is the Tetherow Destination Resort developed with dwellings, a golf course, and a lodge.

E. **Land Use History:** The Tree Farm property has been owned by the Miller family since the 1950's. The record indicates this property historically was managed for timber production as part of the larger Miller Tree Farm, including periodic harvesting and thinning activities. The eastern portion of Tree Farm 3 was in the path of the 1990 Awbrey Hall Fire which burned several thousand acres between the northern edge of Shevlin Park and U.S. Highway 97 to the southeast.

In June 2014, the applicant obtained lot-of-record determinations for The Tree Farm property recognizing five legal lots of record (LR-14-16, LR-14-17, LR-14-18, LR-14-19, LR-14-20). The applicant also obtained approval of ten lot line adjustments reconfiguring boundaries for the five legal lots of record (LL-14-17 through LL-14-26). Deeds reflecting the adjusted boundaries of the five legal lots were recorded on October 17, 2014.

F. **Procedural History:** The Tree Farm applications were submitted on August 5, 2014. The Planning Division sent the applicant an incomplete letter on September 9, 2014, identifying certain missing information and allowing the applicant 30 days to submit additional information. The applicant submitted the missing information on September 19, 2014. However, the staff report states that because the incomplete letter was not provided to the applicant within 30 days of the date the applications were submitted, as

required by ORS 215.427(2) and Section 22.08.030 of the Development Procedures Ordinance, the county considers the applications to have been deemed complete on September 5, 2014. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.427 would have expired on February 2, 2014.

A consolidated public hearing on the five Tree Farm applications was scheduled for November 6, 2014. On November 4, 2014, the Hearings Officer conducted a site visit to the subject property accompanied by Senior Planner Anthony Raguine. Due to work occurring on the nearby utility lines, some roads adjacent to and within the Tree Farm were not accessible, so the site visit was terminated.

By a letter dated November 4, 2014, the applicant requested that the hearing be continued to November 20, 2014. At the November 6, 2014, hearing the Hearings Officer disclosed my limited observations from the abbreviated site visit, received testimony and evidence, and continued the hearing to November 20, 2014. At the continued public hearing, the Hearings Officer announced my intention to conduct another site visit and to issue a written site visit report. I also received testimony and evidence, left the written evidentiary record open through December 23, 2014, and allowed the applicant through December 30, 2014 to submit final argument pursuant to ORS 197.763.

On December 3, 2014 the Hearings Officer conducted another site visit to the subject property and vicinity, again accompanied by Mr. Raguine, and on December 8, 2014, I issued a written site visit report. On December 19, 2015, Mr. Raguine issued a staff memorandum addressing the status of the proposed private roads in the Tree Farm. By a letter dated December 22, 2014, the applicant requested that the written record be extended to allow additional time to respond to the staff memorandum. By an order dated December 23, 2014, the Hearings Officer extended the written evidentiary record through January 6, 2015, and allowed the applicant to submit final argument through January 13, 2015. The applicant submitted final argument on January 13, 2015 and the record closed on that date.

Because the applicant requested that the public hearing be continued from November 6 to November 20, 2013 (a period of 14 days), and agreed to leave the written record open from November 20, 2014, through January 13, 2015 (a period of 54 days), under Section 22.24.140 the 150-day period was tolled for 68 days and now expires on April 13, 2015.[2] As of the date of this decision there remain 27 days in the extended 150-day period.

G. **Proposal:** The applicant requests conditional use, site plan, and tentative plan approval to establish a 50-lot cluster/PUD to be called The Tree Farm on approximately 533 acres west of the Bend UGB. The Tree Farm would include five contiguous cluster/PUDs with a total of 100 acres of residential lots, 422.8 acres of open space tracts, and 10.6 acres of road right-of-way. The boundaries of the five cluster/PUDs coincide with the boundaries of the five legal lots of record recently reconfigured through the aforementioned lot line adjustments. Each cluster/PUD would have ten 2-acre residential lots, an open space tract, segments of the public and private road system, and mixed-use trails connecting to trails in Shevlin Park and the DNF. Tree Farms 1 through 4 would include land in the UAR-10, RR-10 and WA Zones. Tree Farm 5 would be located entirely within the RR-10 and WA Zones.

[2] Because the 150th day falls on Saturday April 11, 2015, and because under Section 22.08.070 weekends and holidays are excluded from time computations, the 150th day is April 13, 2015.

The subject application is for Tree Farm 3, consisting of 106.9 acres with ten dwellings on ten 2-acre lots (Lots 21-30) clustered near the center of The Tree Farm. Tree Farm 3 would have an 83.8-acre open space tract and 3.1 acres of right-of-way.[3] The residential lots would have access to Skyliners Road, a county collector road, via two new private roads, Tree Farm Drive and Ridgeline Drive, over which the applicant proposes to dedicate permanent public access easements. Tree Farm Drive and Ridgeline Drive would run through Tree Farms 1, 2 and 3 before connecting to Skyliners Road, and therefore the applicant proposes to develop Tree Farms 1, 2 and 3 concurrently.

The applicant also proposes to construct a gated temporary emergency access road on an easement extending from the southern terminus of Sage Steppe Drive at the southern boundary of Tree Farm 1 south across the adjacent Miller Tree Farm property to Crosby Drive, a public street within the Bend UGB that connects to Skyliners Road. The emergency access would operate until the Miller Tree Farm property is developed with public roads to which Sage Steppe Drive would connect.[4]

Lots in Tree Farm 3 would be served by on-site sewage disposal systems. They would receive domestic water from one of three alternative sources: (1) extension of and connection to the City of Bend water system; (2) service from Avion Water Company; or (3) water pumped from one or more private groundwater wells on The Tree Farm and/or the adjacent Miller Tree Farm property. Tree Farm 3 dwellings would have fire protection from the Bend Fire Department and police protection from the Deschutes County Sheriff. The applicant proposes that the entire Tree Farm development would comply with the "Firewise Community" standards for fire prevention. The Tree Farm 3 open space tract would be subject to deed restrictions preventing future development thereon.

H. **Public/Private Agency Comments:** The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the Deschutes County Road Department (road department), Property Address Coordinator, Building Division, Senior Transportation Planner, and Forester; the City of Bend Fire Department (fire department); the park district; and the Oregon Department of Fish and Wildlife (ODFW). These comments are set forth verbatim at pages 3-9 of the Tree Farm 3 staff report and are included in the record. The following agencies either did not respond to the request for comments or submitted "no comment" responses: the Deschutes County Environmental Soils Division, Assessor, and Surveyor; the City of

[3] Tree Farms 1, 2, 4 and 5 would have the following characteristics:

- Tree Farm 1: Lots 1-10; 105.3 acres total; 81.1 acres of open space, of which 39.9 acres would be in the RR-10/WA Zones; and 4.2 acres of right-of-way;
- Tree Farm 2: Lots 11-20; 104.2 acres total; 82.8 acres of open space, of which 67.7 acres would be in the RR-10/WA Zones; and 1.4 acres of right-of-way;
- Tree Farm 4: Lots 31-40; 109.5 acres total; 87.7 acres of open space, of which 85.7 acres would be in the RR-10/WA Zones; and 1.7 acres of right-of-way; and
- Tree Farm 5: Lots 41-50; 107.6 acres total; 87.4 acres of open space, all of which would be in the RR-10/WA Zones; and 0.2 acres of right-of-way.

[4] The tentative plan for Tree Farm 1 also shows potential right-of-way for future extension of Skyline Ranch Road, a designated county collector road that has been dedicated and improved in segments north and south of the Miller Tree Farm and Rio Lobo properties. The potential right-of-way would extend north from Crosby Drive through the Miller Tree Farm property and the northeast corner of Tree Farm 1 and onto the Rio Lobo property.

Bend Planning Division, Engineering Division, and Public Works Department (public works); the USFS DNF; the Oregon Department of Water Resources, Watermaster-District 11; the school district; Bend Broadband; Cascade Natural Gas; CenturyLink; and Pacific Power. Agency comments are addressed in the findings below.

I. **Public Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the initial public hearing to the owners of record of all property located within 250 feet of the subject property's boundaries. The record indicates this notice was mailed to the owners of twenty-six tax lots. In addition, notice of the initial public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the county had received thirteen letters from the public in response to these notices. In addition, four members of the public testified at the continued public hearing. Public comments are addressed in the findings below.

J. **Lot of Record:** The county determined Tree Farm 3 is a legal lot of record pursuant to a 2014 lot-of-record determination (LR-14-18). The current configuration of Tree Farm 3 is the result of a series of 2014 lot line adjustments (LL-14-17 through LL-14-26).

III. CONCLUSIONS OF LAW:

A. SUMMARY:

The Hearings Officer has found that with two significant exceptions, Tree Farm 3 satisfies, or with imposition of conditions of approval will satisfy, the applicable approval criteria in the relevant administrative rules and the provisions of Titles 17, 18, 19 and 22 of the Deschutes County Code. I have found the applicant has *not* demonstrated compliance with a number of criteria related to wildlife habitat and wildfire risks. Specifically, I have found the applicant's proposed Wildlife Assessment and Management Plan (WMP) and Wildfire Protection and Management Plan (wildfire plan) are not adequate, and cannot be made adequate through imposition of conditions of approval, to demonstrate the risk of wildfire can be reduced to an acceptable level while protecting winter deer range habitat. For these reasons, I cannot approve the application for Tree Farm 3. However, I anticipate this decision will be appealed to the Board of County Commissioners (board). Therefore, in order to assist the board and county staff in the event of such appeal, I have included in this decision findings of fact and conclusions of law on all applicable standards and criteria, as well as recommended conditions of approval.

B. PRELIMINARY ISSUES:

1. Completeness and Status of Application.

FINDINGS: In June of 2014, the county issued lot-of-record determinations written by Associate Planner Cynthia Smidt and confirming the existence of five legal lots of record comprising The Tree Farm ((LR-14-16 through LR-14-20). Ms. Smidt also issued a series of decisions approving lot line adjustments for the five legal lots of record creating the current configurations of the five Tree Farm developments (LL-14-17 through LL-14-26). Each of the lot-line-adjustment decisions included the following six conditions for final approval: (a) obtaining approval of all lot line adjustments; (b) obtaining surveys of the reconfigured lots and filing the surveys with the Deschutes County Surveyor; (3) submitting to the Planning Division legal descriptions of the newly reconfigured lots; (4) recording new deeds reflecting the new lot configurations; (5) paying

all property taxes for the affected tax lots; and (6) complying with all development setbacks from the reconfigured lot lines. The record does not indicate whether or to what extent these conditions of approval had been met at the time The Tree Farm applications were filed and the record for the applications closed.

The record indicates the deeds required pursuant to Condition 4 of the lot-line-adjustment decisions were recorded on October 17, 2014, nearly ten weeks after the applicant submitted its Tree Farm applications and nearly six weeks after the applications were deemed complete. Mr. Raguine's September 9, 2014 incomplete letter for The Tree Farm applications does not refer to compliance with the lot-line-adjustment conditions of approval. The record does include a copy of an October 29, 2014 electronic mail message from the applicant's representative Romy Mortensen to Ms. Smidt, copied to Mr. Raguine, stating the deeds had been recorded.

The burden of proof for each of the five Tree Farm applications states the property subject to the application is a legal lot of record as configured on the submitted tentative plan. However, those statements were not correct because not all lot line adjustment conditions of approval had been satisfied and therefore the lot line adjustments were not final. The question is whether these misstatements affect the Hearings Officer's consideration of The Tree Farm applications.

Section 22.08.035 of the development procedures ordinance states:

> **If the applicant or the applicant's representative or apparent representative makes a misstatement of fact on the application regarding property ownership, authority to submit the application, acreage, or any other fact material to the acceptance or approval of the application, and such misstatement is relied upon by the Planning Director or Hearings Body in making a decision whether to accept or approve the application, the Planning Director may upon notice to the applicant and subject to an applicant's right to a hearing declare the application void.**

The Hearings Officer finds the applicant's misstatements concern facts material to acceptance or approval of the Tree Farm applications – i.e., the legal status and configuration of the five lots comprising the five proposed Tree Farm developments. However, the record indicates all five Tree Farm applications were deemed complete as required by law. Moreover, the Planning Director has not declared the applications void, and I find he is not likely to do so since he referred The Tree Farm applications for a hearing, and the required deeds were recorded before the record closed. For these reasons, I find I may consider The Tree Farm applications. Nevertheless, I find that to assure all lot-line-adjustment conditions of approval are satisfied, the applicant will be required as a condition of approval, and before submitting the final plat of any Tree Farm development for approval, to demonstrate to the Planning Division that all such conditions have been met.

2. Modification of Application.

FINDINGS: As discussed in the findings below concerning compliance with the PUD requirements in Title 19, the applicant has requested approval of a number of exceptions to the standard regulations for Tree Farm 3. Several exceptions were identified in the applicant's burden of proof, and several additional exceptions were requested through subsequent correspondence from the applicant.

Section 22.20.055 allows an applicant to modify an application up to the close of the record, but prohibits the Hearings Officer from considering a modification without the filing of a modification

application. Section 22.20.055(D) authorizes me to determine whether an applicant's submission constitutes a modification, defined in Section 22.04.020 as:

> *** * * the applicant's submittal of new information after an application has been deemed complete and prior to the close of the record on a pending application that would modify a development proposal by changing one or more of the following previously described components: proposed uses, operating characteristics, intensity, scale, site layout (including but not limited to changes in setbacks, access points, building design, size or orientation, parking, traffic, or pedestrian circulation plans), or landscaping in a manner that requires the application of new criteria to the proposal or that would require the findings of fact to be changed. It does not mean an applicant's submission of new evidence that merely clarifies or supports the pending application.**

The Hearings Officer finds the applicant's requests for exceptions, and its arguments in support thereof, submitted following the date the application was deemed complete do not constitute modifications. That is because they do not change the development proposal. Rather, they seek approval of various aspects of the applicant's proposal as shown on the tentative plans and in the burden of proof statements. I also find they constitute new evidence that clarifies and supports the applicant's proposal. Therefore, I find I can consider all of the applicant's requested exceptions without the need for modification applications.

3. Effect of Split Zoning.

FINDINGS: Tree Farm 3 includes land in three zones -- UAR-10, RR-10 and WA -- established and governed by two separate zoning ordinances -- Title 18 (RR-10 and WA) and Title 19 (UAR-10). As discussed below, the Hearings Officer previously has considered development applications on split-zoned property. However, because of the complexity of The Tree Farm applications and the large number of applicable standards – I find it is appropriate at the outset to address how these zones will be applied to Tree Farm 3.

Permitted Uses. Sections 18.60.030(E) and (F), respectively, permit conditionally in the RR-10 Zone "planned development" and "cluster development," defined in Section 18.04.030 as:

> **"Cluster development" means a development permitting the clustering of single or multi-family residences on a part of the property, with individual lots of not less than two acres in size and not exceeding three acres in size. No commercial or industrial uses not allowed by the applicable zoning ordinance are permitted.**
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> **"Planned development" means the development of an area of land at least 40 acres in size for a number of dwelling units, commercial or industrial uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage, or required open space to the standard regulations otherwise required by DCC Title 18, and usually featuring a clustering of residential units.**
> **"Planned unit development," see "planned development."**

Section 18.88.040 provides that uses permitted conditionally in the zone with which the WA Zone is combined are permitted conditionally in the WA Zone.

Section 19.12.030(N) permits conditionally in the UAR-10 Zone "planned unit development," defined in Section 19.04.040 as follows:

> **"Planned unit development" means the development of an area of land as a single entity for a number of units or a number of uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the standard regulations otherwise required by DCC Title 19.**

Although "planned unit development" in the UAR-10 Zone does not expressly permit clustering of dwellings, the Hearings Officer finds clustering is the type of deviation from standard regulations contemplated in a PUD.

All proposed Tree Farm lots will be at least two acres in size, and all five Tree Farm developments will be at least 40 acres in size. As discussed in the findings below, the applicant has requested cluster/PUD approval in order to deviate in several respects from the standard regulations under Titles 18 and 19.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 falls within the definitions of "cluster development," "planned development," and "planned unit development" in Titles 18 and 19. Because the proposed cluster/PUDs are permitted conditionally in all three zones, I find the split-zoning does not preclude approval of Tree Farm 3 on the subject property. *See: Eola Glen Neighborhood Assoc. v. City of Salem,* 25 Or LUBA 672 (1993) (residential subdivision allowed on property's split rural residential and rural agricultural zones where use permitted in both zones); *Roth v. Jackson County,* 38 Or LUBA 894 (2000) (winery allowed on split-zoned property's agricultural zone, but not on its suburban residential zone where winery is not a permitted use).

Effect of Zone Boundaries. Tree Farms 1 through 4 straddle the boundary between the UAR-10 and RR-10/WA Zones which is the line between Sections 33 and 34. As a result, the proposed lots, open space tracts, roads, and trails are located in all three zones.[5] As a general rule, regulations applicable to a specific zone are not applied outside the boundaries of that zone. The Hearings Officer finds application of that general rule is particularly appropriate in the case of overlay or combining zones established to protect identified resources with specific geographic or site boundaries, such as the WA Zone.[6] As discussed in the findings below under the WA Zone, Section 18.88.020 applies that zone to areas designated "winter deer range," an identified resource with mapped boundaries. The WA Zone provisions are directed at protecting that specific habitat and minimizing conflicting uses therewith. Therefore, I find the WA Zone regulations do not apply to the areas of Tree Farm 3 located outside the WA Zone boundaries.

With respect to base zones such as the RR-10 and UAR-10 Zones, the Hearings Officer finds there are circumstances in which application of the general rule, that zoning regulations do not apply outside the zone boundaries, may not be appropriate. For example, in *Eola Glen*, cited

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[5] It appears from the aforementioned lot-line-adjustment decisions that this split zoning existed in the original configuration of the five legal lots of record comprising The Tree Farm.

[6] Examples of similar geographically specific overlay or combining zones in Title 18 are: (a) the Landscape Management (LM) Zone in Chapter 18.84 (protecting designated scenic roads and waterways; (b) the Sensitive Bird and Mammal Habitat (SBMH) Zone in Chapter 18.90 (protecting bird nests and breeding grounds); and (c) the Airport Safety (AS) Zone in Chapter 18.80 (protecting airport approach zones).

above, LUBA appears to have found that because the proposed residential subdivision was permitted in both zones on the property, review and approval of the proposal could be based on application of requirements in both zones. This Hearings Officer reached a similar conclusion in my 2006 decision in *Hodgert* (CU-06-53, SP-06-19, LM-06-73, LL-06-48). In that case, the applicant requested conditional use and site plan approval to establish a private fishing lodge on property zoned F-1 and F-2. The applicant also requested a lot line adjustment that would create a split-zoned parcel on which some of the fishing lodge facilities would be located. I made the following relevant findings:

> *"Split zoning generally is not favored because it may complicate application of land use regulations to development on the property. However, where, as here, the regulations governing the F-1 and F-2 Zones are very similar, the proposed private fishing accommodations are allowed conditionally in both zones, and the standards for this conditional use are identical in each zone, the Hearings Officer finds such split zoning is appropriate."*

As in *Hodgert*, The Tree Farm applications propose cluster/PUDs permitted in both the UAR-10 and RR-10 Zones. The general conditional use standards applicable to cluster/PUDs under Sections 18.128.015 and 19.100.030 are very similar. However, as discussed below, the specific conditional use standards applicable to cluster developments and PUDs in Title 18 differ in many respects from the specific PUD standards in Title 19. Therefore, the question is whether applying the standards in Titles 18 and 19 *only* to those portions of Tree Farms 1 through 4 located within the RR-10 and UAR-10 Zones, respectively, would allow meaningful review of each cluster/PUD as a whole.[7] The Hearings Officer finds it would not because such segmented review would artificially segregate portions of these developments based solely on the location of a section line, and without regard to the nature and scope of the standards applicable to cluster/PUDs. Accordingly, I find that to the extent feasible, I will apply the applicable provisions of the RR-10 and UAR-10 Zones to the proposed Tree Farm 3 in its entirety.

ADMINISTRATIVE RULES

B. Oregon Administrative Rules, Chapter 660, Land Conservation and Development Commission

1. Division 4, Goal 2 Exceptions Process

a. OAR 660-004-0040, Application of Goal 14 to Rural Residential Areas

(1) The purpose of this rule is to specify how Statewide Planning Goal 14, Urbanization, applies to rural lands in acknowledged exception areas planned for residential uses.

(2) (a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this as rural residential areas.

[7] As noted above, Tree Farm 5 is not split zoned as it is located entirely within the RR-10 Zone.

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Section (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

(A) land inside an acknowledged urban growth boundary;

(B) land inside an acknowledged unincorporated community boundary established pursuant to OAR Chapter 660, Division 022;

(C) land in an acknowledged urban reserve area established pursuant to OAR Chapter 660, Division 021;

(D) land in acknowledged destination resort established pursuant to applicable land use statutes and goals;

(E) resource land, as defined in OAR 660-004-0005(2);

(F) nonresource land, as defined in OAR 660-004-0005(3);

(G) marginal land, as defined in ORS 197.247, 1991 Edition;

(H) land planned and zoned primarily for rural industrial, commercial or public use.

FINDINGS: The applicant and staff identified this administrative rule as applicable to Tree Farm 3 because the proposed cluster/PUD is on land located outside the Bend UGB, zoned UAR-10, RR-10 and WA, and designated UAR and RREA. The Hearings Officer is aware the county's RR-10 zoned lands were acknowledged as exception areas at the time the county's comprehensive plan initially was acknowledged in 1979. Therefore, I find the RR-10 zoned land within The Tree Farm constitutes a "rural residential area" subject to this administrative rule because it is not included in any of the exceptions in Paragraph (2) (c).
With respect to land within Tree Farm 3 zoned UAR-10, the record indicates this urban reserve area was acknowledged but was not established pursuant to Division 21 of OAR Chapter 660. In 2003, former county hearings officer Tia Lewis issued a decision approving the nearby The Highlands at Broken Top PUD on UAR-10 zoned land (*Cascade Highlands* (CU-02-73/TP-02-931)). Ms. Lewis concluded this administrative rule was applicable to the UAR-10 Zone west of Bend based on the following findings:

> *"The Hearings Officer agrees with Staff that the subject property is located neither inside an acknowledged urban growth boundary nor inside an*

acknowledged unincorporated community. In addition, although located in the urban reserve area, the record indicates that the County's urban reserve area was established in 1979 prior to the State requiring acknowledgment of urban reserve areas. Further, the land is not an acknowledged destination resort, resource land, nonresource land, marginal or zoned for rural industrial, commercial or public use. Therefore, the Hearings Officer finds this rule is applicable to the applicant's proposal." (Emphasis added.)

The Hearings Officer agrees with Ms. Lewis' analysis and finds this administrative rule also is applicable to the portion of Tree Farm 3 zoned and designated UAR.

(7) (a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as the minimum lot size.

(c) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed that minimum lot size which is already in effect.

(d) If, on the effective date of this rule, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:

A. The number of new dwelling units to be clustered or developed as a PUD does not exceed 10.

FINDINGS: Each of the ten proposed residential lots in Tree Farm 3 would be at least two acres in size, and the lots would be clustered in the northern part of Tree Farm 3. As discussed above, Tree Farm 3 would be one of five contiguous cluster/PUDs comprising The Tree Farm, and establishing a total of 50 dwellings on approximately 533 acres.

The applicant's five burden of proof statements assert each subdivision can be approved as a stand-alone development. The Hearings Officer disagrees. I find the five cluster/PUDs

effectively would function as a single development because each cluster/PUD is dependent on one or more of the other cluster/PUDs for roads and other infrastructure. For example, Tree Farm 3 lots will not have access to Skyliners Road without concurrent development of Tree Farms 1 and 2, and the applicant's proposed utility plan shows city water service connections to Tree Farm 3 lots must be made through Tree Farms 4 and 5.

The applicant appears to have chosen to develop The Tree Farm through five separate cluster/PUDs in order to maximize the number of dwellings on the property. Although this approach is somewhat unconventional, the Hearings Officer finds nothing in the county's land use regulations that prohibits it. Each individual Tree Farm development is a legal lot of record,[8] and the applicant is entitled to develop each legal lot of record consistent with applicable zoning ordinance(s) and the subdivision/partition ordinance. I am not aware of any code provision that requires the applicant to consolidate its five legal lots as a prerequisite to cluster/PUD development. Neither have I found any prohibition against developing a cluster/PUD where, as here, roads and other infrastructure necessary to serve the new subdivision lots are dependent upon extension of and connection to such facilities on contiguous or nearby land. In such cases, subdivision approval may be conditioned on extension of and connection to existing roads and other infrastructure before final plat approval.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 does not exceed the maximum number of dwelling units for a cluster/PUD under this administrative rule.

B. The number of new lots or parcels to be created does not exceed 10.

FINDINGS: The applicant proposes ten new residential lots in Tree Farm 3. Staff questioned whether the applicant's proposed open space tract must be counted as a lot for purposes of the maximum density calculation. Staff discussed this question with the applicant and with Jon Jinnings, Community Services Specialist with the Department of Land Conservation and Development (DLCD). Based on those conversations, staff concluded the ten-lot maximum applies only to new *residential* lots and not to the proposed open space tract. In an October 27, 2014 electronic mail message, the applicant's attorney Jeffrey Condit agreed with staff's interpretation, offering the following analysis:

> *"There are two rules of statutory construction that come into play: First, a statute is construed based upon text and context (i.e. its relationship to other provisions in the ordinance). Second, if possible, a statute should be construed to avoid a conflict rather than create one. The rule (subsection 7(e)) allows up to ten dwellings on up to ten new lots, so that assumes that there can be up to ten buildable lots. The rule (subsection 7(h)) also contemplates that there could be an 'open space lot, parcel, or tract.' If the open space tract is as counted as a lot for the purposes of subsection 7(e)(B), then an applicant will never be able to construct more than 9 dwellings, which will violate the express text of the rule. It will be possible, of course, to include the common area within the boundary of one of the ten parcels, and limit the development on the open space portion via covenant, but what is the policy basis for allowing that and not allowing the open space to be located on a separate unit of land as long as it can't be developed?*

[8] As discussed above, the Hearings Officer has found the applicant will be required as a condition of approval to demonstrate to the Planning Division that all conditions of approval for the lot line adjustments creating the proposed configurations for Tree Farms 1 through 5 have been met before final plat approval for any of the Tree Farm developments.

(Particularly considering that the latter arguably provides better long-term protection to the open space parcel.) I think the better reading, which doesn't create a conflict or a distinction without a difference, is that the ten parcel limit in Subsection 7(e) (B), when read in context with the 7(e) (A) dwelling unit limit, was intended as a limit of up to ten buildable parcels, and that subsection 7(h) allows an additional unbuildable 'lot, parcel or tract' restricted to open space as long as the requirements in that section are met. This is the only interpretation that reconciles potential conflicts and makes overall sense when read in context.

*I think similar reasoning applies to the County Code interpretation. The issue arose in the context of Tree Farm #1, which is proposed for a 105 acre property. Under the existing UAR-10 zoning, the property could be divided into ten lots each with a house on it. The Tree Farm's proposal under the county PUD statute is to cluster this development on ten two-acre lots and preserve the remainder of the property as open space in a separate tract. * * * First, the express purpose of the PUD is to allow exceptions from the standard requirements of the zone in order to 'accrue benefits to the County and the general public in terms of need, convenience, service and appearance.' DCC 19.104.070. The preservation of the vast majority of the property in an open space tract is the chief public benefit that justifies the exception to the standard. Second, DCC 19.104.070 provides that '[a] planned unit development shall not be approved in any R zone if the housing density of the proposed development will result in an intensity of land use greater than permitted by the Comprehensive Plan.' As the underscored language indicates, the PUD ordinance is not concerned about number of parcels, but about overall housing density. Under the current zoning, no more than ten dwelling units can be sited on the 105-acre property. Under the PUD as proposed in Tree Farm 1, no more than ten dwelling units can be sited on the 105-acre property. The fact that the open space is being preserved in a separate tract does not affect compliance with the requirements of the PUD Code (and is a very common practice in planned developments)."*

The Hearings Officer concurs with Mr. Condit's analysis. I find the proposed open space tract in Tree Farm 3 is not counted in the ten-lot maximum, and therefore the applicant's proposal for ten residential lots does not exceed that maximum.

C. None of the new lots or parcels will be smaller than two acres.

FINDINGS: All residential lots in Tree Farm 3 will be two acres in size, satisfying this criterion.

D. The development is not to be served by a new community sewer system.

E. The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.

FINDINGS: The applicant proposes to serve the ten residential lots in Tree Farm 3 with individual on-site septic systems, therefore satisfying these criteria.

F. **The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on the effective date of this rule as the minimum lot size for the area.**

FINDINGS: The RR-10 and UAR-10 Zones in which Tree Farm 3 is located establish a general density of one lot per ten acres through Sections 18.60.60 and 19.12.50, respectively. Both zones permit higher density for cluster/PUDs through Sections 18.60.60 and 19.104.040, respectively. As discussed above, the Hearings Officer has found the 10-lot maximum density in the administrative rule applies to *residential* lots and does not include open space tracts. Therefore, I find the applicant's proposal complies with this requirement.

G. **Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there.**

FINDINGS:

Farm Use. The record indicates there are no nearby lands devoted to farm use and no farm practices occurring on nearby lands. Therefore, the Hearings Officer finds Tree Farm 3 will not force a significant change in, or significantly increase the cost of, accepted farm practices on nearby lands devoted to farm use.

Forest Use.

Required Analysis. The Hearings Officer finds this paragraph requires me to determine: (1) whether nearby forest-zoned land is "devoted to forest use;" (2) if so, what is the nature of that forest use; and (3) whether that forest use conflicts, or has the potential to conflict, with residential uses in the proposed cluster/PUD to the degree that the residential uses will significantly affect, or significantly increase the cost of, accepted forest practices on the nearby forest-zoned lands.[9]

Study Area. The record indicates public forest land in the DNF is located southwest across Skyliners Road. In addition, private forest land is located west and northwest of Shevlin Park. The DNF forest lands are managed by the USFS and extend west to the crest of the Cascade Mountains. The private forest lands west and northwest of Shevlin Park were once part of the "Bull Springs Block" of public forest land conveyed by the USFS to private owners. The largest of these private forest land holdings was owned and managed by Cascade Timberlands, and

[9] Section 18.04.030 defines "forest lands" and "forest uses" as follows:

> **"Forest lands" means lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.**
>
> **"Forest uses" include production of trees and the processing of forest products; open space; buffers from noise and visual separation of conflicting uses; watershed protection and wildlife and fisheries habitat; soil protection from wind and water; maintenance of clean air and water; outdoor recreational activity and related support services and wilderness values compatible with these uses; and grazing for livestock.**

according to Assessor's data consists of 17 tax lots totaling approximately 33,000 acres.[10] Assessor's data indicate there are several smaller private forest-zoned parcels northwest of Shevlin Park, some of which have dwellings.[11]

The Hearings Officer finds I must establish a "study area" for the analysis required by this rule. I agree with the argument presented by Central Oregon LandWatch (LandWatch), that because impacts from certain forest practices, such as smoke from prescribed burns, can extend beyond adjacent properties, the appropriate study area should include both DNF lands and private forest lands west and northwest of Shevlin Park. However, the administrative rule requires an analysis of impacts on "nearby" lands devoted to forest use. The ordinary definitions of "nearby" and "near" are: "close at hand;" "at a short distance in space or time; close in distance or time; close in relationship." *Webster's New World Dictionary and Thesaurus, Second Edition.* In light of these definitions, I find the appropriate study area should include public and private forest-zoned parcels located in whole or in part within one mile of the western boundary of The Tree Farm.[12] The record indicates that because of the large size of these parcels, this study area includes thousands of forested acres in public and private ownership.

Accepted Forest Practices on Nearby Lands Devoted to Forest Use.

1. Deschutes National Forest. The applicant's burden of proof for Tree Farm 3 notes the portion of the DNF southwest of The Tree Farm includes the heavily-used "Phil's Trail" mountain biking trail network. The burden of proof goes on to state:

> *"The 1990 Deschutes National Forest plan (as amended) identifies the lands adjacent to The Tree Farm property as Management Area 9 – Scenic Views. The goal of this management area is to provide visitors with scenic vistas representing the natural character of central Oregon. Specifically, landscapes which are visible from selected travel routes and places which are frequently visited will be managed to maintain or enhance their appearance. The proposed trail network will provide a variety of scenic vistas for visitors. The proposed homesites in The Tree Farm project overall and in Tree Farm 1 specifically are all located well away from the travel corridor of Skyliners Road within the Deschutes National Forest, and thus will have no negative visual impact on the forest use identified in the Forest Plan. In addition, use of the PUD to cluster development allows homesites to be sited at a further distance from the boundary than would development of ten-acre lots. The open space tract must remain in that state and will be subject to deed restrictions."*

The Hearings Officer finds that under the broad definition of "forest use" in Title 18, the DNF is land "devoted to forest use." I find the uses occurring on and planned for that land – recreational, and preservation of open space and scenic vistas – are of relatively low intensity

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[10] The Hearings Officer is aware that after the close of the record Cascade Timberlands sold its Deschutes County holdings. I will continue to refer to these lands as Cascade Timberlands property.

[11] The Hearings Officer finds I may take official notice of data collected and maintained by the Deschutes County Assessor concerning real property in Deschutes County.

[12] This study area is equivalent to the county's one-mile-radius study area for non-farm dwelling conditional use approval requiring a similar analysis of the impact from such a dwelling on accepted farm practices in the surrounding area.

compared with timber harvesting. I also find the nature of these existing and planned uses for this portion of the DNF reflects the land's proximity to the Bend urban area and its function as a gateway to millions of acres of public recreational land west of Bend. Nevertheless, in his November 21, 2014 comments on the applicant's proposal, County Forester Ed Keith stated:

> *"I would note that the Forest Service does have an approved project called 'West Bend' that will be active for the coming several years on lands immediately west of the property. Planned activities include commercial and non-commercial thinning, brush mowing, pile and broadcast burning."*

In his December 10, 2014 comments in support of the applicant's proposal attached to Jeffrey Condit's December 11, 2014 letter, Gary Marshall, former City of Bend Fire Marshal, stated the USFS has begun implementing the "West Bend Plan" which he describes as involving the restoration of 26,000 acres of the DNF adjacent to The Tree Farm for the dual purposes of improving wildlife habitat and reducing wildfire risk. Mr. Marshall stated the methods utilized in the "West Bend Plan" are essentially the same as those previously employed, and proposed to be continued, on The Tree Farm property.

Based on this information, the Hearings Officer finds it appropriate to assume these nearby DNF lands also will be managed for forest health and fire prevention through periodic thinning by logging and controlled burns. Impacts from these higher-intensity forest practices would include noise from tree cutting, noise and drifting dust from log truck traffic on unpaved roads, and drifting of chemicals and smoke from prescribed burns and pile/slash burns.

On behalf of LandWatch, Paul Dewey claims the presence of homes in The Tree Farm will cause the DNF to abandon forest practices such as "aggressive fuel treatment and fire suppression techniques." He cites a research paper on wildfire risks from Headwaters Economics, included in the record as Exhibit "E" to Mr. Dewey's November 19, 2014 submission. This paper is based on case studies of eight communities, none of which includes Bend or Central Oregon. Although these studies provide useful general information, the Hearings Officer finds they are not a substitute for site-specific analysis of the impact of the ten proposed dwellings in Tree Farm 3 on DNF lands within the study area. Moreover, the evidence in this record does not support Mr. Dewey's assertion that the DNF is undertaking, or planning to undertake, "aggressive fuel treatment and fire suppression techniques." Mr. Dewey acknowledges that since the management plan for the DNF lands closest to The Tree Farm includes preservation of scenery, any logging will be done "in a more visually-sensitive way * * * than in the General Forest," which the record indicates is located approximately five miles southwest of The Tree Farm.[13] Finally, Mr. Keith stated that in his opinion:

> *"* * * rather than restricting management because of development, this project ["West Bend"] is going on because of development and the recognition of risk that the current condition of these lands pose to the greater Bend area."*

Existing development near the DNF includes both Shevlin Park and two large rural residential developments – The Highlands at Broken Top and Tetherow. Based on Mr. Keith's comments, the Hearings Officer believes it is appropriate to assume the management plans for the nearby DNF lands already have been influenced to a significant degree by the presence of these land uses, as well as nearby developments within the Bend UGB.

[13] Included as Exhibit "H" to Mr. Condit's December 11, 2014 letter is a color-coded map depicting the DNF west and southwest of The Tree Farm, and showing the more distant location of the DNF "General Forest" – i.e., the area planned for timber production.

The record indicates that at its closest points, the portions of the DNF engaged in, and planned for, scenic preservation and recreation are located between 2,500 and 3,000 feet from Tree Farm 3 Lot 26, the most southwestern lot. The staff report suggests, and the Hearings Officer agrees, that because of the combination of the intervening distance and the low-intensity uses on the nearest DNF lands, current and planned management practices on nearby DNF lands will result in few if any impacts on Tree Farm 3 residential uses. I find the lack of comment on The Tree Farm from the USFS strongly suggests it has no concerns about the impact of dwellings in Tree Farm 3 on its management practices.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 and its residential uses will not force a significant change in, or significantly increase the cost of, accepted forest practices on DNF lands in the study area.

Private Forest Land. The private forest lands west and northwest of Shevlin Park are part of the "Bull Springs Block" that was once part of the DNF. These lands were transferred to Crown Pacific, and following its bankruptcy were conveyed to other owners including Cascade Timberlands. They form much of the forest land visible to the west of Bend. The record indicates that before Cascade Timberlands sold its Deschutes County holdings, the company and other stakeholders had discussed long-term planning for this land -- referred to as "Skyline Forest" -- to include a combination of preservation of open space and scenic views, recreation, and sustainable timber production, not unlike the plan for nearby DNF lands.

The record does not indicate what types of uses currently are occurring on the Cascade Timberlands property or on the smaller private forest-zoned parcels northwest of The Tree Farm. In the Hearings Officer's previous decision in *Taylor* (MP-05-31, CU-05-106, SMA-05-41, MA-06-1, MA-06-8), involving an application for a large-tract dwelling on a forest-zoned parcel northwest of The Tree Farm, I made the following findings concerning accepted forest practices on the Cascade Timberlands property:

> *"LandWatch argues that although current forest practices in the study area are of low intensity, the Hearings Officer should include within the 'accepted forest practices' in the study area much more intensive practices that could occur in the future if reforestation occurs on a large scale and mature trees are harvested in greater numbers. LandWatch's predecessor Sisters Forest Planning Committee (SFPC) made the same argument in Hogensen. In that decision, I made the following pertinent findings:*
>
> > *'The Hearings Officer concurs with the appellant that it is reasonable to assume the term 'accepted' forest practices includes not only those practices currently taking place, but those that could occur in the future. Nevertheless, I find it is not reasonable to speculate from this record that all land in the study area will be reforested and harvested to the most intense degree possible -- particularly where, as here, the record indicates Crown Pacific* [the predecessor of Cascade Timberlands] *has been selling tracts of its forest-zoned land for residential development purposes rather than for timber management and harvest. Therefore, I find it appropriate to evaluate the impacts of the proposed dwelling on those forest practices that are most prevalent currently and in the recent past -- i.e., selective harvesting of trees, log hauling, slash and prescribed burning, and some chemical spraying.'*

These findings were challenged by SFPC and upheld on appeal. Sisters Forest Planning Committee v. Deschutes County. The Hearings Officer adheres to these findings here."

On appeal of the Hearings Officer's decision in *Taylor (Central Oregon LandWatch v. Deschutes County* 53 Or LUBA 290 (2007), LUBA found that the scope and intensity of accepted forest practices is a "fact-specific inquiry," and upheld my findings. There is no evidence in this record that Cascade Timberlands continued its predecessor's practice of selling individual forest-zoned parcels for residential use. However, it appears from this record that in the ten years since my *Taylor* decision the general nature of accepted forest practices on the Cascade Timberlands property has not changed. Therefore, I find it is appropriate to assume accepted forest practices on these lands would include selective harvesting of trees, log hauling, slash and prescribed burning, and some chemical spraying. I have found potential impacts from such uses include noise from logging, noise and drifting dust from operating log trucks on unpaved roads, drifting of chemicals, and drifting of smoke from prescribed burns and pile/slash burns.

The tentative plan for Tree Farm 3 shows its most western lot, Lot 26, would be located more than 5,500 feet from the nearest point on the Cascade Timberlands land and farther from the nearest smaller private forest-zoned parcels to the northwest. The intervening land includes large open space tracts in the western portion of The Tree Farm as well as Shevlin Park. As with the nearby DNF lands, the Hearings Officer finds it is likely the presence of Shevlin Park has influenced, and will continue to influence, the intensity of forest practices on the nearby private forest lands. I find impacts, if any, on Tree Farm 3 from forest practices on the nearby private forest lands would be significantly attenuated by distance and intervening open space.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 will not force a significant change in, or significantly increase the cost of, accepted forest practices on the nearby private forest lands. Therefore, I find the applicant's proposal satisfies this rule requirement.

H. For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

FINDINGS: The applicant proposes to make the Tree Farm 3 open space tract subject to deed restrictions as depicted in Exhibit "L" to its burden of proof. However, the sample deed restrictions included in this exhibit do not state they would *permanently* prohibit development of the open space tracts. Rather, they use language similar to that set forth above in Paragraph (H) – i.e., development of the open space tract would be prohibited for so long as the property is outside the Bend UGB. As discussed in findings throughout this decision, the applicant has stated it intends that The Tree Farm and Tree Farm 3 never will be included in the Bend UGB, and has proposed that the development create a "permanent" transition area between urban uses to the east and Shevlin Park and forest land to the west.

Accordingly, the Hearings Officer finds the applicant will be required as a condition of approval to record nonrevocable deed restrictions for the Tree Farm 3 open space tract stating that no portion of the open space tract will be used for a dwelling or any other use *in perpetuity*. In addition, the applicant will be required as a condition of approval, and prior to submitting for final approval any plat for Tree Farm development, to provide to the Planning Division for county review and approval a copy of the required deed restrictions, as well as copies of the recorded deed restrictions after recording. I find that with imposition of these conditions of approval the applicant's intent will be accomplished and the open space tract in Tree Farm 3 will be preserved as open space as required by this paragraph.

> **(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.**

FINDINGS: The applicant proposes one single-family dwelling per residential lot, therefore satisfying this criterion.

2. Division 11, Public Facilities Planning

a. OAR 660-011-0065, Water Service to Rural Lands

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment" means the creation of a new water system and all associated physical components, including systems provided by public or private entities;

(b) "Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.

(c) "Water system" shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.

(2) Consistent with Goal 11, <u>local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not</u>:

(a) <u>Allow an increase in a base density</u> in a residential zone due to the availability of service from a water system;

(b) **Allow a higher density for residential development served by a water system than will be authorized without such service; or**

(c) **Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.**

(3) **Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.** (Emphasis added.)

FINDINGS: The applicant proposes to provide domestic water to the Tree Farm 3 lots through one of three options: (1) extension of City of Bend water service; (2) securing water service from Avion Water Company; or (3) pumping water from one or more wells on The Tree Farm or adjacent property. The Hearings Officer finds both Bend's and Avion's water systems constitute "water systems" for purposes of this rule.

The base density of the UAR-10 Zone will allow the creation of up to ten new residential lots in Tree Farm 3, as proposed by the applicant. The Hearings Officer finds the applicant's proposal will not allow an increase in the UAR-10 base density, allow higher residential density than would be authorized without water service, or allow an increase in allowable density due to the presence or extension of a water system. Therefore, I find the applicant's proposal satisfies this criterion.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies, or with imposition of the conditions of approval described above will satisfy, all applicable provisions of the administrative rules in Divisions 4 and 11 of OAR Chapter 660.

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

RR-10 ZONE STANDARDS

1. Chapter 18.60, Rural Residential Zone – RR-10

a. Section 18.60.030, Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

* * *

F. Cluster development.

FINDINGS: The Tree Farm 3 tentative plan shows most of the proposed open space tract would be located within the RR-10 Zone. The Hearings Officer has found the proposed cluster/PUD is a use permitted conditionally in both the RR-10 and UAR-10 Zones under Sections 18.60.030(E) and (F) and 19.12.030(N), respectively. The staff report states the RR-10 Zone provisions applicable to residential lots are *not* applicable to Tree Farm 3 because its residential lots are not located in the RR-10 Zone. However, as discussed above, I have found that to the extent feasible, I will apply the provisions of both the RR-10 and UAR-10 Zones to Tree Farms 1

through 4 in their entirety rather than segmenting my review based on the zone boundaries. Therefore, I find the provisions of the RR-10 Zone are applicable to Tree Farm 3 as a whole. The proposal's compliance with the provisions of Chapter 18.128 is discussed in findings below under that chapter.

b. Section 18.60.060, Dimensional Standards

In an RR-10 Zone, the following dimensional standards shall apply:

* * *

C. Minimum lot size shall be 10 acres, except planned and cluster developments shall be allowed an equivalent density of one unit per 7.5 acres. Planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five acre minimum lot size or equivalent density. For parcels separated by new arterial rights of way, an exemption shall be granted pursuant to DCC 18.120.020.

FINDINGS: The Hearings Officer has found the applicant's proposal satisfies the maximum density under OAR 660-004-0040, which allows lots as small as two acres. The applicant proposes ten 2-acre residential lots and one 83.8-acre open space tract for Tree Farm 3. As discussed in the findings below under the WA Zone, Section 18.88.050 requires that all residential lots within the WA Zone be clustered and a minimum of 80-percent open space be preserved. The burden of proof for Tree Farm 3 states the applicant chose to plat *all* residential lots in The Tree Farm – including all lots in Tree Farms 1, 2, and 3, and Lots 31-36 and 38 in Tree Farm 4 in the UAR-10 Zone -- at two acres in size, and to cluster the residential lots, in order to maximize open space and to create a consistent development pattern throughout The Tree Farm in spite of its split zoning.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies all applicable criteria in the RR-10 Zone.

WA ZONE STANDARDS

2. Chapter 18.88, Wildlife Area Combining Zone – WA

a. Section 18.88.010, Purpose

The purpose of the Wildlife Area Combining Zone is to conserve important wildlife areas in Deschutes County; to protect an important environmental, social and economic element of the area; and to permit development compatible with the protection of the wildlife resource.

b. Section 18.88.020, Application of Provisions

The provisions of DCC 18.88 shall apply <u>to all areas identified in the Comprehensive Plan as a winter deer range,</u> significant elk habitat, antelope range or deer migration corridor.

Unincorporated communities are exempt from the provisions of DCC 18.88. (Emphasis added.)

FINDINGS: The tentative plan for The Tree Farm shows the western 333 acres of the entire development, and the western 86 acres of Tree Farm 3, are within the WA Zone associated with Tumalo deer winter range. The Hearings Officer has found that because the WA Zone is an overlay zone protecting a specific geographically-defined and mapped resource, I will apply the WA Zone only to those portions of Tree Farms 1 through 4 located within the WA Zone.[14] Therefore, I find the WA Zone provisions apply only to the portion of Tree Farm 3 located in the WA Zone, consisting of open space and a segment of Tree Farm Drive.

b. 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.

FINDINGS: Cluster developments are permitted conditionally in the RR-10 Zone and therefore they are allowed conditionally in the WA Zone. Compliance with the specific cluster development standards in Chapter 18.128 is addressed in the findings below.

c. Section 18.88.050, Dimensional Standards

In a WA Zone, the following dimensional standards shall apply:

A. In the Tumalo, Metolius, North Paulina and Grizzly deer winter ranges designated in the Comprehensive Plan Resource Element, <u>the minimum lot size for new parcels shall be 40 acres</u> except as provided in DCC 18.88.050(D).

FINDINGS: Section 18.04.030 defines "parcel" as "a unit of land created by a partitioning of land." The applicant does not propose the creation of any *new* parcels, and therefore the Hearings Officer finds this criterion is not applicable. In any case, Tree Farm 3 would be 106.9 acres in size, and the portion of Tree Farm 3 in the WA Zone would be 86 acres, exceeding the minimum lot size for new parcels.

D. Residential land divisions, including partitions, in deer winter range where the underlying zone is RR-10 or MUA-10, shall not be permitted except as a planned development or cluster development conforming to the following standards:

FINDINGS: The applicant proposes a residential land division consisting of a ten-lot cluster/PUD on property zoned RR-10 and UAR-10, therefore satisfying this criterion.

1. The minimum area for a planned or cluster development shall be at least 40 acres.

[14] As noted above, Tree Farms 1, 2, and 4 also have split zoning between UAR-10 and RR-10/WA.

FINDINGS: According to the submitted tentative plan, Tree Farm 3 would consist of 106.9 acres, 86 acres of which would be located within the WA Zone, therefore satisfying this minimum area standard.[15]

2. The planned or cluster development shall retain a minimum of 80 percent open space and conform with the provisions of DCC 18.128.200 or 210.

FINDINGS: According to the submitted tentative plan, Tree Farm 3 would have 20 acres of residential lots (ten 2-acre lots), 83.8 acres of open space, and 3.1 acres of right-of-way. The tentative plan shows 82 acres of the open space and 2.2 acres of the right-of-way would be located within the WA Zone. Based on this acreage, 78 percent of the entire Tree Farm 3, and approximately 97 percent of the WA-zoned portion of Tree Farm 3, would be open space. The applicant's burden of proof states the 80-percent open space should be calculated including *only* the WA-zoned land, based on the following analysis:

> *"Overall, the 5 separate PUD/Cluster Development proposal within The Tree Farm will result in fifty 2-acre homesites totaling 100.1 acres on 533.5 combined acres. Open space will comprise 422.8 total acres, or 79% of the total project (the remaining 10.6 acres are within the new street rights of way.). While this is just under 80% open space for the entire project, the applicant notes that only 393 acres of the project is zoned RR-10 (WA) and subject to the 80% requirement, the remainder being zoned UAR-10 which has no such specific open space requirement. Of the 393 acres in the RR-10(WA), 362.7 acres (92%) will be preserved as permanent open space. This is accomplished by concentrating the developed homesites in the UAR-10 portion of the property in order to maximize the amount of open space to be preserved in the deer winter range."*

The Hearings Officer agrees with the applicant that land outside the WA Zone is not included in the open space calculation, and therefore I find Tree Farm 3 satisfies the minimum 80 percent open space requirement in the WA Zone.

3. Notwithstanding the provisions of DCC 18.128.200 or 210, or DCC 18.60.060(C), the total number of residences in a cluster development may not exceed the density permitted in the underlying zone.

FINDINGS: The general density in the RR-10 Zone is one dwelling per ten acres. The applicant proposes that the 106.9-acre Tree Farm 3 be developed with ten residential lots and one open space tract. The Hearings Officer has found the open space tract is not included in the residential density calculation, and therefore Tree Farm 3 satisfies this standard.

d. Section 18.88.060, Siting Standards

[15] The Hearings Officer addressed a similar issue in my *Taylor* decision, cited above. There, the applicant proposed creation of an 80-acre parcel comprised of 40 acres zoned F-1 and 40 acres zoned Surface Mining (SM). Section 18.36.090 establishes an 80-acre minimum lot size "in the F-1 Zone." I held the quoted language meant the 80-acre minimum lot size must be met *entirely within the F-1 Zone*. The language establishing the minimum lot size in the WA Zone is identical to the language in F-1 Zone at issue in *Taylor*.

A. **Setbacks shall be those described in the underlying zone with which the WA Zone is combined.**

FINDINGS: The Hearings Officer finds this provision applies to setbacks between structures and lot lines. Because all 10 residential lots and dwellings in Tree Farm 3 would be located outside the WA Zone, I find this criterion is not applicable to Tree Farm 3.

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 will 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.**

C. **For purposes of DCC 18.88.060(B):**

1. **A private road, easement for vehicular access or driveway will conclusively be regarded as having existed prior to August 5, 1992 if the applicant submits any of the following:**

a. **A copy of an easement recorded with the County Clerk prior to August 5, 1992 establishing a right of ingress and egress for vehicular use;**

b. **An aerial photograph with proof that it was taken prior to August 5, 1992 on which the road, easement or driveway allowing vehicular access is visible;**

c. **A map published prior to August 5, 1992 or assessor's map from prior to August 5, 1992 showing the road (but not showing a mere trail or footpath).**

2. **An applicant may submit any other evidence thought to establish the existence of a private road, easement for vehicular access or driveway as of August 5, 1992 which evidence need not be regarded as conclusive.**

FINDINGS: Because no residential lots or dwellings in Tree Farm 3 will be located in the WA Zone, the Hearings Officer finds these dwelling siting criteria are not applicable to Tree Farm 3.

e. **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.**

FINDINGS: The applicant does not propose any new fencing for Tree Farm 3, and therefore the Hearings Officer finds these criteria are not applicable. However, to assure compliance with these standards, I find that as a condition of approval the applicant will be required to install any fencing in the WA-zoned portion of Tree Farm 3 in accordance with these standards. As noted above, the applicant proposes to remove most of the existing wire fencing on The Tree Farm.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies all applicable standards in the WA Zone.

CONDITIONAL USE APPROVAL CRITERIA

3. **Chapter 18.128, Conditional Use**

a. **Section 18.128.010, Operations**

A. **A conditional use listed in DCC Table 18 shall be permitted, altered or denied in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.**

b. **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:

FINDINGS: The applicant argues the general conditional use standards in this section do not apply to Tree Farm 3 because the proposal includes individual single-family dwellings. The Hearings Officer disagrees. I find these criteria are applicable to Tree Farm 3 because the proposed conditional use is a cluster development, not an "individual single-family dwelling."[16]

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

FINDINGS: At the outset, staff questions what constitutes the "site" for purposes of the suitability analysis under this paragraph in light of the split zoning of Tree Farm 3. As discussed above, the Hearings Officer has found that in order to conduct a meaningful review of Tree Farm 3 as a whole, I will apply the standards in both Titles 18 and 19 – with the exception of the WA Zone in Title 18 -- to the entire cluster/PUD. Therefore, I find the site for evaluation of the proposed cluster/PUD is the entire Tree Farm 3.

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

Site. Tree Farm 3 would be 106.9 acres in size. It is very irregular in shape, the result of the irregular shape of The Tree Farm and the configuration of its five legal lots of record. The topographical information on The Tree Farm tentative plans shows the configuration of Tree Farms 1 through 5 generally follows the contours of the property, and in particular the central ridge that runs generally in a southwest-to-northeast direction. Tree Farm 3 is in the middle of The Tree Farm. Tree Farm 3 extends from a point south of the northern border of The Tree Farm in a generally southwest direction to the western Tree Farm boundary. The topography of Tree Farm 3 varies from higher, relatively level ground in its northern area where the dwellings are proposed to steeper slopes in the center and southwest portion of the site and within the open space tract. Vegetation consists of a mature forest in the western portion of the site and mostly shrub steppe vegetation in the eastern portion. Tree Farm 3 does not have frontage on Skyliners Road; it is separated from the road by the most southern portion of Tree Farm 2. Tree

[16] The applicant did not address these criteria in its burden of proof for Tree Farm 3, but in response to the staff report submitted a memorandum dated October 29, 2014, addressing the criteria.

Farm 3 is separated from the Bend UGB by Tree Farms 1 and 2 and a vacant parcel owned by Miller Tree Farm.

Design and Operating Characteristics. The proposed ten residential lots in Tree Farm 3 would be clustered in the north-central portion of The Tree Farm on higher, relatively level ground. All lots would have frontage on Ridgeline Drive or Golden Mantle Loop. The northeast terminus of Ridgeline Drive would be a cul-de-sac on Ridgeline Court near the northeast corner of Tree Farm 1. Ridgeline Drive would extend southwest from Tree Farm 1 through Tree Farms 2 and 3 and would connect with Tree Farm Drive in Tree Farm 3, the primary cluster/PUD road which intersects with Skyliners Road at the southern property boundary. The applicant proposes to develop Tree Farms 1, 2 and 3 concurrently to provide access from Skyliners Road to the lots in those three cluster/PUDs. The topographical information on the tentative plans shows the private roads will be constructed primarily on the central ridge, thus minimizing steep road cuts and grades.

A gated temporary emergency access road would extend from the southern terminus of Sage Steppe Drive in Tree Farm 1 south across the adjacent Miller Tree Farm property to Crosby Drive in the Bend UGB. This secondary access would be in place until the adjacent Miller Tree Farm property is developed with paved streets to which Sage Steppe Drive could connect. Sage Steppe Drive would be a dedicated public road with 60 feet of right-of-way and would be stubbed off at the northern boundary of Tree Farm 1 to provide future road access to the adjacent Rio Lobo property. The applicant proposes that each dwelling would be constructed within a designated building envelope, would be served by an onsite septic system, and would receive water from the City of Bend, Avion Water Company, or one or more groundwater wells.

The majority of Tree Farm 3 (83.8 acres) would be set aside as permanent open space. The public would have access to this open space through a combination of a permanent trail easement on the primary trails within The Tree Farm and a license granted by The Tree Farm homeowners' association (HOA) for use of trails within the residential lot areas. The multi-use paths and recreation/mountain bike trails in Tree Farm 3 would connect with trails in the rest of The Tree Farm and Shevlin Park and the DNF to the west and southwest.

The Hearings Officer finds the site for Tree Farm 3 is suitable for the proposed ten-lot cluster/PUD because of the nature of the site and the design and operating characteristics of the proposed development. I find the property is large enough to accommodate the proposed residential lots, open space tract, and private and public roads. I find the clustering of dwellings in the north-central part of Tree Farm 3 will preserve the maximum amount of open space and will allow the dwellings to be sited on some of the most level ground on the site. I find the design of the public and private roads in Tree Farm 3 has taken into account the site's topography so the roads can be constructed without steep slopes or road cuts and tight curves. As discussed in the findings immediately below, I have found soils on the site are suitable for installation of on-site septic systems. I also have found the proposed dwellings will have adequate access to Skyliners Road with concurrent development of Tree Farms 1, 2 and 3.

For the foregoing reasons, the Hearings Officer finds the site of Tree Farm 3 is suitable for the proposed ten-lot cluster/PUD considering the site and the design and operating characteristics of the proposed development.

2. Adequacy of transportation access to the site; and

FINDINGS: Access to Tree Farm 3 will be from Skyliners Road via a system of public and private roads. The main access road, Tree Farm Drive, will connect with all other Tree Farm roads at an intersection in Tree Farm 3. The segment of Tree Farm Drive from Skyliners Road north to a point near this intersection would be improved with a 26-foot-wide paved surface to accommodate both vehicular and pedestrian/bicycle traffic. The remaining segment of Tree Farm Drive and the other Tree Farm Roads would be improved with 20 feet of paved surface. The applicant proposes a gated temporary emergency access road from the southern end of Sage Steppe Drive, a dedicated public road, in Tree Farm 1 south through the adjacent Miller Tree Farm property to Crosby Drive, a dedicated public street within the Bend UGB. This secondary access would be in place until the adjacent Miller Tree Farm property is developed with paved streets to which Sage Steppe Drive could connect.

Traffic Study. In support of The Tree Farm proposal, the applicant submitted a traffic impact analysis ("traffic study") prepared by Kittelson & Associates, dated July, 2014, and included in the record as Exhibit "H" to the burden of proof statement for Tree Farm 3. The traffic study indicates the Institute of Transportation Engineers *Trip Generation Manual,* 9th Edition (ITE Manual), predicts each single-family dwelling will generate 9.5 average daily vehicle trips (ADTs). Accordingly, the traffic study predicts the 50 single-family dwellings proposed for entire Tree Farm would generate 476 ADTs, of which 50 would be during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The traffic study analyzed the impact of this traffic on the proposed Skyliners Road/Tree Farm Drive intersection, and found sight distance at this intersection would be adequate in both directions. The traffic study recommended the placement of a stop sign on Tree Farm Drive at Skyliners Road and maintenance of clear vision areas at this intersection.

The traffic study also analyzed Tree Farm traffic impacts on the following five existing intersections on the west side of Bend:

- Skyliners Road and Crosby Drive;
- Skyliners Road and Skyline Ranch Road;
- Skyliners Road and Mt. Washington Drive;
- Mt. Washington Drive and Northwest Crossing Drive; and
- Mt. Washington Drive and Simpson Avenue.

The traffic study found these existing intersections currently operate at acceptable levels of service, and that with the addition traffic generated by The Tree Farm, and including traffic volume growth of three percent and additional traffic anticipated from development in progress (including the new Pacific Crest Middle School and a large church under construction, and continuing development of Northwest Crossing), these intersections will continue to operate at acceptable levels of service in 2017 and 2022. In its comments on the applicant's proposal, the road department did not identify any concerns or recommend any improvements to Skyliners Road or other existing roads to handle traffic generated by The Tree Farm. In his August 29, 2014 comments on the applicant's proposal, Senior Transportation Planner Peter Russell stated he had reviewed the applicant's traffic study and agreed with its methodology and conclusions.

Several opponents argued traffic from The Tree Farm would cause unacceptable levels of congestion on affected streets and intersections on the west side of Bend, and would cause serious deterioration to Skyliners Road. The Hearings Officer finds no merit to these arguments in light of the traffic study's conclusions and the lack of road improvement recommendations from the road department.

Opponent Connie Peterson suggested the traffic study should have included in its analysis traffic generated from a future Oregon State University (OSU) Cascades campus near the Mt. Washington Drive/Simpson Avenue intersection. The Hearings Officer is aware the city's approval of a ten-acre OSU Cascades campus is on appeal to LUBA and the approval therefore is not final. For this reason, I find the OSU development and its potential traffic impacts are too speculative to be included in The Tree Farm traffic study. Opponent Rio Lobo submitted a memorandum dated December 11, 2014 from its traffic engineer, Lancaster Engineering, suggesting the applicant's traffic study was deficient in failing to include projected traffic from urban-density development of the adjacent 376-acre Rio Lobo property. Rio Lobo's engineer predicted up to 1,100 dwellings could be developed on the property, and they would generate over 9,000 ADTs and 948 p.m. peak hour trips. The Rio Lobo property is outside the Bend UGB, has no county land use approvals for the type of low-density residential development permitted in the UAR-10 Zone – i.e., up to 37 dwellings -- and has limited road access.[17] Therefore, I find potential traffic impacts from urban-density development of the Rio Lobo property also are too speculative to be included in the traffic analysis for The Tree Farm.

Emergency Access. The applicant proposes a gated temporary emergency access road from the southern terminus of Sage Steppe Drive south through the adjacent Miller Tree Farm property to Crosby Drive, a public street in the Bend UGB. Sage Steppe Drive would be a public road within a dedicated 60-foot right-of-way and improved with a 20-foot-wide paved surface. The emergency access road would be gated at both ends, and constructed with an all-weather surface meeting the fire department's standards for emergency vehicles. In his November 20, 2014 comments on the applicant's proposal, County Engineer George Kolb stated the emergency access road must have a 24-foot-wide surface, and on that date the applicant submitted a revised tentative plan for Tree Farm 1 showing the emergency access road would be 24 feet wide.

Crosby Drive provides access to the three nearby public schools – Summit High School, Miller Elementary School, and the new Pacific Crest middle school under construction. The tentative plan for Tree Farm 1 shows the proposed route of this emergency access road across the adjacent property, and the topographical information on the tentative plan indicates that for the most part the route would be on level or slightly sloping ground. The exception is a small area just north of Skyliners Road where there is a steep ridge. However, the proposed road alignment appears to skirt the steepest part of that ridge. In an October 31, 2014 electronic mail message, the applicant stated the emergency access road will be constructed with grades not exceeding 8.5 percent, less than the 12-percent maximum slope permitted for emergency vehicle access. In his November 20, 2014 comments, George Kolb stated the proposed emergency access would require a county gate permit.

At the public hearing, the Hearings Officer questioned how the locked access gates would operate and whether residents and guests would be able to open the gates. Gary Marshall stated such gates generally are designed to be operated by the fire department with "Knox" locks, but that additional options are available for "residential access," including special keys, key codes and automatic gates. I find the applicant will be required as a condition of approval to install one or more of these "residential access" measures on the Tree Farm side of the gate at the southern terminus of Sage Steppe Drive.

[17] In his December 19, 2014 comments on the applicant's proposal, Peter Russell correctly noted that without any land use approvals or current applications for development of the Rio Lobo property, "the potential trip generation from the Rio Lobo property is zero."

At the public hearing, the Hearings Officer also questioned whether the proximity of the three schools would cause Crosby Drive to become so congested during a large-scale emergency evacuation, such as for a wildfire, that Tree Farm residents would not be able to use the emergency road for egress. In his January 6, 2015 submission, Mr. Dewey stated the applicant's proposed secondary emergency access is "fundamentally inadequate" for evacuations because it must be assumed all three schools and all Tree Farm residents will be evacuated at the same time. Mr. Marshall responded to these concerns in a letter dated December 10, 2014, included in the record as Exhibit "B" to Mr. Condit's December 11, 2014 letter. Mr. Marshall stated that in his opinion such congestion would not occur because it is highly unlikely every person in the three schools and every resident in The Tree Farm would evacuate at the same time and by the same roads. The Hearings Officer agrees with Mr. Marshall's assessment. The Tree Farm would have two points of egress – Tree Farm Drive and the secondary emergency road -- and the record indicates the schools have several points of access. I find the existence of multiple points of egress for The Tree Farm and for the schools would serve to reduce congestion in the event all three schools and The Tree Farm were evacuated simultaneously. Moreover, I find that in light of Mr. Marshall's extensive experience, including dealing with wildfires on the west side of Bend, his opinion concerning likely evacuation scenarios is credible and reliable.

In a November 4, 2014 letter, included in the record as Exhibit "P" to Paul Dewey's November 19, 2014 submission, LandWatch's fire expert Addison Johnson suggested the secondary emergency access road should be constructed to run in the opposite direction from the main PUD access road – i.e., to the northeast. However, as discussed elsewhere in this decision, the tentative plan for Tree Farm 1 shows there is steep terrain northeast of Tree Farm 1, and there are no existing public roads with which such a secondary access road could connect. Therefore, I find an emergency access road to the northeast likely would not be feasible.

Skyline Ranch Road. The tentative plan for Tree Farm 1 shows "potential future Skyline Ranch Road right-of-way" running from Crosby Drive north and northwest across the adjacent Miller Tree Farm property and the northeast corner of Tree Farm 1 east of the cul-de-sac bulb for Ridgeline Drive. In the Hearings Officer's decision in Tree Farm 1, I discussed concerns expressed by county staff and Rio Lobo about the location of this right-of-way. I held the applicant will be required as a condition of approval for Tree Farm 1 to include a notation on the Tree Farm 1 final plat stating possible adjustments to the open space and right-of-way calculations if a segment of Skyline Ranch Road is dedicated in Tree Farm 1.

For the foregoing reasons, and with imposition of the condition of approval described above, the Hearings Officer finds Tree Farm 3 is suitable for the proposed ten-lot cluster/PUD considering the adequacy of transportation access 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.

FINDINGS:

General Topography. The Tree Farm 3 tentative plan shows, and the Hearings Officer's site visit observations confirmed, that the Tree Farm 3 site has varying topography. The dominant feature of Tree Farm 3 is the central ridge running from southwest to northeast. The applicant's burden of proof states, and my site visit observations confirmed, that the higher ground atop this ridge is relatively level to rolling, with steeper slopes in the northwest where the terrain drops

toward Tumalo Creek and on the southeast-facing slopes in the middle of the property. Topographical information for The Tree Farm indicates the central ridge in Tree Farms 4 and 5 slopes down to the west at grades ranging from 10 to 20 percent and lots in Tree Farms 4 and 5 include sloping terrain. The topographical information on the Tree Farm 3 tentative plan shows the rear portions of Lots 23-25 are sloped down to the southeast, but that this slope is more gentle than the slopes on the lots in Tree Farms 4 and 5. As discussed above, the private road segments in Tree Farm 3 would align with the natural topography rather than cutting across slopes. For these reasons, I find the site is suitable for Tree Farm 3 considering its general topography.

Natural Hazards. The identified natural hazard affecting The Tree Farm is wildfire. There is no dispute The Tree Farm is in a wildfire hazard area.[18] It is located in the "Wildland Urban Interface" (WUI) – i.e., the transition area between human development and wildland, in this case forest lands. The eastern half of The Tree Farm was in the path of the 1990 Awbrey Hall fire that burned approximately 3,500 acres from the north end of Shevlin Park southeast to a point hear Highway 97. The June, 2014 Two Bulls Fire burned several thousand acres of Cascade Timberlands property west and northwest of Shevlin Park. The Hearings Officer finds the nature of the wildfire hazard is two-fold: (a) residential uses in The Tree Farm could ignite a fire that spreads to adjacent land; and (b) wildfire ignited elsewhere in the WUI, such as in the DNF, could spread to residential uses in The Tree Farm, diverting fire-fighting resources to The Tree Farm.

The applicant's burden of proof states the Awbrey Hall Fire removed much of the forest overstory in the eastern part of The Tree Farm including the eastern part of Tree Farm 3, resulting in that area having fewer trees and primarily shrub steppe vegetation. The applicant states that since the Awbrey Hall Fire, Miller Tree Farm has worked with the Oregon Department of Forestry (ODF) and others to reduce fire fuels on the entire Tree Farm property, including tree thinning and brush removal. I observed evidence of this thinning activity during my site visit. However, as I noted in my site visit report, I observed that the forested part of The Tree Farm retains a relatively dense tree cover, visible in aerial photographs in the record.[19] The photos show the interface between the denser forest and the more open shrub steppe runs roughly along the line between Sections 33 and 34 and the RR-10 and UAR-10 Zones. The denser forest also covers a small portion of UAR-10 zoned property in Tree Farms 2 and 3 and the most southwestern portion of Tree Farm 1. The shrub steppe vegetation in Tree Farms 1, 2 and 3 continues north onto the Rio Lobo property and east onto the Miller Tree Farm property.

LandWatch argues that *no* part of The Tree Farm property or Tree Farm 3 is suitable for the proposed cluster/PUDs considering the risk of wildfire. Paul Dewey describes The Tree Farm as "not a safe place to build" and "an inappropriate place for people to live." He states further development in the WUI is not appropriate because "no development can be made 'safe' in the face of catastrophic wildfires." In support of his position, Mr. Dewey submitted into the record several letters from LandWatch's fire expert Addison Johnson, as well as dozens of pages of articles, studies, and research papers discussing the risks of wildfire in the WUI.

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[18] The parties disagree as to the degree of that hazard. Paul Dewey describes it as "extreme." The applicant notes the Greater Bend CWPP (Community Wildfire Protection Plan) Boundary Map, included in the record in Exhibit "O" to Mr. Dewey's November 19, 2014 submission, categorizes The Tree Farm and surrounding land as "high risk" – the lowest category of risk -- while other areas on the map are categorized as higher risk – i.e., "extreme" and high density extreme."

[19] *E.g.*, the Tree Farm Master Plan, Exhibit "A" to the Tree Farm 3 burden of proof.

In response, Mr. Condit argues in his December 30, 2014 letter that "The Tree Farm properties are zoned for rural development and the applicable criteria have to be construed in that context." In his January 6, 2015 final argument, Mr. Condit stated:

> *"While* [the applicant's proposed wildfire plan] *will obviously not eliminate all risk from wildfires, it does not, however, follow that all development should be prohibited. Deschutes County regulates developments in areas subject to natural hazards (including wildfires) pursuant to Statewide Land Use Planning Goal 7, which provides that '[l]ocal governments shall adopt comprehensive plans * * * to reduce risk to people and property from natural hazards.' There is no requirement that all risk be eliminated.*[3]
>
> [3] *Indeed, such risk would be impossible to eliminate in the Bend area. The greater Bend area Community Wildfire Protection Plan Boundary, attached as the last page of Exhibit O to LandWatch's November 19, 2014, submittal shows that The Tree Farm properties, the territory within the City of Bend, and most of the surrounding territory are rated 'high' for wildfire risk. And there are significant areas near the City rated 'extreme' or 'high-density extreme' for wildfire risk. The fire hazard risk within the City and on most of the surrounding territories is thus the same or even higher than on The Tree Farm properties."*

Mr. Condit goes on to state:

> *"By requesting and obtaining an exception to Goals 3 and 4 to designate The Tree Farm properties as Rural Residential or Urban Area Reserve in 1988, the County made the policy decision that these are developable lands. This decision was acknowledged to be in compliance with the State Land Use Planning Goals, including Goal 7. That doesn't mean The Tree Farm doesn't have to comply with the applicable criteria. See PGE/Gaines, cited in the Applicant's prior testimony. Mr. Dewey argues that, because the Applicant cannot guarantee absolute protection from wildfires, no development should be allowed. Such a reading would swallow the Code."*

The Hearings Officer agrees the county made a policy decision that the RR-10/WA zoned lands west of the Bend UGB are developable. Any change to the uses permitted in the RR-10 and UAR-10 Zones west of Bend -- e.g., eliminating dwellings due to fire risk -- would require legislative action by the county, such as a text amendment to Titles 18 and 19, and cannot be accomplished through individual quasi-judicial land use decisions.

However, The Tree Farm proposal includes land divisions providing for *multiple dwellings*, and therefore is subject to the subjective and discretionary standards in Title 17 -- e.g., contributing to "orderly development" -- and the equally subjective and discretionary conditional use and cluster/PUD standards in Titles 18 and 19. Section 18.128.010 (A), set forth above, makes clear the county may deny a conditional use application if it finds the proposal does not satisfy the applicable approval criteria. In addition, Section 18.128.020 authorizes the county to impose conditions of approval in order to assure compliance with the approval criteria. Nevertheless, the Hearings Officer finds nothing in Title 18, 19, or 22 that *requires* the county to impose conditions in order to make a proposed conditional use approvable. Accordingly, I find the question before me is *not* whether the residential development should be prohibited on The Tree Farm or Tree Farm 3 site. Rather, it is whether the site for Tree Farm 3 is suitable for the proposed cluster/PUD considering the wildfire hazard.

The unusual configuration of Tree Farm 3 restricts placement of dwellings to the higher ground near the northern property boundary where there are significant views. The applicant proposes to cluster the dwellings on the high ground, and to address wildfire risk through its wildfire plan, included in the record as Exhibit "J" to the Tree Farm 3 burden of proof. The Hearings Officer agrees with Mr. Condit that in order to find compliance with this conditional use approval criterion I need not find the wildfire plan *eliminates all fire risk* for these dwellings. Rather, I must determine whether the wildfire plan, in its design and implementation, will reduce that risk to a sufficient degree that the Tree Farm 3 site and configuration are suitable for the proposed 10-lot cluster/PUD considering the risk of wildfire.

The applicant's wildfire plan consists of a two-page narrative to which are attached nine pages of information concerning the "Firewise Communities Program" (Firewise) and the "Fire Adapted Communities Program." The narrative describes the wildfire plan's goals as:

- further reduction of ladder fuels;
- thinning of juniper and small ponderosa trees;
- development of a fire adaptive ecosystem to preserve old growth;
- maintenance of a healthy tree stand and reduction of the threat of beetle kill and fire damaged trees; and
- enhancement of the landscape with native grasses for a natural landscape and to support wildlife.

The wildfire plan identifies the following means to accomplish these goals:

1. wildland fuel treatments completed by the current property owner will continue to be maintained by the developer and future HOA through a requirement written into the community's governing documents and guidelines, and will "enhance open space, structure survivability, and firefighter safety;"

2. The Tree Farm <u>will comply with all applicable criteria in the Deschutes County code</u> relative to community safety from fire;

3. The Tree Farm <u>will become a nationally recognized FIrewise/USA Community</u> viewed as a model HOA-managed neighborhood <u>that uses wildfire mitigation principles</u> to manage combustible vegetation and incorporates structure fire resistant features and materials to reduce the threat and intensity of wildfire to personal property and the adjacent forest;

4. The Tree Farm will incorporate into its governing documents and architectural and landscape guidelines the requirement <u>to use fire resistant building materials and landscape treatments</u> to reduce the threat of wildfire within the boundaries of the neighborhood and to create a fuel break to slow or stop an approaching wildfire to adjacent properties;

5. The Tree Farm developer and HOA <u>will make an annual commitment to maintain recognition</u> as a Firewise/USA Community;

6. residents and visitors <u>will be familiar with the county's Wildfire Fire Evacuation Plan, in addition to The Tree Farm Evacuation Plan</u>; and

7. The Tree Farm's governing documents will address sources of human caused ignitions and prohibit burning of debris and the use of fireworks. (Emphasis added.)

In his written public hearing testimony, Gary Marshall stated the applicant proposes to use the National Fire Protection Association (NFPA) standards in conjunction with regulations from the Oregon Fire Code and the Oregon State Residential Code "which will greatly reduce the risk of home ignition from wildfire." Attached to Mr. Marshall's testimony are several lengthy NFPA and Firewise documents, including the 34-page 2008 edition of the NFPA's "Standards for Reducing Structure Ignition Hazards from Wildland Fire." However, Mr. Marshall's testimony does not indicate which of the Firewise or NFPA standards would apply to The Tree Farm, or when, how, where, or by whom they would be implemented. And indicated in the above-underlined language, most of the wildfire plan's proposed implementation measures are general and aspirational.

LandWatch questions the effectiveness of the applicant's wildfire plan for two principle reasons, each of which is addressed in the findings below.

1. Reliance on Firewise and NFPA Standards. In his November 21, 2104 comments on the applicant's proposal, Ed Keith noted that to obtain Firewise recognition, The Tree Farm would need to obtain a wildfire risk assessment from ODF or the Bend Fire Department, form a board or committee to identify priorities, and create and implement an action plan. Mr. Keith stated that "since communities are dynamic and vegetation grows back," Firewise recognition must be renewed annually "so the community shows they are continually working on their priority issues." For these reasons, LandWatch argues Firewise recognition does not constitute a meaningful wildfire plan for The Tree Farm.

With respect to NFPA standards, in his December 11, 2014 submission, Mr. Dewey notes these standards begin with disclaimers concerning the need for local evaluation of "products, designs, or installations" and local enforcement. He also notes, and the Hearings Officer agrees, that the NFPA standards included in the record are extensive, technical, and detailed. However, applicant's wildfire plan does not identify which NFPA standards apply to The Tree Farm, where, when, how, or by whom the NFPA standards would be implemented, or how and by whom they would be enforced and their effectiveness evaluated.

Although Mr. Marshall's written testimony, provided in several letters, does include some specific recommendations for implementation of the Firewise program and NFPA standards, these recommendations are not described in the applicant's submitted wildfire plan. Rather, the plan appears merely to incorporate the Firewise program and NFPA standards by reference. The Hearings Officer finds that is not sufficient to meet the applicant's burden of demonstrating compliance with this conditional use approval criterion. I also find it is not my responsibility, nor that of planning staff or interested parties, to search through Mr. Marshall's extensive materials – which he describes as "a plethora of fire safety standards" -- in order to identify relevant standards and to craft a comprehensive and coherent wildfire plan therefrom. Neither do the wildfire plan's mere references to Firewise and the NFPA provide a sufficient basis for me to impose clear and objective conditions of approval. I cannot simply condition approval on compliance with the Firewise Community recognition process and the NFPA standards. *See, Sisters Forest Planning Comm. v. Deschutes County,* 48 LUBA 78 (2004), 198 Or App 311, 108 P3d 1175 (2005).[20] Finally, the wildfire plan's narrative summaries state the developer and the

[20] In that appeal, filed by LandWatch's predecessor, the Court of Appeals held a condition of approval requiring implementation of the applicant's expert's recommendations was improper where the recommendations were imprecise, confusing, hypothetical, and/or in conflict with county code provisions.

HOA will undertake certain wildfire plan activities, but they do not clarify if/when the developer would bow out and the HOA would take over.

For the foregoing reasons, the Hearings Officer finds the applicant's wildfire plan is not sufficient to demonstrate compliance with this conditional use approval criterion because it simply does not include a meaningful action plan or an explanation of how, when, or by whom the plan will be implemented. And it addresses The Tree Farm as a whole although the record indicates there is considerable variation in location, topography, and vegetation in The Tree Farm lots. However, because the Firewise and NFPA standards are nationally recognized, comprehensive and detailed, I believe it is feasible for the applicant to create an adequate wildfire plan based on those standards that includes the critical information missing from the submitted plan. I find such a plan must include, at a minimum, the following information:

- identification of each residential lot building envelope, the extent and nature of the defensible space around each dwelling, and fire fuel treatments on the building envelope and the rest of the lot;
- the setback from the upper edge of the slope(s) for each building envelope and dwelling;
- the fuel treatment, if any, on any slope below each dwelling, and if such fuel treatment will occur on open space, what impact it will have on that open space, on surface water drainage, and on wildlife habitat for lots in the WA Zone;
- whether and where decks and outbuildings would be permitted on each lot;
- what specific construction methods and building materials will be required for each dwelling to meet specific, identified NFPA standards;
- a detailed description of how and by whom the wildfire plan will be implemented, monitored, and enforced, with particular attention to the transition between the developer and the HOA;
- a specific, mapped evacuation plan for The Tree Farm and each of the five Tree Farm developments, including directions for operation of the gate on Sage Steppe Drive; and
- a detailed description of when and how residents and guests will be informed of the wildfire plan requirements and the evacuation plan.

2. Inadequate Recognition of Fire Behavior. The parties disagree as to whether the proposed design and configuration of Tree Farm 3 adequately recognize and address wildfire behavior. For example, Mr. Johnson argues placement of dwellings on the central ridge and upland areas above slopes increases wildfire risk because the dwellings would be both upslope and downwind from a wind-driven wildfire starting in the public and private forest lands or Shevlin Park to the west. Mr. Johnson also argues placement of dwellings in the shrub steppe vegetation on the eastern half of The Tree Farm does not reduce the fire risk because fire in that vegetation can produce flame lengths of 10-12 feet. He claims the previously burned portion of The Tree Farm, including the eastern part of Tree Farm 3, does not create a fuel break between the forested western half of The Tree Farm and the urban and urbanizable lands to the east, as claimed by the applicant, because the Awbrey Hall Fire only changed the *type* of fuel, reducing the fire risk from "extremely intense to merely intense." As discussed elsewhere in this decision, Mr. Johnson also argues the proposed secondary emergency access road will not allow timely and efficient evacuation of The Tree Farm in the event of a fire and should be in a

different location. Finally, Mr. Johnson questions the adequacy of water available for fire suppression in light of the uncertainty of The Tree Farm's water supply and pressure.

The applicant responds that The Tree Farm configuration and its wildfire plan adequately address and minimize the risk of wildfire. The applicant notes that in his comments on The Tree Farm, Ed Keith stated that he doesn't consider the 10-20 percent slopes on the west side of the central ridge to be particularly steep, and that many local subdivisions have been developed on steeper ground. He stated he believes fire risk can be reduced by setting dwellings and decks well back from the top of the slopes. The applicant also submitted several letters from Mr. Marshall, discussed in the findings above, identifying measures to be implemented in The Tree Farm. However, as discussed above, the Hearings Officer has found the applicant's wildfire plan does not adequately identify what NFPA standards are applicable to Tree Farm lots and dwellings, how and by whom those standards will be implemented and enforced, and what would be the relative role of the developer and the HOA in implementing the wildfire plan.

For the foregoing reasons, the Hearings Officer finds that without an adequate wildfire plan, the applicant also has not demonstrated the site and configuration of Tree Farm 3 sufficiently address predicted wildfire behavior affecting residential lots and dwellings. I also find it is neither feasible nor appropriate for me to craft conditions in an effort to make the applicant's proposal approvable.

For the foregoing reasons, the Hearings Officer finds the applicant has failed to demonstrate the site for Tree Farm 3 is suitable for the proposed use considering natural hazards.

Natural Resource Values. The Hearings Officer finds natural resources on the site of Tree Farm 3 consist of native vegetation including predominantly shrub-steppe vegetation, scattered rock outcrops, and wildlife habitat including the Tumalo winter deer range in the most southwestern portion of the site within the RR-10 and WA Zones.

a. Vegetation. The majority of the site (789%) will be maintained in permanent open space. As discussed above, the record indicates the applicant has undertaken regular brush cutting and tree thinning for purposes of fire fuel reduction and intends that such vegetation management will continue within the Tree Farm 3 open space tract. In addition, the applicant proposes that each lot in Tree Farm 3 will have a designated building envelope in which the dwelling must be constructed, preserving native vegetation on the residential lots outside the building envelopes. As discussed in the findings below, the applicant's wildlife expert testified that in her opinion, management of vegetation on Tree Farm 3 for fire fuel reduction can and will be accomplished in a manner consistent with preservation of wildlife habitat.

b. Rimrock and Rock Outcrops. At the outset, the Hearings Officer finds it is not clear any rock outcrops in Tree Farm 3 qualify as "rimrock," defined in Section 18.04.030 as a ledge or outcropping of rock that "forms a face in excess of 45 degrees." In any case, the submitted tentative plan and burden of proof statement for Tree Farm 3 indicate the applicant does not intend to remove or alter existing rimrock or rock outcrops.

c. Wildlife Habitat. The Hearings Officer finds Tree Farm 3 contains what are essentially two categories of wildlife habitat. The western 86 acres of Tree Farm 3 are located in the Tumalo winter deer range and are subject to the WA Zone established to protect it. The remaining approximately 21 acres of Tree Farm 3 provide wildlife habitat typical of undeveloped land west of Bend, but this habitat is not designated for special protection. Nevertheless, the applicant

proposes to protect this typical habitat in a manner similar to that required in the WA Zone. Specifically, the ten Tree Farm 3 dwellings would be clustered near the northern border of the site, all dwellings would be built within a designated building envelope so as to preserve the rest of the residential lots in a natural state, and no new fences would be established. In addition, the Tree Farm 3 burden of proof states the applicant has removed some wire fencing on The Tree Farm, and intends to remove most of the remaining wire fencing and to eradicate and revegetate most of the existing network of dirt logging roads. The Hearings Officer finds that with these protective measures, the portion of Tree Farm 3 outside the WA Zone is suitable for Tree Farm 3 considering the typical wildlife habitat outside the winter deer range.

The tentative plan for Tree Farm 3 shows that all of the 86 acres within the WA Zone and the winter deer range would be maintained in permanent open space with the exception of 3.1 acres of right-of-way for segments of Golden Mantle Loop and Tree Farm Drive. No dwellings and no part of the trail system would be located in this part of Tree Farm 3, but a small portion of the proposed recreation/mountain bike trail would traverse this area. Therefore, the Hearings Officer finds the impacts from Tree Farm 3 on the winter deer range would be limited to use of Tree Farm Drive and the recreation trail, and vegetation management practices for fire fuel reduction.

The stated purpose of the WA Zone in Section 18.88.010 is to "conserve important wildlife areas" while permitting "development compatible with the protection of the wildlife resource." Therefore, the Hearings Officer finds the protective measures established in the WA Zone are intended to accomplish those dual purposes. As discussed in the WA Zone findings, I have found Tree Farm 3 will satisfy all applicable WA Zone criteria. Nevertheless, in its August 19 and December 11, 2014 comments on the applicant's proposal, ODFW argued The Tree Farm will not protect the Tumalo winter deer range for the following reasons:

- development of residences in the winter deer range will convert native forest and upland habitats into built structures, including roads, resulting in permanent loss of habitat;
- homeowners will be allowed to remove habitat on their homesites;
- deer migration corridors will be blocked by dwellings;
- trails and open space will promote low impact recreational use – e.g., bicycling, walking, and wildlife viewing – that will interfere with deer use of winter range if they are not sufficiently dispersed in the Tree Farm; and
- the applicant has not identified mitigation measures demonstrating "no net loss" of habitat pursuant to ODFW's administrative rules.[21]

At the outset, the Hearings Officer notes no dwellings are proposed in the WA-zoned portion of Tree Farm 3, and therefore the impact of dwellings addressed by ODFW will not occur in Tree Farm 3. In addition, I find ODFW's habitat mitigation policy, which includes the "no net loss" standard, does not establish approval criteria for quasi-judicial land use decisions unless they involve local government land use regulations that require habitat mitigation, or proposed plan amendments or zone changes relating to habitat protection. OAR 635-415-0015 and OAR 635-

[21] ODFW also raised concerns about a proposed pond in The Tree Farm. However, in her letter dated October 10, 2014, Dr. Wente stated the pond has been removed from The Tree Farm proposal.

415-0020. I find neither exception applies here. Finally, I find ODFW's concerns about low-impact recreational use on trails are of greater relevance to Tree Farms 4 and 5 than they are to Tree Farms 1, 2 and 3 because all of Tree Farm 5 and most of Tree Farm 4 are located in the winter deer range. Consequently, I find the only relevant wildlife issues are development and use of the segment of Tree Farm Drive in Tree Farm 3, and management of the WA-zoned open space for fire fuel reduction.

LandWatch submitted an article from the USFS Pacific Northwest Research Station (PNWRS) entitled "Science Findings" generally addressing the potential impact of residential development on mule deer winter range and migration corridors. The article reviews the work of Jeff Kline, a research forester with PNWRS, on general deer migration patterns in Deschutes County, and in particular on anticipated effects on deer migration from potential future development of the Cascade Timberlands property west of The Tree Farm. The article concludes by listing "land management implications" for such development, including recommendations that resource managers work with landowners to consider protective measures such as conservation easements to protect winter deer range and migration corridors.

The WMP, dated May 19, 2014, is attached to the Tree Farm 3 burden of proof as Exhibit "I," and was prepared by Dr. Wendy Wente, an ecologist and biologist with Mason, Bruce and Girard Natural Resource Consultants (MB&G). The WMP includes an overview of The Tree Farm property, Dr. Wente's methods for investigation and identification of existing wildlife habitat and use, her assessment of the habitat and wildlife use thereon based on her investigation, a number of specific mitigation and conservation measures, and her opinion regarding wildlife habitat on the portion of The Tree Farm zoned WA, including residential lots and open space tracts. The WMP's assessment and recommendations concerning the residential lots are addressed in detail in the Hearings Officer's decisions in Tree Farms 4 and 5 which propose dwellings in the WA Zone.

At page 8 of the WMP, Dr. Wente identified "general wildlife utilization trends" for mule deer on The Tree Farm in relevant part as follows:

> "***Mule Deer Habitat and Migration Corridor.***
>
> *Deschutes County has designated the Tree Farm West property* [the part of The Tree Farm located in the WA Zone] *within the PSA* {The Tree Farm] *(Figure 1) as a mule deer winter range (WA Zone), and deer are also known to migrate through the area. Throughout the field investigation, the MB&G biologist observed signs of diffuse migration through the respective understories of Ponderosa Pine Forests West and East. Wildlife species, especially ungulates, frequently use the PSA in its entirety as evidenced by the presence of deer signs at sample plots and other areas throughout the property. These forested habitats provided minimal evidence of bedding, but they showed signs of significant wildlife use as foraging and corridor habitat. Numerous signs of up-gradiant and down-gradiant trails/tracks suggest that forested areas within and throughout the PSA serve as diffuse corridors for traveling to resources located outside of the PSA and for accessing forage and possibly water resources. Key areas identified as travel corridors for deer included the dry draw and parallel minor ridges running northeast to southwest between plots H8 and H9 (Figure 2). This corridor extends northward along the property boundary where it parallels Tumalo Creek. Deer are also likely using corridors where they would experience lower gradients, such as along the existing road to the south of plot H7, to move between the*

Tumalo Creek riparian corridor and upland areas to the east (outside of the WA Zone) that provide bunchgrass and antelope bitterbrush forage. Therefore, the MB&G biologist was able to corroborate the WA Zone designation within the PSA relative to mule deer habitat and use." (Bold emphasis in original.)

Based on the figures and photographs in the WMP, the Hearings Officer understands Dr. Wente to conclude mule deer use and travel corridors are sufficiently diffuse on The Tree Farm property that deer currently move across the southern portion of Tree Farm 3 and will continue to do so. Based on Dr. Wente's opinion, I find deer would cross the proposed segment of Tree Farm Drive in Tree Farm 3.

Dr. Wente also submitted a letter dated October 10, 2014 responding to ODFW's concerns in relevant part as follows:

> *"ODFW commented that the deer migration corridors 'could be completely eradicated or substantially cut-off* [sic], *forcing deer to move through the development * * *.' The Tree Farm RR-10 parcel, which is overlain by the deer winter range WA zone, is approximately 393 acres in size. The development plan proposes approximately 30 acres of lots and road right-of-way (combined) within the RR-10 parcel. This maintains the remaining approximately 363 acres (92%) as designated open space. The DCC 18.88.050(D)(2) requires the retention of 80% of an RR-10 zoned area with a WA zone as open space, thus this development far exceeds the proportion of open space required by the code for a cluster development within a WA Zone. In addition to providing more open space than required by the code for deer winter range on RR-10, the development team selected a design configuration that would maintain wildlife corridors throughout the open space. The plan provides an extensive corridor along the western boundary, preserving an area where deer would be expected to continue utilizing the Tumalo Creek drainage. The two pods of the cluster development that fall within (TF5) or partially within (TF4) the RR-10 zone are also configured to provide an additional north/south corridor following the natural lay of the land.* ***Finally, the configuration of the development plan supports east/west deer movement patterns along the southern portion of the RR-10 zone. This area is clearly maintained as a corridor of habitat between the road*** **[Skyliners Road]** ***and the southernmost cluster*** **[in Tree Farms 3 and 5].** ***These corridors, and the open space in general, will continue to provide space for deer to move across and to utilize the wildlife habitat provided by the WA zone on the RR-10.****"* (Bold emphasis added.)

The Hearings Officer understands the above-emphasized language to mean Dr. Wente concluded the proposed open space in the southern portion of The Tree Farm and Tree Farm 3, including the portions of Tree Farm Drive located therein, would not create a barrier to deer movement or habitat use in that area. The tentative plans for The Tree Farm indicate, and my site visit observations confirmed, that there are a number of existing dirt roads in this area of The Tree Farm as well as on the southern portion of the adjacent Miller Tree Farm property to the east. The record also indicates these roads and the existing dirt trails in The Tree Farm have been, and currently are, used by members of the public. In other words, human use of this habitat already is occurring. The applicant proposes to obliterate and revegetate some of the existing dirt roads in an effort to restore habitat and reduce human use thereon. The applicant also proposes to remove much of the existing wire fence on The Tree Farm property which will reduce the physical barriers to deer movement on the property.

The Hearings Officer finds development of The Tree Farm and construction of Tree Farm Drive are likely to increase vehicular traffic in the southern portion of The Tree Farm over historic and current use of the existing dirt roads and trails. Nevertheless, considering the relatively low volume of traffic predicted for Tree Farm Drive at buildout – 476 ADTs – I find the presence of a segment of Tree Farm Drive in Tree Farm 3 will not interfere with use of the winter deer range in general or migration corridors therein in particular.

At the public hearing, the Hearings Officer questioned whether ongoing management on The Tree Farm for fire fuel reduction can be undertaken consistent with the conservation of the Tumalo winter deer range. In response, the applicant submitted a letter dated December 5, 2014 from Dr. Wente stating the WMP and the applicant's fire plan "are designed to provide a coordinated solution to serve two goals that can in some cases be in conflict: maintaining the quality of wildlife habitat while also reducing the risk of wildfire." Specifically, Dr. Wente noted the fuel reduction treatments proposed for The Tree Farm's open space tracts are merely a continuation of the treatments already practiced by Miller Tree Farm on The Tree Farm property. Dr. Wente stated that in her opinion the proposed fuel reduction treatments would not interfere with conservation of the winter deer range for three reasons: (1) The Tree Farm open space provides good winter deer range habitat in spite of historic and ongoing fuel reduction treatments thereon; (2) the fuels management techniques will simulate the effects of small-scale wildlife which is an important component of a healthy ponderosa pine ecosystem; and (3) regular brush cutting and removal of juniper trees encourages the growth of forbs that make up much of the winter forage for deer. However, as discussed in the findings above and in my decisions in Tree Farms 1, 2, 4, and 5, I have found it may be necessary to implement more aggressive fuel management methods, such as clearing vegetation downslope from ridgetop dwellings, in order to reduce the fire risk for those dwellings to a sufficient degree that Tree Farm 1 is suitable for the proposed cluster/PUD and will be compatible with surrounding lands. I have found some of this clearing may need to occur in The Tree Farm's open space tracts in the WA Zone. I find the WMP does not appear to contemplate or address the impacts to wildlife habitat from, that additional fuel reduction.

Finally, the WMP includes at pages 9-12 a number of habitat mitigation and conservation measures. These measures are described as dwelling siting and fencing consistent with the WA Zone not allowing uses prohibited by Title 18, and several specific measures addressing vegetation monitoring, removal of non-native species and juniper, preserving ponderosa pine trees and downed logs, and keeping dogs on leash. However, the Hearings Officer finds WMP suffers from the same lack of detail and clarity as does the applicant's wildfire plan, particular concerning when, how, and by whom these measures will be undertaken, how their success will be measured, and how and by whom they will be enforced. Rather, for the most part the WMP states simply that certain things "will be done" or "will comply." I find that to be effective, and to assure compliance with this conditional use approval criterion, the WMP must include more detail, such as an action plan that identifies specific roles and responsibilities for the developer and HOA, describes how and when the developer will hand off to the HOA, and what specific measures will be undertaken consistent with the wildfire plan to assure more aggressive fuel reduction measures, if required, will not interfere with deer use of the winter range and migration corridors. As with the wildfire plan, I find it is neither feasible nor appropriate for me to craft conditions of approval in an effort to make the applicant's WMP adequate.

For the foregoing reasons, the Hearings Officer finds the applicant has failed to demonstrate the site for Tree Farm 3 is suitable for the proposed use considering natural resource values.

B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).

FINDINGS:

Existing and Projected Uses. Existing and projected uses on surrounding properties are discussed in the findings below.

1. East: To the east of Tree Farms 1 and 2 is vacant land zoned UAR-10 and owned by Miller Tree Farm. The Hearings Officer finds that in the short term this property could be developed with ten-acre residential lots or with smaller lots through PUD approval. In the longer term, because this property is included in the urban area reserve, it may be brought into the Bend UGB and developed with urban-density residential uses. Farther to the east within the Bend UGB and city limits are three public schools and Northwest Crossing, a mixed-use development including urban-density residential, commercial, and light industrial development. The Hearings Officer finds these uses will continue in the future. The applicant's burden of proof states, and I agree, that the design of The Tree Farm, with its clustering of dwellings and large swaths of open space, will be compatible with surrounding lands to the east by placing the dwellings closest to the UGB and by serving as a permanent transition between the urban and urbanizable lands to the east and Shevlin Park and forest lands the west.

2. West. To the southwest is the portion of the DNF planned and managed for scenic views and recreation, including the "Phil's Trail" mountain biking trail network. Immediately to the west is Shevlin Park, a 652-acre regional park owned and managed by the park district and which includes developed amenities, large areas of open space, and an extensive trail system. The Hearings Officer finds it is reasonable to assume these uses will continue in the future. Farther to the west and northwest are private forest lands including the approximately 33,000-acre Cascade Timberlands property and several smaller parcels. Evidence in the record concerning current uses on these lands is scant, so I have found it appropriate for purposes of the suitability criteria addressed above to assume existing uses include those permitted outright in the F-1 Zone, including some timber harvest. However, as noted above, I am aware long-term plans for the Cascade Timberlands holdings have included a mix of timber production, protection of scenic views, and recreation.

The Hearings Officer has found Tree Farm 3 will not cause a significant change in, or significantly increase the cost of, accepted forest practices on nearby lands devoted to forest use. However, as discussed in the findings above, I have found the applicant failed to demonstrate the site for Tree Farm 3 is suitable for the proposed cluster/PUD considering natural hazards and natural resource values due to deficiencies in the wildlife plan and wildfire plan. The question, then, is whether those suitability findings mean Tree Farm 3 will be incompatible with current and projected uses on public and private forest lands to the west and southwest. I find the primary concerns about incompatibility are the risk of a fire spreading into and from The Tree Farm, and the lack of an adequate wildfire plan and implementation of that plan making that risk higher. I believe it is feasible for the applicant to develop an adequate wildfire plan, but unless and until the applicant does so, I find Tree Farm 3 is not compatible with existing and proposed uses on Shevlin Park and nearby forest lands.

3. South. To the south across Skyliners Road is The Highlands at Broken Top PUD zoned UAR-10 and including 37 ten-acre residential lots and open space. Farther to the south is the

Tetherow destination resort including residential lots, open space, a golf course and clubhouse. The Hearings Officer finds these uses will continue in the future, although because it is zoned UAR-10, The Highlands at Broken Top has the potential to be brought into the Bend UGB and redeveloped at urban density. I find Tree Farm 3 will be compatible with surrounding lands to the south because they are developed with uses similar to what is proposed for The Tree Farm – i.e., rural residential subdivisions.

3. North. To the north are large vacant parcels zoned UAR-10, one of which is 376 acres in size and owned by Rio Lobo. The Hearings Officer finds that in the short term these lands could be developed with ten-acre lots or with smaller lots through PUD approval. In the longer term, because these lands are included in the urban area reserve, they may eventually be brought into the Bend UGB and developed at urban density.

Rio Lobo argues The Tree Farm and Tree Farm 3 are not compatible with future development of its property for two reasons. First, in his letter dated December 11, 2014, Rio Lobo's attorney Myles Conway stated the applicant's proposal to create a private road system in The Tree Farm, and to stub off Sage Steppe Drive in Tree Farm 1 at the boundary of Rio Lobo's property, will not be sufficient to support additional through traffic generated by future development of Rio Lobo's land. As discussed in the findings above addressing the adequacy of transportation access, Rio Lobo's traffic engineer predicted that buildout of Rio Lobo's 376-acre property at urban density would include 1,100 dwellings units generating over 9,000 ADTs. Mr. Conway argues Section 17.36.020(B) requires the applicant to dedicate and construct a public road from The Tree Farm's shared boundary with Rio Lobo's property to Skyliners Road to facilitate future development of Rio Lobo's property. The Hearings Officer disagrees. As discussed in the subdivision and PUD findings below, I have found the applicant is permitted to develop The Tree Farm with private roads. In addition, I have found Section 17.36.020(B) of the subdivision ordinance does not require the applicant to dedicate or construct a public road between the Rio Lobo property and Skyliners Road because none is necessary to accommodate present and future through traffic generated by The Tree Farm and/or development of Rio Lobo's property with its current UAR-10 zoning.[22]

Second, Mr. Conway argues The Tree Farm is not compatible with projected uses on Rio Lobo's property because the majority of Tree Farm dwellings are proposed to be clustered along or near Rio Lobo's southern boundary, and the applicant proposes only one street connection between the properties, the future extension of Sage Steppe Drive. In his January 6, 2015 submission, Mr. Conway asserts this configuration will "adversely affect future development of the Rio Lobo property" and these proposed Tree Farm homesites "should be subjected to additional setbacks from applicant's northern property boundary to compliance with the compatibility provisions." Mr. Conway argues Tree Farms 1 through 4 must be reconfigured to provide a future road connection at least every 400 feet along the Rio Lobo property boundary, relying on Section 17.36.140(B)(3)(c). However, as discussed in the findings below, the Hearings Officer has found Section 17.36.140(B)(3)(c) of the subdivision ordinance is not applicable to Tree Farm 3, and therefore the applicant is not required to provide more than one future road connection along the northern boundary of The Tree Farm.

[22] In a letter dated December 23, 2014, Charley Miller representing Miller Tree Farm LLC stated it would be willing to commit to the dedication of public road right-of-way in a mutually agreed upon location across the adjacent Miller Tree Farm property in the event Rio Lobo obtains county land use approval for either a destination resort or a 37-lot subdivision or PUD on its adjacent property. That dedication would be to allow Rio Lobo to construct the segment of Skyline Ranch Road from the Rio Lobo property across the Miller Tree Farm property to the recently constructed NorthWest Crossing Drive/Skyline Ranch road intersection adjacent to the new Pacific Crest Middle School.

Rio Lobo's property and the vacant Miller Tree Farm property east of Tree Farm 1 are zoned UAR-10 and abut the Bend UGB. Consequently, the Hearings Officer finds the nature and timing of development on these two properties likely will depend on whether and when they are brought into the UGB and when Skyline Ranch Road, a designated collector, is dedicated and developed north of its current terminus near Skyliners Road. Annexation of these properties into the UGB could allow the urban-density development contemplated in Rio Lobo's traffic study. However, I find that as long as the properties remain in the urban area reserve, development will be at much lower density. The applicant's burden of proof states The Tree Farm was conceived as a permanent transition area between urban and urbanizable land to the east and Shevlin Park and large areas of forest to the west. That transition is created by clustering most of the dwellings in the UAR-10 zoned portion of The Tree Farm, including all of the dwellings in Tree Farm 2, and placing most of the open space on the RR-10/WA-zoned property near Shevlin Park and forest lands. For these reasons, I find that regardless of the ultimate development density on the Rio Lobo and Miller Tree Farm properties, the transition area created by The Tree Farm cluster/PUDs will be compatible with their development.
Opponent LandWatch argues the applicant mischaracterizes The Tree Farm as creating a "transition area" because "there are no urban uses for a substantial distance to the east," and therefore the applicant's proposal represents "an isolated pocket subdivision that doesn't provide a transition to anything." The Hearings Officer disagrees. The properties east and north of The Tree Farm are zoned UAR-10 and therefore are planned and zoned for eventual inclusion in the Bend UGB and urban-density development. That these properties are undeveloped does not change the fact that they are urbanizable lands and ultimately may be developed at much higher density than The Tree Farm. Accordingly, I find the characterization of proposed The Tree Farm as a "transition area" is accurate.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 will be compatible with existing and projected uses on surrounding lands to the north, east and south, but will not be compatible with Shevlin Park and forest lands to the west because of deficiencies in the applicant's wildfire plan and WMP.

C. These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.

FINDINGS: As discussed throughout this decision, the Hearings Officer has recommended that if the applicant's proposal is approved on appeal, such approval should be subject to conditions of approval designed to assure compliance with applicable standards and criteria.

1. Section 18.128.040, Specific Use Standards

A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.

FINDINGS: Compliance with the specific use standards for cluster developments in Section 18.128.200 is addressed in the findings immediately below.

c. Section 18.128.200, Cluster Development (Single Family Residential Uses Only)

A. Such uses may be authorized as a conditional use only after consideration of the following factors:

FINDINGS: The Hearings Officer finds the language of this paragraph means the factors discussed in the findings below do not establish specific approval standards for Tree Farm 3, but rather identify issues I must consider.

1. Need for residential uses in the immediate area of the proposed development.

FINDINGS: The applicant addressed this factor by submitting as Exhibit "K" to its burden of proof reports identifying the homes, lots and land currently for sale, pending sales, and actual sales during the past 12 months in developments in close proximity to The Tree Farm. These developments include NorthWest Crossing, Shevlin Commons, The Highlands at Broken Top, Tetherow, and Shevlin Meadows. The report also includes a copy of the June 12, 2014 "Bratton Report," a monthly compilation of data on residential sales complied by the Bratton Appraisal Group. The staff report summarizes the reports in Exhibit "K" as follows:

> *"Out of a total of 131 listings, 81 lots have sold in the past year and nine sales are pending. This translates to 7.5 sales per month. As of the time of the reports, the applicant indicates a standing inventory of 41 properties on the market, or just under 5 ½ months inventory. The applicant notes that since January 2014, the number of sales and pending sales has increased to an average of nearly ten per month. Assuming current activity levels, the applicant concludes there is just over a 4 month supply of inventory on the market.*
>
> *Out of a total of 178 single-family home listings priced up to $2,000,000, 116 homes have sold in the past year and 29 are pending, absorbing inventory at just over 12 sales per month. Standing inventory includes 33 homes on the market -- a dozen of which are either under construction or to-be-built -- providing fewer than three months of single-family homes on the market."*

Opponents Connie Peterson and Christine Herrick argue the applicant should have identified and addressed the need for *affordable* housing. The Hearings Officer understands these concerns. However, I find use of the broad term "residential uses" in this factor does not specify or require analysis of any particular types of housing.

For the foregoing reasons, the Hearings Officer finds the applicant has demonstrated there is a need for residential uses in the immediate area of The Tree Farm, and the proposed dwellings in Tree Farm 3 will address that need.

2. Environmental, social and economic impacts likely to result from the development, including impacts on public facilities such as schools and roads.

FINDINGS:

Environmental Impacts. Tree Farm 3 is configured so that the ten proposed dwellings and most of the roads that will serve them are clustered on relatively level land in the north-central part of The Tree Farm in the UAR-10 Zone. The remainder of Tree Farm 3 will be preserved as open space with the exception of a small area near the southern property boundary on which a

segment of Tree Farm Drive will be constructed. The applicant proposes to establish building envelopes on each residential lot in which dwellings must be constructed. Remaining land on the residential lots and the open space tract would be maintained in its natural state except for periodic removal of juniper trees and brush cutting required for fire fuel reduction. As discussed in the findings above, the Hearings Officer has found Tree Farm 3 will not interfere, and will be compatible, with accepted forest practices on nearby public and private forest lands. I have also found that without an adequate wildfire plan the applicant has not demonstrated The Tree Farm and Tree Farm 3 will be compatible with current and projected uses on Shevlin Park and nearby forest lands to the west.

In his December 11, 2014 letter, Paul Dewey argues the Hearings Officer should not consider environmental impacts based on a comparison of the impacts of clustering vs. development of The Tree Farm property with the maximum five dwellings that would be permitted under its current configuration and zoning, or with alternate development patterns such as a traditional subdivision with 10-acre lots and dwellings spread throughout the 533-acre property. His letter goes on to state:

> *"There are apparently only five lots, so the current alternative would be five houses. Though the zoning allows a house on a 10-acre parcel, there is <u>no basis</u> to conclude that 50 10-acre lots can be created here."* (Underscored emphasis added.)

The Hearings Officer disagrees. There are reasons to find a traditional subdivision with ten 10-acre lots could be approved on each of the five Tree Farm legal lots. First, a similar development -- The Highlands at Broken Top -- was approved immediately south of The Tree Farm. Although this subdivision technically is a PUD,[23] it was approved with 37 mostly ten-acre lots on land zoned UAR-10 and adjacent to a large open space area abutting the DNF. Second, traditional subdivisions do not require conditional use approval in the RR-10 and UAR-10 Zones. They are subject to the 10-acre minimum lot size in those zones, and to the subdivision standards in Title 17. As discussed in the findings below concerning compliance with Title 17, the vast majority of those standards are clear and objective design standards. The exceptions are the subjective and discretionary standards in Section 17.16.100 that require the developer to demonstrate the subdivision would establish orderly development and land use patterns in the area, provide for the preservation of natural features and resources, and not create excessive demand on public facilities and services, and utilities. I find it is possible for the applicant to satisfy those standards with conditions of approval and with the above-described revisions to its wildfire plan and WMP. Accordingly, I find there is nothing improper in comparing the propose cluster/PUDs to the alternative of a traditional subdivision when weighing the environmental impacts of The Tree Farm and Tree Farm 3.

LandWatch also argues the applicant has failed to demonstrate The Tree Farm will not have negative environmental impacts on Tumalo Creek. Again, the Hearings Officer disagrees. I find potential impacts on Tumalo Creek would be limited to erosion and runoff from the west side of the central ridge into the creek, and I find the applicant's drainage plan, discussed in detail elsewhere in this decision, demonstrates runoff will be contained on site.

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[23] The *Cascade Highlands* decision, included in the record as an attachment to Anthony Raguine's November 17, 2014 memorandum, states "the 37 lots are all about 10 acres in size (with the exception of proposed Lot 22 that will be 18.05 acres)," and "the remaining acreage [approximately 20 acres] * * * will be platted as a separate lot" and designated "not a part" of the subdivision.

Because the Hearings Officer has found the applicant failed to demonstrate the site for Tree Farm 3 is suitable for the proposed cluster/PUD considering wildlife habitat and wildfire risk, I also find the applicant failed to demonstrate Tree Farm 3 adequately considers and addresses this cluster development factor.

Social Impacts. The Hearings Officer has found the applicant demonstrated a need for additional residential uses on the west side of Bend that The Tree Farm will address. Tree Farm 3 will cluster ten dwellings in the UAR-10 Zone relatively close to three public schools and commercial and light-industrial uses in NorthWest Crossing, and possible future urban-density development on the adjacent Rio Lobo and Miller Tree Farm properties. The configuration will place approximately 98 percent of the Tree Farm 3 open space in the RR-10 and WA-Zones closest to Shevlin Park and the public and private forest lands to the west. As discussed above, I have found the proposed configuration of Tree Farm 3 will provide a transition between the Bend urban area and the vast forested land to the west. I find the proximity of Tree Farm 3 to Shevlin Park and to the extensive "Phil's Trail" mountain biking trail network in the DNF will facilitate use of these resources by Tree Farm residents.

LandWatch argues The Tree Farm will have negative social impacts on Shevlin Park. The Hearings Officer finds this argument ignores the record. The park district submitted several comments in support of The Tree Farm. The only concerns the park district expressed were the need to refine the proposed trail alignments between The Tree Farm and Shevlin Park, and the need to provide for off–street parking for trail access. In his December 11, 2014 comments, Steve Jorgensen, the park district's Park and Trail Planner, stated that increasing public access to the south portion of Shevlin Park "is a positive development" that will relieve some of the current and future demands on the limited parking areas at the north end of Shevlin Park, and will serve to discourage transient camps on the southern portion of the park.

Mr. Jorgensen recommended several measures to facilitate trail access and off-street parking. These would occur on the adjacent Miller Tree Farm property. Specifically, Mr. Jorgensen recommended the applicant dedicate a 20'-wide "re-locatable 'floating' public trail easement" to the park district that abuts and runs parallel to the Skyliners Road right-of-way between Crosby Drive and the proposed intersection between Tree Farm Drive and Skyliners Road. He also recommended the applicant improve a new mountain bike trail within that easement in order to provide a connection between the existing West Bend Trail along Skyliners Road that terminates on the east side of Crosby Drive and the proposed trail system in The Tree Farm. The Hearings Officer finds that because it appears from the tentative plan for Tree Farm 1 that this easement and the recommended improvements thereto would be located entirely within the adjacent Miller Tree Farm property, I lack authority to require the easement and improvements as a condition of approval for Tree Farm 3.

Economic Impacts. The applicant argues, and the Hearings Officer agrees, that The Tree Farm's clustered development pattern is the most cost-efficient manner in which to develop a large rural tract, and much more efficient than providing public facilities and services to widely dispersed ten-acre lots. For example, clustering of dwellings requires shorter extensions of streets and utilities required to serve residential lots. In addition, I find that if the applicant is able to secure domestic water through connection to the City of Bend water system or the Avion Water Company there will be no need for individual on-site wells.[24]

[24] The applicant argues The Tree Farm also will provide economic benefits by having the HOA own and maintain PUD roads, thereby relieving the county of such maintenance expenses. However, in his comments on the applicant's proposal, George Kolb noted that the county no longer is accepting roads into its road maintenance network.

Public Facilities. Comments on the applicant's proposal from Peter Russell and George Kolb indicate no improvements to existing streets or intersections are necessary. No comments on road improvements were received from the city's public works department. As discussed in the findings above concerning the adequacy of transportation access to The Tree Farm, the Hearings Officer has found the development will not create an undue burden on affected transportation facilities. Finally, as discussed in the findings below, incorporated by reference herein, the Hearings Officer has found that providing domestic water to The Tree Farm and Tree Farm 3 will not place an undue burden on city water facilities.

Schools. The UAR-10 zoned portion of Tree Farm 3 is located within the boundaries of the Bend-La Pine School District.[25] As discussed above, three of the district's schools -- Miller Elementary, Summit High School, and the new Pacific Crest Middle School under construction -- are located within a mile of Tree Farm 3. The school district did not submit comments on the applicant's proposal. However, the Hearings Officer is aware the school district responds to growth in student populations by expanding school capacity and/or adjusting school boundaries, and typically requests that private subdivision streets be subject to public access easements to facilitate school bus travel thereon. As discussed above, the applicant proposes to dedicate public access easements over all private Tree Farm roads.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 will have positive social and economic impacts, but in the absence of an adequate wildfire plan and WMP, the applicant has not demonstrated Tree Farm 3 will have entirely positive environmental impacts.

3. Effect of the development on the rural character of the area.

FINDINGS: Tree Farm 3 is located in a rural area west of the Bend UGB that is characterized by: (a) large vacant parcels zoned UAR-10 to the east and north; (b) large UAR-10 zoned parcels to the south across Skyliners Road with low-density residential development (The Highlands at Broken Top) and a destination resort (Tetherow); (c) Shevlin Park; and (d) tens of thousands of acres of public and private forest lands to the west. The Hearings Officer has found The Tree Farm will provide a transition between the urban and urbanizable lands to the east and the vast resource lands to the west. The overall density of development in The Tree Farm will be the same as in The Highlands at Broken Top. The proposed configuration of The Tree Farm will cluster the majority of dwellings in the UAR-10 Zone and will locate the majority of open space in the RR-10 and WA Zones. For these reasons, I find Tree Farm 3 will be consistent with the rural character of the area.

4. Effect of the development on agricultural, forestry, wildlife or other natural resource uses in the area.

FINDINGS: The record indicates there are no agricultural uses in the area. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found Tree Farm 3 will not force a significant change in, or significantly increase the cost of, accepted forest practices on nearby land devoted to forest use, and will be compatible with such uses. With the exception of vegetation management for fire fuel reduction, the applicant proposes to retain all

[25] The record indicates the RR-10 zoned portion of the Tree Farm is located in the Redmond School District. The applicant's burden of proof states the applicant will request that the Bend and Redmond school districts allow the thirteen Tree Farm homesites in the Redmond School District to be transferred to the Bend-La Pine School District.

existing vegetation on The Tree Farm open space tracts as well as on the portions of the two-acre residential lots outside the designated building envelopes. The applicant proposes to site dwellings on relatively level ground, thus minimizing the need for significant excavation and fill, and to site the private roads to minimize steep slopes and road cuts. Finally, as also discussed above, the Hearings Officer has found Tree Farm 3 will comply with all applicable requirements in the WA Zone. However, I have found that in the absence of an adequate wildlife habitat management and wildfire plans, the applicant has not demonstrated The Tree Farm and Tree Farm 3 will be compatible with nearby forest lands or with the Tumalo winter deer range.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 will not have a negative effect on agriculture or forestry. But I have found the applicant has failed to demonstrate Tree Farm 3 will not have a negative effect on wildlife habitat in the winter deer range. Therefore, I find Tree Farm 3 does not satisfy this criterion.

B. The conditional use shall not be granted unless the following findings are made:

1. All development and alterations of the natural landscape, will be limited to 35 percent of the land and at least 65 percent shall be kept in open space. In cases where the natural landscape has been altered or destroyed by a prior land use, such as surface mining, dam construction or timber removal, the County may allow reclamation and enhancement of the open space area if enhancement creates or improves wetlands, creates or improves wildlife habitat, restores native vegetation or provides for agricultural or forestry use of the property after reclamation.

FINDINGS: The Hearings Officer has found the WA Zone's 80-percent open space requirement must be met entirely within the WA-zoned portion of Tree Farm 3. Because 83.8 acres of the 86 acres of Tree Farm 3 in the WA Zone will be preserved as permanent open space, the applicant's proposal satisfies the WA Zone standards. With respect to the 65-percent open space requirement in this paragraph, the applicant's burden of proof states 83.8 acres of the 106.9-acre Tree Farm 3 (78 percent of the site) will be in open space, satisfying this standard.

2. The area not dedicated to open space or common use may be platted as residential dwelling lots or parcels that are a minimum of two acres and a maximum of three acres in size. Their use shall be restricted to single-family use. Single-family use may include accessory uses and County authorized home occupations. Uses permitted in the open space area may include the management of natural resources, trail systems or other outdoor uses that are consistent with the character of the natural landscape.

FINDINGS: The applicant proposes that Tree Farm 3 will have ten 2-acre residential lots with single-family dwellings constructed within designated building envelopes. The applicant proposes that the dedicated open space tracts will be managed for trail systems, wildlife habitat,

and forest management consistent with preservation of wildlife habitat and the reduction of fire fuels. For these reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

3. In the Wildlife Area Combining Zone, in addition to compliance with the WA zone development restrictions, uses and activities must be consistent with the required Wildlife Management Plan. The Plan shall be approved if it proposes all of the following in the required open space area:

FINDINGS: As discussed in detail in the findings above, the Hearings Officer has found the WA Zone requirements apply only to the portion of Tree Farm 3 zoned WA. Therefore, I find it is applicable only to the 86 acres of open space and road right-of-way in Tree Farm 3 zoned WA. The applicant's WMP proposes that uses in the open space tracts in Tree Farm 3 will be limited to management of vegetation for fire fuel reduction and winter range habitat conservation as well as low-intensity recreation uses such as pedestrian and bicycle trails. Therefore, I find the proposed uses and activities in the open space tract will be consistent with the WMP. However, as discussed above, I have found the WMP does not adequately address potential impacts on wildlife habitat from more aggressive fire fuel reduction that may be required to protect ridgetop dwellings from wildland fire.

a. Preserves, protects and enhances wildlife habitat for WA zone protected species as specified in the County Comprehensive Plan (DCC Title 23); and

FINDINGS: The portion of Tree Farm 3 in the WA Zone consists of 83.8 acres of open space and 3.1 acres of right-of-way for Tree Farm Drive. As discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant failed to demonstrate the site for Tree Farm 3 is suitable for the proposed cluster/PUD considering wildlife habitat because the WMP is deficient in not addressing potential impacts on habitat from more aggressive fire fuel treatments that may be required for ridgetop dwellings to reduce the risk of fire. However, I have found on the basis of the WMP that deer will continue to use the habitat in the open space area for browsing, and the segment of Tree Farm Drive will not obstruct the existing deer migration corridor across the southern portion of Tree Farm 3.

b. Prohibits golf courses, tennis courts, swimming pools, marinas, ski runs or other developed recreational uses of similar intensity. Low intensity recreational uses such as properly located bicycle, equestrian and pedestrian trails, wildlife viewing areas and fitness courses may be permitted; and

FINDINGS: The only developed recreational use on the Tree Farm 3 open space would be the pedestrian/bicycle trail system, a low-intensity use permitted by this paragraph.

c. Provides a supplemental, private open space area on home lots by imposing special yard setback of 100 feet on yards adjacent to required open space areas. In this yard, no

structures other than fences consistent with DCC 18.88.070 may be constructed. The size of the yard may be reduced during development review if the County finds that, through the review of the wildlife management plan, natural landscape protection or wildlife values will achieve equal or greater protection through the approval of a reduced setback. In granting an adjustment, the County may require that a specific building envelope be shown on the final plat or may impose other conditions that assure the natural resource values relied upon to justify the exception to the special yard requirements will be protected.

FINDINGS: The tentative plan for Tree Farm 3 shows Lot 26 and possibly Lot 25 may be adjacent to the open space within the WA Zone. As discussed above, the applicant has proposed building envelopes for all residential lots in The Tree Farm including the ten lots in Tree Farm 3. Those building envelopes show setbacks of at least 100 feet between the adjacent UAR-10 zoned open space and the building envelope.

d. Off-road motor vehicle use shall be prohibited in the open space area.

FINDINGS: The applicant's burden of proof states no off-road motor vehicle use will be permitted in the open space tracts. The Hearings Officer finds the applicant will be required as a condition of approval to prohibit off-road vehicle use on the Tree Farm 3 open space tract, and to enforce that prohibition, through the development's CC&Rs.

e. Adequate corridors on the cluster property to allow for wildlife passage through the development.

FINDINGS: As discussed in the findings above concerning compliance with the general conditional use standards in Chapter 18.128, the applicant's WMP identified several existing migration corridors in the winter deer range, including north-south corridors in the western portion of The Tree Farm outside the boundaries of Tree Farm 3, and an east-west corridor along the southern part of Tree Farm 3 running parallel to Skyliners Road. Based on the WMP, the Hearings Officer has found the open space tract and the small segment of Tree Farm Drive in the WA-zoned portion of Tree Farm 3 will not create a barrier to deer migration along this existing corridor. Therefore, I find this existing corridor will allow wildlife passage.

4. All lots within the development shall be contiguous to one another except for occasional corridors to allow for human passage, wildlife travel, natural features such as a stream or bluff or development of property divided by a public road which shall not be wider than the average lot width, unless the Planning Director or Hearings Body finds that special circumstances warrant a wider corridor.

FINDINGS: The tentative plan for Tree Farm 3 shows all ten residential lots will be contiguous except for the intervening right-of-way for Golden Mantle Loop. Therefore, the Hearings Officer finds Tree Farm 3 satisfies this criterion.[26]

5. All applicable subdivision or partition requirements contained in DCC Title 17, the Subdivision/Partition Ordinance, shall be met.

FINDINGS: Compliance with the criteria in Title 17 is addressed in the findings below.

6. The total number of units shall be established by reference to the lot size standards of the applicable zoning district and combining zones.

FINDINGS: The RR-10, UAR-10 and WA Zones establish a general density of one dwelling per ten acres. The applicant proposes ten residential lots on the 106.9-acre Tree Farm 3 property, therefore satisfying these standards.

7. The open space of the proposed development shall be platted as a separate parcel or in common ownership of some or all of the clustered lots or parcels. For any open space or common area provided as a part of the cluster development, the owner shall submit proof of deed restrictions recorded in the County records. The deed restrictions shall preclude all future rights to construct a residential dwelling on the lot, parcel or tract designated as open space or common area for as long as the lot, parcel or tract remains outside an urban growth boundary. The deed shall also assure that the use of the open space shall be continued in the use allowed by the approved cluster development plan, unless the whole development is brought inside an urban growth boundary. If open space is to be owned by a homeowner's association or if private roads are approved, a homeowner's association must be formed to manage the open space and/or road areas. The bylaws of the association must be recorded prior to or concurrent with the filing of the final plat. If the open space is located within the Wildlife Area Combining Zone, the management plan for the open space must be recorded with the deed restrictions or bylaws of the homeowner's association.

FINDINGS: The tentative plan for Tree Farm 3 shows the 83.8 acres of open space would be platted as a separate tract. The Hearings Officer the applicant will be required to show the Tree Farm 3 open space as a separate tract on the final plat as a condition of approval.

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[26] The record indicates the only gap between residential lots within The Tree Farm – other than those created by roads – is proposed between Lot 37 in Tree Farm 4 and Lot 43 in Tree Farm 5. The WMP indicates this gap is located at a natural topographic break and existing wildlife corridor between Tumalo Creek and the higher ground on the subject property.

The applicant submitted as Exhibit "L" to its burden of proof a draft set of deed restrictions for the open space tracts in The Tree Farm. Those deed restrictions would prohibit development within the open space tracts for as long as The Tree Farm is located outside the Bend UGB. As discussed in the findings above under the administrative rules, the Hearings Officer has found that to carry out the applicant's intent to prevent development on The Tree Farm open space tracts *in perpetuity*, the applicant will be required as a condition of approval, and prior to submitting for final approval any plat for Tree Farm development, to provide to the Planning Division for county review and approval a copy of the required deed restrictions, and to provide to the Planning Division copies of the recorded deed restrictions after recording.

The applicant also proposes, and will be required as conditions of approval, to record the WMP along with the required deed restrictions, to form an HOA to own and manage the open space tracts and roads within The Tree Farm, and to develop bylaws for the HOA.[27]

8. Notwithstanding any provision to the contrary in other parts of the County's land use regulations, roads within a cluster development may be private roads and lots or parcels may be created that front on private roads only. These roads must meet the private road standards of DCC Title 17, and are not subject to public road standards under DCC Title 17. An agreement acceptable to the Road Department and County Legal Counsel shall be required for the maintenance of private roads. Public roads may be required where street continuation standards of DCC Title 17 call for street connections and the County finds that the benefits of street extension are significant and needed in the future, given the established pattern of street development on adjoining properties and transportation distribution needs. The area dedicated for public road rights of way within or adjacent to a planned or cluster development or required by the County during cluster development review shall be subtracted from the gross acreage of the cluster development prior to calculating compliance with open space requirements.

FINDINGS: The Hearings Officer finds this subsection establishes the following:

a. private roads are permitted in Tree Farm 3;

b. private PUD roads must meet the county's private road standards;

c. a road maintenance agreement acceptable to the county must be executed; and

[27] Exhibit "O" to the applicant's burden of proof indicates the applicant has discussed potential acquisition of the most western open space tracts in The Tree Farm by the Trust for Public Lands to facilitate future transfer of these tracts to a public entity such as the park district or the USFS. Tree Farm open space not so transferred would continue to be managed by the HOA. The Hearings Officer finds that because it is likely any transfer of Tree Farm open space to another entity will require some type of land use approval – e.g., lot line adjustment, modification of conditions – I need not address in this decision the legal effect of such a transfer on conditional use approval of Tree Farm 3.

d. public roads may be required in the subdivision where:

- street continuation standards in Title 17 call for street connections; and
- the county finds the benefits of street extension are significant and needed in the future, given the established pattern of street development on adjoining properties and transportation distribution needs.

The applicant proposes to construct two private roads in Tree Farm 3 -- Golden Mantle Loop and Ridgeline Drive -- and to improve these roads to the applicable county standards for local private roads including 20 feet of paved surface. In addition, the applicant proposes to dedicate to the public 60 feet of right-of-way for Sage Steppe Drive in Tree Farm 1 in order to provide future public road access to the adjoining Rio Lobo property to the north and an emergency access road through the adjoining Miller Tree Farm property to the south. Ridgeline Drive will connect with Tree Farm Drive in Tree Farms 1, 2 and 3 to provide access to Skyliners Road for the residential lots in Tree Farms 1, 2 and 3. The applicant proposes that all Tree Farm roads will be owned and managed by The Tree Farm HOA. The Hearings Officer finds the applicant will be required as a condition of approval to execute a road maintenance agreement acceptable to the county and to record such agreement prior to submitting for approval the final plat for any Tree Farm development.

The record indicates there are no existing streets on surrounding lands for which a connection to allow continuation of such street is required. Section 17.36.020(B) provides that planned developments shall include public streets "where necessary to accommodate present and future through traffic." However, as discussed in detail in the findings below, incorporated by reference herein, the Hearings Officer has found this section does not require the applicant to dedicate or construct a public road from Rio Lobo's property to Skyliners Road because such a public road is not necessary to accommodate present and future through traffic within The Tree Farm or from the Rio Lobo property.

Based on the foregoing findings, the Hearings Officer finds that with imposition of the conditions of approval described above, Tree Farm 3 will satisfy this criterion.

9. All service connections shall be the minimum length necessary and underground where feasible.

FINDINGS: The preliminary utility plan for Tree Farm 3, Exhibit "E" to the burden of proof, shows all new utility services will be located underground within road rights-of-way. The Hearings Officer finds this proposal will assure service connections are the minimum length necessary, therefore satisfying this criterion.

10. The number of new dwelling units to be clustered does not exceed 10.

11. The number of new lots or parcels to be created does not exceed 10.

FINDINGS: The applicant proposes ten residential lots in Tree Farm 3 clustered near the northeast corner of the development, therefore satisfying these criteria.

12. **The development is not to be served by a new community sewer system or by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community.**

FINDINGS: Applicant proposes to serve the residential lots in Tree Farm 3 with individual on-site septic systems, therefore satisfying this criterion.

13. **The development will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use, and will not significantly increase the cost of accepted farm or forest practices there.**

FINDINGS: As discussed in detail in the findings above concerning compliance with the applicable administrative rules in OAR 660-004-040 and the general conditional use standards in Chapter 18.128, incorporated by reference herein, the Hearings Officer finds Tree Farm 3 will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on nearby lands devoted to farm or forest use.

14. **All dwellings in a cluster development must be setback a minimum of 100 feet from the boundary line of an adjacent lot zoned Exclusive Farm Use that is receiving special assessment for farm use.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because there are no lands zoned Exclusive Farm Use (EFU) adjacent to the subject property.

C. **All applications shall be accompanied by a plan with the following information:**

1. **A plat map meeting all the subdivision requirements of DCC Title 17, the Subdivision/Partition Ordinance.**

2. **A draft of the deed restrictions required by DCC 18.128.200(B)(7).**

FINDINGS: The applicant submitted a tentative plan for Tree Farm 3 including a plat map showing all information required under Title 17. In addition, the applicant submitted as Exhibit "L" to the burden of proof draft deed restriction language for the open space tract. As discussed in the findings above, the Hearings Officer has found the applicant will be required to submit for county review, and to record, deed restrictions that *permanently* prohibit development on these tracts. For these reasons, and with imposition of the conditions of approval described above, I find Tree Farm 3 satisfies this criterion.

3. **A written document establishing an acceptable homeowners association assuring the maintenance of common property, if any, in the development. The document shall include a method for the resolution of disputes by the association membership, and shall be included as part of the bylaws.**

FINDINGS: The applicant submitted as part of Exhibit "L" to the burden of proof CC&Rs and HOA bylaws, therefore satisfying this criterion.

4. **In the WA Combining Zone, the applicant shall submit an evaluation of the property with a Wildlife Management Plan for the open space area, prepared by a wildlife biologist that includes the following:**

   a. **A description of the condition of the property and the current ability of the property to support use of the open space area by wildlife protected by the applicable WA zone during the periods specified in the comprehensive plan; and**

   b. **A description of the protected species and periods of protection identified by the comprehensive plan and the current use of the open space area; and**

   c. **A management plan that contains prescriptions that will achieve compliance with the wildlife protection guidelines in the comprehensive plan. In overlay zones that are keyed to seasons or particular times of the year, restrictions or protections may vary based on the time of year. The management plan may also propose protections or enhancements of benefit to other types of wildlife that may be considered in weighing use impacts versus plan benefits.**

FINDINGS: The applicant submitted a WMP as Exhibit "I" to the burden of proof. Based on the findings above concerning the WMP, incorporated by reference herein, the Hearings Officer finds the management plan contains the information required in this subsection.

5. **Photographs and a narrative description of the natural landscape features of the open space areas of the subject property. If the features are to be removed or developed, the applicant shall explain why removal is appropriate.**

FINDINGS: The applicant's burden of proof includes aerial photographs of The Tree Farm and surrounding property as well as a narrative description of the natural landscape features and proposed open space areas in Tree Farm 3. The applicant does not propose to introduce any landscaping, or to remove any existing landscape features in the open space areas except as necessary for ongoing fire fuels treatment. However, as discussed in the findings above the Hearings Officer has found the WMP is deficient in not addressing potential impacts to wildlife habitat from more aggressive fire fuel treatments that may be necessary to protect ridgetop dwellings. Therefore, I find the applicant has not fully satisfied this criterion.

6. **A description of the forestry or agricultural uses proposed, if any.**

FINDINGS: The applicant's burden of proof states no agricultural uses are proposed for Tree Farm 3, and that the only forestry uses proposed are fire fuels reduction treatment to reduce wildfire risk and to improve wildlife habitat.

For the foregoing reasons, the Hearings Officer finds the Tree Farm 3 proposal provides all information required by these criteria.

D. **Dimensional Standards:**

1. **Setbacks and height limitations shall be as prescribed in the zone in which the development is proposed unless adequate justification for variation is provided the Planning Director or Hearings Body.**

FINDINGS: The setback and height limitations in the RR-10 and UAR-10 Zones are discussed in the findings above and below. The Hearings Officer has found the applicant will be required as a condition of approval to meet these standards for the dwellings in Tree Farm 3.

2. **Minimum area for a cluster development shall be determined by the zone in which it is proposed.**

FINDINGS: The 104.2-acre Tree Farm 3 meets the 40-acre minimum size for a cluster development in the WA Zone. The RR-10 Zone does not establish a minimum size for cluster developments. As discussed in the findings below, Tree Farm 3 satisfies the five-acre minimum size for a planned unit development in the UAR-10 Zone.

E. **Conditions for phased development shall be specified and performance bonds shall be required by the Planning Director or Hearings Body to assure completion of the project as stipulated, if required improvements are not completed prior to platting.**

FINDINGS: The applicant does not propose to develop Tree Farm 3 in phases, and therefore the Hearings Officer finds this criterion is not applicable. However, as discussed above, the applicant proposes to develop Tree Farms 1, 2 and 3 concurrently to provide road access for all residential lots in those developments. I find such concurrent development will be required as a condition of approval for Tree Farms 1, 2 and 3.

F. **Developments with private roads shall provide bicycle and pedestrian facilities that comply with the private road requirements of Title 17.**

FINDINGS: The applicant proposes to accommodate bicycle and pedestrian traffic via a network of paved multi-use trails and native surface recreational/mountain biking trails. The applicant proposes that only the southern portion of Tree Farm Drive would be designed to accommodate bicycle traffic on its paved surface. All other paved paths would run parallel to, but be separate from, the PUD roads. The applicant proposes, and will be required as a

condition of approval, to construct all subdivision roads with the applicable standards in Title 17 for local public and private roads.

G. **Bicycle and pedestrian connections shall be provided at the ends of cul-de-sacs, at mid-block, between subdivision plats, etc., in the following situations. Connections shall have a 20-foot right of way, with at least a 10-foot wide useable surface, shall be as straight as possible, and shall not be more than 400 feet long.**

FINDINGS: The applicant submitted as Exhibit "C" to its burden of proof for Tree Farm 3 a "Trail Plan" that shows four types of trails within the Tree Farm:

1. a 10-foot-wide paved section of Tree Farm Drive from Skyliners Road to a point in Tree Farm 3;

2. several 8-foot-wide "neighborhood trails" running along the private Tree Farm roads;

3. recreation/mountain bike trails leading across the open space in the RR-10/WA zoned portion of The Tree Farm and connecting with the existing trail system in Shevlin Park; and

4. existing "perimeter trails" with "native surface" traversing the open space in the RR-10/WA zoned portion of The Tree Farm between Shevlin Park and the top of the central ridge on The Tree Farm property.

The tentative plan for Tree Farm 1 shows a proposed cul-de-sac at the eastern end of Ridgeline Drive at the southern boundary of the adjacent Rio Lobo property. The topographical information on the tentative plan shows a steep slope between the proposed cul-de-sac and the nearest eastern and southern boundaries of Tree Farm 1. As discussed in the findings above, Sage Steppe Drive in Tree Farm 1 is proposed to be stubbed off at the northern and southern property boundaries of the most northeastern portion of Tree Farm 1, and to be gated at the southern boundary of Tree Farm 1 where it would connect with a temporary emergency access road that would run south through the adjacent Miller Tree Farm property to Crosby Drive. The tentative plan for Tree Farm 1 shows the three public schools within the Bend UGB are located approximately 2,500 feet southeast of the cul-de-sac in Tree Farm 1.[28] For these reasons, the Hearings Officer found in my decision in Tree Farm 1 that no bicycle connections are required either at the end of the Ridgeline cul-de-sac or mid-block anywhere in Tree Farm 1. I also find no mid-block bicycle connections are required in Tree Farm 3.

1. **Where the addition of a connection will reduce the walking or cycling distance to an existing or planned transit stop, school, shopping center, or neighborhood park by 400 feet and by at least 50 percent over other available routes.**

2. **For schools or commercial uses where the addition of a connection will reduce the walking or cycling distance to an existing or planned transit stop, school,**

[28] The staff report states the three schools are located approximately 450 feet from Tree Farm 2. The Hearings Officer finds that calculation is not consistent with the scale shown on the tentative plan.

shopping center, or neighborhood park by 200 feet or by at least 50 percent over other available routes.

3. For cul de sacs or dead end streets where a street connection is determined by the Hearings Officer or Planning Director to be unfeasible or inappropriate provided that a bicycle or pedestrian connection is not required where the logical extension of the road that terminates in a cul de sac or dead end street to the nearest boundary of the development will not create a direct connection to an area street, sidewalk or bikeway.

The County may approve a cluster development without bicycle or pedestrian connections if connections interfere with wildlife passage through the subdivision, harm wildlife habitat or alter landscape approved for protection in its natural state.

FINDINGS: The Hearings Officer finds construction of a bicycle and pedestrian connection to the nearby schools and beyond to the retail and park uses in NorthWest Crossing would require crossing the adjacent Miller Tree Farm property to the southeast, which is not a part of the proposed Tree Farm development. For this reason, I found in my decision in Tree Farm 1 that a bicycle and pedestrian connection at the cul-de-sac end of Ridgeline Drive is unfeasible and inappropriate. I note that the proposed trail system in The Tree Farm will connect the cul-de-sac at the western end of Canopy Court in Tree Farm 5 to Shevlin Park and to the DNF to the west.

H. A Conditions of Approval Agreement for the cluster development shall be recorded prior to or concurrent with the final plat for the development.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to record a Conditions of Approval Agreement in accordance with this paragraph.

For the foregoing reasons, the Hearings Officer has failed to demonstrate Tree Farm 3 will satisfy all applicable conditional use criteria in Chapter 18.128.

D. Title 19 of the Deschutes County Code, the Bend Urban Growth Boundary Zoning Ordinance

UAR-10 ZONE STANDARDS

1. Chapter 19.12, Urban Area Reserve Zone – UAR-10

a. Section 19.12.010, Purpose

To serve as a holding category and to provide opportunity for tax differentials as urban growth takes place elsewhere in the planning area, and to be preserved as long as possible as useful open space until needed for orderly growth.

FINDINGS: Opponent Christine Herrick argues the applicant's proposal conflicts with the purpose statement for the UAR-10 Zone which she believes requires the portion of The Tree

Farm located in the UAR-10 Zone to remain in open space "as long as possible." The Hearings Officer disagrees. Zoning ordinance purpose statements do not establish approval criteria for quasi-judicial land use applications where such statements are aspirational, or where nothing in the text or context of the purpose statement suggests it was intended to establish approval criteria. *SEIU v. City of Happy Valley*, 58 Or LUBA 261 (2009). The Hearings Officer finds there is nothing in this purpose statement that suggests it was intended to apply to quasi-judicial land use applications or to prohibit uses permitted outright or conditionally in the UAR-10 Zone.

b. Section 19.12.030, Conditional Uses

FINDINGS: Opponents Christine Herrick and Ruth Zdanowicz argue that conditional uses in the UAR-10 Zone "must comply with the Statewide Goals for land use." They are mistaken. The statewide goals are implemented through the county's acknowledged comprehensive plans and zoning ordinances, and therefore are not directly applicable to the applicant's quasi-judicial land use application.

> **The following conditional uses may be permitted subject to a conditional use permit and the provisions of DCC 19.76 and 19.100.**
>
> * * *
>
> **N. Planned unit development subject to DCC 19.104.**

FINDINGS: The applicant requests conditional use approval to establish Tree Farm 3 as a PUD. Section 19.04.040 defines PUD as:

> *** * * the development of an area of land as a single entity for a number of units or a number of uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the standard regulations otherwise required by DCC Title 19.**

The applicant proposes that Tree Farm 3 be approved as a stand-alone subdivision with ten 2-acre residential lots, an 83.8-acre open space tract, segments of private roads and multi-use paths. However, the Hearings Officer has found that none of the individual Tree Farm cluster/PUDs can function independently of one another. And the applicant proposes that Tree Farm 3 be developed concurrently with Tree Farms 1 and 2 to assure access to Skyliners Road for all residential lots in those PUDs. As discussed elsewhere in this decision, the applicant has requested approval to deviate in several respects from the standard regulations for subdivisions. For these reasons, I find Tree Farm 3 meets the definition of PUD and therefore is permitted conditionally in the UAR-10 Zone. And as discussed in the findings above, I have found that in order to conduct a meaningful review of Tree Farm 3 as a whole, I will apply the provisions of Title 19 to the entire Tree Farm 3 and not just to those portions of the development zoned UAR-10. Compliance with Chapters 19.76, 19.100, and 19.104 is addressed in the findings below.

c. Section 19.12.040, Height Regulations

> **No building or structure shall be hereafter erected, enlarged or structurally altered to exceed 30 feet in height.**

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to assure all dwellings in Tree Farm 3 meet the 30-foot height limitation. I find building height will be verified at the time of building plan review, permitting and inspections.

d. Section 19.12.050, Lot Requirements

The following requirements shall be observed:

A. Lot Area. Each lot shall have a minimum area of 10 acres.

B. Lot Width. Each lot shall have a minimum average width of 300 feet with a minimum street frontage of 150 feet.

C. Front Yard. The front yard shall be a minimum of 50 feet from the existing street right of way line or the ultimate street right of way as adopted on the Comprehensive Plan or Official Map, except that any lot of record less than one acre in size lawfully created prior to (effect date of this title) shall have a minimum front yard of 30 feet.

D. Side Yard. There shall be a minimum side yard of 10 feet.

E. Rear Yard. There shall be a minimum rear yard of 50 feet.

F. Solar Setback. The solar setback shall be as prescribed in DCC 19.88.210.

FINDINGS: The applicant proposes exceptions to minimum lot area, average lot width, and street frontage requirements pursuant to the PUD standards in Chapter 19.104. As discussed in the findings below, the Hearings Officer has found the requested exceptions are justified by the benefits provided by The Tree Farm cluster/PUDs.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies all applicable standards in the UAR-10 Zone in Chapter 19.12.

SITE PLAN REVIEW

2. Chapter 19.76, Site Plan Review

a. Section 19.76.070, Site Plan Criteria

FINDINGS: As set forth above, Section 19.12.030 states PUDs are subject to site plan review.

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

A. Safety and Privacy. Residential site plans shall be designed to provide a safe living environment while offering appropriate opportunities for privacy and transitions from public to private spaces.

FINDINGS: As discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant failed to demonstrate the site for Tree Farm 3 is

suitable for the proposed cluster/PUD considering wildfire risk. For those same reasons, I find the applicant has not demonstrated the site plan for Tree Farm 3 is designed to provide a safe living environment. Therefore, I find Tree Farm 3 does not satisfy this criterion.

B. Special Needs of Disabled. When deemed appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs, drop curbs and disabled parking stalls.

FINDINGS: The applicant's burden of proof states the paved bicycle/pedestrian path along Tree Farm Drive and the neighborhood trails within The Tree Farm and Tree Farm 3 will be designed and constructed in accordance with applicable requirements of the Americans with Disabilities Act (ADA) to the extent practicable and where required to ensure adequate access. The Hearings Officer understands these private paths may not be inspected for ADA compliance. However, I am aware ADA compliance *for dwellings and accessory structures* will be determined and verified at the time of building permit plan review, permitting and inspections. For these reasons, I find Tree Farm 3 satisfies this criterion.

C. Preservation of Natural Landscape. The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve the applicant's functions. Preserved trees and shrubs shall be protected during construction.

FINDINGS: The applicant proposes to preserve 83.8 acres of the 106.9-acre Tree Farm 3 as open space with the only development therein being a small segment of Tree Farm Drive. The tentative plans for Tree Farms 1 through 5 show most of the road rights-of-way have been proposed in locations and alignments where they will follow existing topography. The tentative plans also show the residential lots will be located primarily atop the central ridge running through The Tree Farm or on other relatively level areas. The dwellings in Tree Farm 3 would be clustered near the northern border of the cluster/PUD on relatively level ground. Finally, the applicant proposes to preserve existing vegetation within the open space tract except where removal or modification of vegetation is required as part of fire fuels treatment or to improve wildlife habitat. However, as discussed in the findings above, the Hearings Officer has found neither the applicant's wildfire plan nor WMP adequately addresses the need for, or impacts from, more aggressive fire fuel treatments that may be required on lots and in open space tracts in order to reduce the fire hazards for ridgetop dwellings such that Tree Farm 3 is suitable for the proposed cluster/PUD and is compatible with surrounding properties. Therefore, I find the applicant has not demonstrated compliance with this criterion.

D. Pedestrian and Vehicular Circulation and Parking. The location and number of points of access to the site, the interior circulation patterns, designs of parking areas and the separation between pedestrians and moving and parked vehicles shall be designed to promote safety and avoid congestion on adjacent streets.

FINDINGS: The Tree Farm tentative plans show the development will have access from Skyliners Road via Tree Farm Drive, improved with a 26-foot-wide paved surface, and with a system of public and private roads connecting with Tree Farm Drive and developed with a 20-

foot-wide paved surface and parallel eight- and ten-foot wide paved multi-use paths. The applicant also proposes a gated temporary secondary access road from the southern end of Sage Steppe Drive south across the adjoining Miller Tree Farm property to Crosby Drive. This temporary access will be in place until the adjoining Miller Tree Farm property is developed with paved streets to which Sage Steppe Drive can connect. In addition, Sage Steppe Drive would be stubbed at the northern boundary of Tree Farm 1 to provide a future road connection to the vacant Rio Lobo property to the north. Parking would be prohibited on Tree Farm roads, and all off-street parking would be provided on the residential lots. The Hearings Officer finds the proposed vehicular and pedestrian circulation plan will provide separation between vehicles, bicycles and pedestrians, will promote safety, and will avoid road congestion, therefore satisfying this criterion.

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

FINDINGS: The applicant's burden of proof and tentative plans indicate none of the above-described structures or uses is proposed for Tree Farm 3. Therefore, the Hearings Officer finds this criterion is not applicable.

F. Utilities. All utility installations above ground, if such are allowed, shall be located so as to minimize adverse impacts on the site and neighboring properties.

FINDINGS: The record indicates, and the Hearings Officer's site visit observations confirmed, that there is an existing above-ground electrical facility running east-west near the Tree Farm's southern boundary and serving the city's Outback Water Facility. However, the tentative plan shows no part of that facility is located in Tree Farm 3. The applicant proposes that all new utilities be located underground. Therefore, I find this criterion is not applicable to Tree Farm 3.

G. Public Facilities. The proposed use shall not be an undue burden on public facilities, such as the street, sewer or water system.

FINDINGS:

Streets. As discussed in the findings above, the applicant's traffic study, included in the record as Exhibit "H" to the applicant's burden of proof for Tree Farm 3, shows traffic predicted to be generated by The Tree Farm will not cause affected transportation facilities to operate below acceptable levels of service. The road department, the county's transportation planner, and the city's public works department did not recommend improvements to existing transportation facilities to accommodate Tree Farm traffic.

Sewage Disposal. The Tree Farm will be served by individual on-site septic disposal systems. No connection to the city's sewer system is proposed. The applicant submitted as Exhibit "F" to the Tree Farm 3 burden of proof a septic suitability study demonstrating soils on The Tree Farm and Tree Farm 3 are suitable for on-site sewage disposal.

Water. The applicant proposes to provide domestic water to The Tree Farm residential lots through one of three sources: (1) extension of and connection to the City of Bend water system; (2) extension of and connection to Avion Water Company's system; or (3) use of one or more wells on The Tree Farm and/or the adjacent Miller Tree Farm property. The applicant expressed a preference for city water service, and requested that the city perform a water analysis for serving The Tree Farm with city water. That analysis and supporting documents, dated August 1, 2014, are included in the record as Exhibit "G" to the Tree Farm 3 burden of proof. In addition, two diagrams labeled "Preliminary Utility Plan" are included in Exhibit "E" to the Tree Farm 3 burden of proof. One of those diagrams is a version of the diagram included in Exhibit "G" and the other is a copy of the applicant's submitted "Preliminary Utility Plan."

The city's water analysis states the Tree Farm can be served by city water facilities with a development agreement between the applicant and the city. The analysis states the nearest city water infrastructure is the Outback Water Facility located near the southwest corner of The Tree Farm and described by the applicant as "the primary storage and treatment area for the City's surface water and [that] also contains several of the City's groundwater wells." The analysis states water for The Tree Farm could be provided from the Outback facility through a new connection and installation of 12-inch and 24-inch diameter water mains within The Tree Farm. However, the analysis cautioned no such water connection could be made until the city's "Outback Membrane Water Facility" is constructed and operational, and the Bend City Council approves extension of city water service outside the Bend UGB through a public process. [29]

The city's water system analysis states city standards require the following minimum water pressure and flow for domestic use:

- 40 psi (pounds per square inch) pressure at peak periods;
- 20 psi residual pressure; and
- 2,000 gpm (gallons per minute) for fire flow.

The color-coded diagrams included in Exhibits "E" and "G" to the Tree Farm 3 burden of proof show that most of the water mains in The Tree Farm could be 24 inches in diameter, but that the mains would need to be 12 inches in diameter along the upper segment of Golden Mantle Loop, and along the segment of Ridgeline Drive east of Sage Steppe Drive, to provide adequate pressure in those areas. The diagrams show all Tree Farm lots would have at least 2,000 gpm for fire flow, but only the ten lots in Tree Farm 1 would have water pressure meeting the 40 psi and 20 psi minimum standards. The other Tree Farm lots would have peak period and residual water pressure falling below those minimum standards.
The city's water analysis states the city cannot guarantee a specific water pressure or flow, and that any water service agreement between the city and the applicant must clearly identify areas of substandard pressure and/or fire flow. The analysis goes on to state that if the property owner finds the available water pressure unsatisfactory, the property owner may install a pressure pump on the downstream side of the city's water meter, at the property owner's own expense and responsibility. The applicant's Preliminary Utility Plan in Exhibit "E" includes a notation that "all homes incl. services with booster pumps." The Hearings understands this note to mean the applicant proposes that water service for each residential lot will have a pump boosting pressure to achieve the minimum psi established in the city's minimum standards.

[29] The Hearings Officer understands this facility was under construction when this record closed.

Based on the city's water analysis, the Hearings Officer finds that if water is provided to Tree Farm 3 through extension of city water service as proposed by the applicant and with necessary city approvals, Tree Farm 3 will not place an undue burden on the city's water facilities.

In his December 11, 2014 letter on behalf of LandWatch, Paul Dewey stated:

> *"Given the uncertainty as to the eventual source of water and whether all of the possible sources will have adequate pressure, the Applicant should be required to provide more specific information and the public be given the opportunity to comment on it."*

The Hearings Officer finds the applicant has submitted sufficient information about water service from the City of Bend for me to find that providing water to Tree Farm 3 will not place an undue burden on the city's water facilities. The applicant did not submit a will-serve letter from Avion Water Company. In a memorandum dated December 29, 2014, the applicant's engineer Niall Boggs from WH Pacific stated Avion or another private water purveyor would provide water to The Tree Farm through the city's existing 14-inch or 16-inch water lines. However, Mr. Boggs stated this system may require a "booster pump station" to provide sufficient water pressure for all Tree Farm lots. And he noted use of the city's water system by a private water purveyor like Avion would require an agreement with the city.

The applicant submitted well logs for surrounding properties, included as Exhibit "M" to the burden of proof for Tree Farm 3 that demonstrate groundwater is available in the surrounding area. Mr. Boggs stated in his memorandum that individual wells for Tree Farm lots would require the lot developer or owner to provide the pipe, power and pump. However, Mr. Boggs did not analyze or determine whether such wells could produce sufficient water pressure or fire flow to meet the minimum standards identified by the city.[30] Finally, Mr. Boggs noted Miller Tree Farm has a quasi-municipal water right for 350 gpm for property including The Tree Farm. He stated that in order for the applicant to use this water right to create an operational water system for The Tree Farm, water from the well or wells would have to be pumped to a reservoir site at the highest point on The Tree Farm property near proposed Lot 50 in Tree Farm 5. Water would then go through a community booster pump station before being distributed to residential lots. Mr. Boggs stated such a system would be "feasible" but would require significantly more capital investment. He did not state whether this quasi-municipal system could produce sufficient pressure and fire flow for the residential lots.

For the foregoing reasons, the Hearings Officer finds that if the applicant elects, or is required to, provide water to The Tree Farm through means other than extension of city water service, the applicant will be required as a condition of approval for Tree Farm 3, and before submitting for approval the final plat for any Tree Farm development, to provide to the Planning Division a water analysis performed by a registered professional engineer demonstrating that water service from the alternative domestic water source will provide at each residential lot water pressure of at least 40 psi during peak demand periods, 20 psi residual pressure, and 2,000 gpm for fire flow.

For the foregoing reasons, and with imposition of the conditions of approval described above, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

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[30] The record indicates the 37 lots in The Highlands at Broken Top south across Skyliners Road are served by individual on-site wells.

b. **Section 19.76.080, Required Minimum Standards**

A. **Minimum Landscaping Standards. All developments subject to site plan approval shall meet the following minimum standards for landscaping:**

1. **A minimum of 15 percent of the area of a project shall be landscaped for multifamily, commercial and industrial developments, subject to site plan approval and the following requirements . . . .**

FINDINGS: The Hearings Officer finds the 15-percent landscape area requirement in Subsection (1) is not applicable to Tree Farm 3 because it is not a multi-family, commercial or industrial use.

2. **Street Trees. The placement, spacing and pruning of street trees shall be as follows, although the Planning Director or Hearings Body may adjust the placement standard for special site conditions . . . .**

FINDINGS: The applicant requests an exception to the street tree requirement under Chapter 19.104. As discussed in the findings below, the Hearings Officer has found this exception is justified by the benefits provided by The Tree Farm.

3. **Areas of commercial and industrial zones used for vehicle maneuvering, parking, loading or storage shall be landscaped and screened as follows:. . . .**

FINDINGS: The Hearings Officer finds this criterion is not applicable to Tree Farm 3 because it does not include multi-family, commercial or industrial uses.

4. **Required landscaping shall be continuously maintained.**

5. **Vegetation planted in accordance with an approved site plan shall be maintained by the owner, any heir or assignee. Plants or trees that die or are damaged shall be replaced and maintained.**

FINDINGS: The applicant has requested an exception to these requirements under Chapter 19.104. As discussed in the findings below, the Hearings Officer has found this exception is justified by the benefits provided by The Tree Farm.

B. **Shared Areas. Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development as follows . . . .**

FINDINGS: The Hearings Officer finds this criterion is not applicable to Tree Farm 3 because it is not an apartment residential development.

C. **Storage. Areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc.**

FINDINGS: The applicant's burden of proof did not address this criterion. However, the Hearings Officer finds adequate storage for the listed items could be provided on each residential lot within each dwelling, garage, and/or accessory structure. Therefore, I find the applicant's proposal satisfies this criterion.

D. **Drainage. Surface drainage shall be contained on site.**

FINDINGS: The applicant's submitted site plan and burden of proof for Tree Farm 3 show surface water drainage would be contained on site through use of vegetated swales, roadside ditches, culverts, and natural drainage ways. Specifically, the applicant states runoff would shed to vegetated swales with 3:1 slopes for on-site infiltration, or runoff would enter a natural drainage way via a roadside ditch and culvert. Because of the site's topography, natural drainage patterns on The Tree Farm generally are toward Tumalo Creek to the west and to the undeveloped open space to the east. However, the applicant's burden of proof states none of the runoff from impervious areas such as roads and driveways will create any additional drainage contributions to Tumalo Creek as no surface water will be disposed of off-site.

Finally, the applicant has proposed that if hydrological calculations determine additional runoff storage is needed, the applicant will construct a catch basin near the main entry to The Tree Farm at Skyliners Road, which appears to be the lowest point in The Tree Farm. The Hearings Officer found in my decision in Tree Farm 1 that the applicant will be required as a condition of approval, and prior to submitting the final plat for any part of The Tree Farm for approval, to submit to the Planning Division a statement from a registered professional engineer stating whether an additional runoff storage basin is necessary, and if such a facility is necessary, the applicant will be required as a condition of approval for Tree Farm 1 to show it on the final plat for Tree Farm 1, and to construct it as part of Tree Farm 1 or in such other location as determined by a registered professional engineer.

E. **Bicycle Parking. The development shall provide the number and type of bicycle parking facility as required in DCC 19.80.080 and 19.80.090. The location and design of bicycle parking facilities shall be shown on the site plan.**

FINDINGS: The Hearings Officer finds Tree Farm 3 is not required to provide bicycle parking because it is not subject to Sections 19.80.080 and 19.80.090. That is because off-street bicycle parking is not required for single-family dwellings, and Tree Farm 3 will not include any of the uses for which off-street bicycle parking is required.

F. **Internal Pedestrian Circulation. Internal pedestrian circulation shall be provided in new office parks and commercial developments through the clustering of buildings, construction of hard surface pedestrian walkway, and similar techniques.**
Walkways shall connect building entrances to one another and from building entrances to public street and existing or planned transit stops. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or

bicycle connection on adjacent properties planned or used for commercial, multifamily, institutional or park use.

FINDINGS: The Hearings Officer finds these criteria are not applicable to Tree Farm 3 because it is not a new office park or commercial development.

G. Public Transit Orientation. New retail, office and institutional buildings on parcels within 600 feet of existing or planned transit routes shall provide preferential access to transit through the following measures . . . .

FINDINGS: The Hearings Officer finds this criterion is not applicable to Tree Farm 3 because it is not a new retail, office or institutional use. .

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies, or with imposition of the conditions of approval described above will satisfy, all applicable site plan requirements under Title 19.

URBAN AREA CONDITIONAL USE CRITERIA

3. Chapter 19.100, Conditional Use Permits

a. Section 19.100.030, General Conditional Use Criteria

A conditional use permit may be granted only upon findings by the Planning Director or Hearings Body that the proposal meets all of the criteria in DCC 19.100.030, as well as all other applicable criteria contained in DCC Title 19. The general criteria are:

A. That the location, size, design and operating characteristics of the proposed use are such that it will have minimal adverse impact on the property value, livability and permissible development of the surrounding area. Consideration shall be given to compatibility in terms of scale, coverage and density with the alteration of traffic patterns and the capacity of surrounding streets and to any other relevant impact of the proposed use.

FINDINGS:

Location. Tree Farm 3 is located north of Skyliners Road on property zoned UAR-10 and RR-10 and located approximately 4,000 feet west of the Bend UGB and approximately 2,000 feet east of Shevlin Park.

Size. Tree Farm 3 is 106.9 acres in size and is west of Tree Farms 1 and 2. Tree Farm 3 would be developed with 20 acres of residential lots, 83.8 acres of open space, and 3.1 acres of road right-of-way.

Operating Characteristics. The proposed ten residential lots in Tree Farm 3 would be clustered in the north-central part of The Tree Farm on higher, relatively level ground. All lots would have frontage on Golden Mantle Loop, a private road developed to the county's private

local road standards. Golden Mantle Loop would connect with Ridgeline Drive northeast of Lots 21 and 30 in Tree Farm 2, and would connect with Tree Farm Drive -- the primary PUD road that intersects with Skyliners Road -- west of Lots 25 and 26 in Tree Farm 3. The applicant proposes to develop Tree Farms 1, 2 and 3 concurrently to provide access from Skyliners Road for all lots in those developments.

The tentative plans show the private roads will be constructed primarily on the central ridge, thus minimizing steep road cuts and grades. A gated temporary emergency access road would extend from the southern terminus of Sage Steppe Drive in Tree Farm 1 south across the adjacent Miller Tree Farm property to Crosby Drive in the Bend UGB. This secondary access would be in place until the adjacent Miller Tree Farm property is developed with paved streets to which Sage Steppe Drive could connect. Sage Steppe Drive would be stubbed at the northern boundary of Tree Farm 1 to provide a future road connection to the adjacent Rio Lobo property to the north. The applicant proposes that each dwelling would be constructed within a designated building envelope, would be served by an on-site septic system, and would receive water from the City of Bend, Avion Water Company, or one or more groundwater wells.

The majority of Tree Farm 3 (83.8 acres) would be set aside as permanent open space. The public would have access to this open space through a combination of a permanent trail easement on the primary trails within The Tree Farm and a license granted by The Tree Farm HOA for use of trails within the residential lot areas in Tree Farm 3. The path and trail system would connect with trails in Shevlin Park and the DNF to the west and southwest.

Compatibility. This criterion requires the applicant to demonstrate Tree Farm 3 will have "minimal adverse impact on the property value, livability and permissible development of the surrounding area" considering "scale, coverage and density," "alteration of traffic patterns and the capacity of surrounding streets," and "any other relevant impact of the proposed use."

1. Scale, Coverage and Density. The applicant has proposed five cluster/PUDs for The Tree Farm in order to provide a transition area between urban and urbanizable lands to the east and Shevlin Park and public and private forest lands to the west. The configuration of The Tree Farm would cluster most of the dwellings in the UAR-10 Zone, limit residential development to 100 acres (fifty 2-acre lots), and preserve almost 423 acres in permanent open space. The overall density of The Tree Farm would be one lot per 10 acres, similar to The Highlands at Broken Top PUD located across Skyliners Road. The applicant proposes that each residential lot would have a designated building envelope in which the dwellings would be built, with the rest of the residential lots retained in native vegetation.
Opponent Rio Lobo asserts the proposed configuration of The Tree Farm will negatively impact future development of its adjacent 376-acre UAR-10 zoned parcel because it will not provide a public road from Rio Lobo's southern boundary to Skyliners Road to facilitate through traffic from Rio Lobo's property, and because most Tree Farm dwellings would be clustered along or near Rio Lobo's southern boundary with only one road connection provided along that boundary. As discussed in the findings below, the Hearings Officer has found the applicant is not required to dedicate a public road between the Rio Lobo property and Skyliners Road to facilitate through traffic for Rio Lobo, and The Tree Farm configuration will not preclude Rio Lobo from developing its property at urban or urban reserve densities in the future.

LandWatch and other opponents argue the site for Tree Farm 3 is not suitable for the proposed cluster/PUD considering impacts on wildlife habitat and the risk of wildfire. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant has failed to demonstrate the site for Tree Farm 3 is suitable for the proposed cluster/PUD

considering wildlife habitat and wildfire risk. For the same reasons, I find the applicant has not demonstrated The Tree Farm will be compatible with Shevlin Park and the public and private forest lands to the west considering wildfire risk, and therefore it does not satisfy this criterion.

2. Traffic Patterns and Street Capacity. As discussed above, the Hearings Officer has found from the applicant's traffic study, and the lack of any recommendations from the city or county for additional right-of-way or road improvements, that traffic generated from the entire Tree Farm development will not cause affected transportation facilities to operate below acceptable levels of service, and the Tree Farm 3 site will be suitable for the proposed cluster/PUD considering the adequacy of transportation access. For the same reasons, I find Tree Farm 3 will have minimal if any adverse impacts on property value, livability and permissible development of the surrounding area considering traffic patterns and street capacity.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

B. That the site planning of the proposed use will, as far as reasonably possible, provide an aesthetically pleasing and functional environment to the highest degree consistent with the nature of the use and the given setting.

FINDINGS: The design of Tree Farm 3 includes two-acre residential lots clustered in the north-central part of The Tree Farm and well away from Skyliners Road. The residential lots would be located atop the central ridge, with all of the remaining acreage, except the road rights-of-way, permanently preserved as open space. Existing vegetation in the open space tracts and on the residential lots outside of the designated building envelopes would be retained except where removal is necessary for fire fuel treatments or to enhance wildlife habitat. The applicant proposes to create a system of paved multi-use paths and recreational trails within The Tree Farm that would connect with the existing trail network in Shevlin Park and the DNF to the west. The cluster/PUD would have a system of public and private roads that generally would follow the existing terrain to minimize road cuts and steep slopes. The road system would include a gated temporary emergency access road from Tree Farm 1 south to Skyliners Road through the adjacent Miller Tree Farm property.

The Hearings Officer finds the site planning for Tree Farm 3 will provide an aesthetically pleasing environment for cluster/PUD residents and for the general public. Based on my site visit observations, I find the Tree Farm 3 dwellings would be substantially screened from Skyliners Road by existing topography and vegetation. Most of Tree Farm 3 would remain in a natural state. Roads and trails would provide a functional circulation system for residents and guests, and the property's proximity to the Bend UGB would allow easy access to schools and other urban uses. Finally, I have found that with imposition of conditions of approval described above, all necessary facilities and services will be available to residential lots in Tree Farm 3.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

C. That if the use is permitted outright in another zone, there is substantial reason for locating the use in an area where it is only conditionally allowed, as opposed to an area where it is permitted outright.

FINDINGS: The Hearings Officer finds no other zones allow a residential PUD as an outright permitted use.

D. **That the proposed use will be consistent with the purposes of DCC Title 19, the Comprehensive Plan, Statewide Goals and any other applicable statutes, ordinances or policies.**

FINDINGS: The Hearings Officer has found the purpose statement for the UAR-10 Zone in Section 19.12.010 does not constitute an approval criterion for quasi-judicial land use applications. Section 19.04.020 identifies several purposes for Title 19, including providing the principle means for implementing the Bend Area General Plan, and providing a means of classifying, designating and regulating development in the Bend urban area. The purpose statement uses a number of aspirational terms, such as to "encourage," "conserve" and "facilitate" various goals for the Bend urban area. For these reasons, the Hearings Officer finds the Title 19 purpose statement does not contain applicable approval criteria for Tree Farm 3.

Compliance with the applicable administrative rules is addressed in the findings above. Compliance with applicable comprehensive plan policies is addressed in the findings below. I have found the Statewide Land Use Planning Goals are not directly applicable to the applicant's proposal. Finally, compliance with Title 19 is the findings above and below.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies, or with imposition of the conditions of approval described above will satisfy, all UAR-10 Zone conditional use approval criteria.

PUD STANDARDS

4. **Chapter 19.104, Planned Unit Development**

a. **Section 19.104.010, Purpose**

The purpose of planned unit development approval is to allow and to make possible greater variety and diversification in the relationships between buildings and open spaces in planned building groups, while ensuring compliance with the purposes and objectives of the various zoning regulations and the intent and purpose of DCC Title 19.

FINDINGS: As discussed above, unless the text or context of a purpose statement indicates otherwise, such statement does not establish approval standards for quasi-judicial land use applications. The Hearings Officer finds use of the terms "make possible," ensuring compliance," and "intent and purpose" indicates the PUD purpose statement is aspirational and therefore does not establish approval criteria for Tree Farm 3.

b. **Section 19.104.040, Minimum Size for Planned Unit Developments**
No application shall be accepted for an area of less than five acres in any R zone, or for an area of less than four acres in any other zone.

FINDINGS: Each Tree Farm development including Tree Farm 3 is at least 104 acres in size, therefore satisfying this standard.

c. **Section 19.104.070, Standards for Approval**

In granting approval for planned unit development, the Hearings Body or Planning Director shall be guided by the following:

A. Whether applicant has, through investigation, planning and programming, demonstrated the soundness of the proposal and an ability to carry out the project as proposed, and whether the construction shall begin within six months of the conclusion of any necessary action by the County, or within such longer period of time as may be established by the Hearings Body or Planning Director.

FINDINGS: The Hearings Officer finds that read in the context of the rest of this paragraph, the term "soundness" connotes the feasibility – financial and physical – of developing The Tree Farm and Tree Farm 3. The applicant's burden of proof states, and the Hearings Officer agrees, that the applicant has demonstrated the soundness of its proposal through its tentative plans, detailed narrative, will-serve letters from utilities and the City of Bend, the city's water analysis, the septic feasibility analysis, and the background of the development team. The team includes several experienced developers such as Brooks Resources, and Skyliner TWS, LLC, whose members include Michael Tennant, Ron White, and Kirk Schueler, each with many years of successful local development experience. I am aware Brooks and Tennant together developed NorthWest Crossing. The burden of proof states the applicant's intent is to initiate development of Tree Farms 1, 2 and 3 immediately upon gaining land use approval. I find the applicant will be required as a condition of approval to begin construction of Tree Farm 3 within six months of the date this decision becomes final, or such longer period of time as the Planning Director may allow. For these reasons, and with imposition of this condition of approval, I find the applicant's proposal satisfies this criterion.

B. Whether the proposal conforms with the general plans of the County in terms of location and general development standards.

FINDINGS: The Hearings Officer finds Tree Farm 3 is proposed for land designated and zoned for residential development and in which residential cluster/PUDs are permitted conditionally. In addition, as discussed in the findings below, I have found Tree Farm 3 is consistent with applicable plan policies. Therefore, I find Tree Farm 3 conforms to the city and county comprehensive plans.

C. Whether the project will accrue benefits to the County and the general public in terms of need, convenience, service and appearance sufficient to justify any necessary exceptions to the regulations of the zoning and subdivision ordinances.

FINDINGS: The applicant has requested exceptions to the following standards applicable to The Tree Farm and Tree Farm 3:

1. two-acre residential lot size rather than the five-acre minimum lot size under Section 18.60.060 or the ten-acre minimum lot size under Section 19.12.050:

2. thirty-foot front yard setbacks rather than the fifty-foot front yard setback under Section 19.12.050;

3. less than fifty feet of street frontage for Lot 1 in Tree Farm 1 as required by Section 17.36.180;

4. reduction in the minimum average lot width and street frontage standards under Section 19.12.050 for Lot 1 in Tree Farm 1;

5. no street trees rather than street trees as required by Section 19.76.080(A)(2);

6. no introduced landscaping or maintenance thereof;

7. eight-foot-wide bicycle and pedestrian multi-use paths rather than ten-foot wide paths as required by Section 19.104.080(F); and

8. no road/bicycle path connections at 400-foot intervals along The Tree Farm's borders with the adjacent Rio Lobo and Miller Tree Farm properties.

The applicant argues The Tree Farm and Tree Farm 3 will accrue the following benefits to the county and the general public:

1. creating two-acre residential lots rather than five- or ten-acre lots and clustering lots on 100 acres of The Tree Farm, and 20 acres of Tree Farm 3;

2. preserving over 83 acres of open space in Tree Farm 3 and 423 acres of open space in The Tree Farm as a whole;

3. making the PUD roads accessible to the public through public access easements;

4. creating a network of trails accessible to the public through public access easements and licenses, and linking The Tree Farm and Tree Farm 3 to the trail systems in Shevlin Park and the DNF;

5. minimizing impacts to habitat in the Tumalo winter deer range through small, clustered residential lots, large open space tracts, preservation of most native vegetation, and reduction in fire fuels;

6. providing a domestic water system for the dwellings and fire hydrants to aid fire protection on The Tree Farm;

7. designing and managing The Tree Farm and Tree Farm 3 as a "Fire Wise Community" to reduce wildfire risk;

8. configuring The Tree Farm and Tree Farm 3 to establish a permanent low-density transition area between urban and urbanizable lands to the east and Shevlin Park and the extensive public and private forest lands to the west; and

9. providing 50 new dwellings to address the demand for new homesites on the west side of Bend.

LandWatch again argues the analysis required by this section should not compare the applicant's proposed cluster/PUD with alternative subdivision configurations such as a

traditional subdivision with 10-acre lots and dwellings spread throughout the 533-acre property. In his December 11, 2014 letter, Paul Dewey states:

> *"There are apparently only five lots, so the current alternative would be five houses. Though the zoning allows a house on a 10-acre parcel, there is no basis to conclude that 50 10-acre lots can be created here."* (Underscored emphasis added.)

As discussed above, the Hearings Officer has found there are reasons to conclude a traditional subdivision with ten 10-acre lots could be approved on each of the five Tree Farm legal lots, including the fact that the county approved a very similar development, The Highlands at Broken Top, immediately south of The Tree Farm with 37 mostly ten-acre lots and large open space areas on land zoned UAR-10 that is close to the DNF. In addition, traditional 10-acre lot subdivisions in the UAR-10 and RR-10 Zones do not require conditional use approval, but rather are subject only to the subdivision standards in Title 17. For this reason, I find there is nothing improper in comparing the proposed cluster/PUDs to the alternative of a traditional subdivision when weighing the benefits of the proposed Tree Farm development against the requested exceptions.

The Hearings Officer finds many of the above-described benefits of developing the subject property with cluster/PUDs justify the requested exceptions. In particular, I find the requested two-acre lot sizes, the clustering of dwellings, the preservation of large swaths of open space in the WA Zone, and the creation of a trail system connecting with trails in Shevlin Park and the DNF will provide significant benefits to the community. For these reasons, I find Tree Farm 3 satisfies this criterion.

D. Whether the project will satisfactorily take care of the traffic it generates by means of adequate off street parking, access points, additional street right of way and improvements and any other traffic facilities required.

FINDINGS: The Hearings Officer has found on the basis of the applicant's traffic study that the addition of traffic generated by The Tree Farm will not exceed the capacity of affected transportation facilities, and no additional right-of-way or improvements are required. I also have found the intersection of Skyliners Road and Tree Farm Drive will have adequate sight distance in both directions, and that the proposed gated secondary access road will provide an appropriate second point of access for evacuations and emergency vehicles. No on-street parking will be allowed; all off-street parking will be accommodated on each homesite. For these reasons, I find Tree Farm 3 satisfies this criterion.

E. Whether the project will be compatible with adjacent developments and will not adversely affect the character of the area.

FINDINGS: The Hearings Officer has addressed virtually identical criteria in the findings above under Section 18.128.015(3)(B). Based on those findings, incorporated by reference herein, I find Tree Farm 3 satisfies this criterion with respect compatibility with the rural character of the area, and with adjacent property to the north, east and south. However, I have found that in the absence of an adequate wildfire plan the applicant has not demonstrated The Tree Farm or Tree Farm 3 will be compatible with Shevlin Park and forest lands to the west.

F. Whether the project will satisfactorily take care of sewer and water needs consistent with the Bend Urban Area General Plan.

FINDINGS:

Sewer. The applicant proposes that each dwelling be served by an on-site septic system, and provided as Exhibit "F" to the Tree Farm 3 burden of proof a Preliminary Soils and Percolation Investigation prepared by FEI Testing and Inspection based on the analysis of 27 test pits and sample percolation testing. The study found the soils on The Tree Farm and Tree Farm 3 are sufficiently deep (18-60 inches) and well-drained to accommodate either standard or capping-fill on-site septic systems on each of The Tree Farm lots. The Hearings Officer finds that as a condition of approval the applicant will be required to obtain from the county an approved septic site evaluation for each Tree Farm 3 lot.

Water. The applicant proposes to provide domestic water to each dwelling in The Tree Farm through one of three methods: (1) extending and connecting to city water service; (2) extending and connecting to service from Avion Water Company; or (3) through one or more groundwater wells. The applicant provided as Exhibit "E" to its burden of proof a Water System Analysis, and as Exhibit "G" to the burden of proof a will-serve letter from the City of Bend indicating the city's water system has sufficient capacity to serve the 50 homesites in The Tree Farm. The applicant also submitted as Exhibit "M" to its burden of proof well logs on surrounding properties showing water is available. The applicant's burden of proof also indicates there is an existing quasi-municipal well on the adjacent Miller Tree Farm Property to the east.

The applicant did not submit a will-serve letter from Avion. Therefore, the Hearings Officer has found that if the applicant elects, or is required to, provide water to The Tree Farm through means other than extension of city water service, the applicant will be required as a condition of approval, and before submitting for approval the final plat for any Tree Farm development, to provide to the Planning Division a water system analysis performed by a registered professional engineer and demonstrating water service from the alternative domestic water source(s) will provide to each residential lot water pressure of at least 40 psi during peak demand periods and at least 20 psi residual pressure, as well as fire flow of at least 2,000 gpm.

Based on the foregoing findings, the Hearings Officer finds Tree Farm 3 satisfies, or with imposition of the conditions of approval described above will satisfy, this criterion.

G. A planned unit development shall not be approved in any R zone if the housing density of the proposed development will result in an intensity of land use greater than permitted by the Comprehensive Plan.

FINDINGS: The proposed density of each Tree Farm development including Tree Farm 3 will not exceed one dwelling per ten acres, consistent with the general density permitted in the RR-10 and UAR-10 Zones, therefore satisfying this criterion.

d. Section 19.104.080, Standards and Requirements

Approval of a request for a planned unit development is dependent upon the submission of an acceptable plan and satisfactory

assurance that it will be carried out. The following minimum standards and requirements shall apply:

A. A dwelling use permitted in any zone may be permitted in a planned unit development.

FINDINGS: The applicant proposes ten residential lots for single-family dwellings, a use allowed in the UAR-10 Zone.

B. A manufactured home may be permitted in a planned unit development. However, manufactured home parks shall not be allowed in any commercial or industrial zone.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose any manufactured homes or manufactured home parks.

C. Developments which either provide for or contemplate private streets and ways and common areas which will be or are proposed to be maintained by the owners of units or lots within a development must organize and maintain an owners' association. The owners' association shall consist of all the owners of units or lots within the development and membership in the association must be required of all owners; adopt and record bylaws as provided by ORS 94.625; adopt bylaws that contain the provisions required by ORS 94.635; and have the power to create a lien upon the unit or lot for services, labor or material lawfully chargeable as common expenses as provided in ORS 94.709. The association's power to create such a lien shall exist whether or not the property is subject to the Oregon Planned Community Act (ORS 94.565 through 94.785.)

FINDINGS: The Tree Farm will include private roads, a public road, multi-use paths, recreation trails, and open space that will be owned and managed by an HOA. The applicant's burden of proof for Tree Farm 3 states an HOA will be established, organized and maintained pursuant to applicable provisions of ORS Chapter 94. As discussed in the findings above, the applicant submitted as Exhibit "L" to its burden of proof a sample set of CC&R's and HOA bylaws that will serve as the template for The Tree Farm CC&R's and HOA bylaws. The Hearings Officer finds the applicant will be required as a condition of approval to record CC&Rs and HOA bylaws prior to submitting for approval the final plat for any Tree Farm development. I find that with imposition of this condition of approval, Tree Farm 3 will satisfy this criterion.

D. If the property is not subject to the Unit Ownership Law, the association shall also create, by contract, the right to claim a lien upon any unit or lot for services, labor or material chargeable as common expenses. This lien may be created by covenants between the association and the property owners and shall supplement the lien created by DCC 19.104.080(C) and require all owners of units or lots within the development to consent to and pay the reasonable value of services, labor or material expended by the County for common expenses where such county expenditures are

made because the owners or the owners' association does not provide the necessary services, labor or material for common expenses.

FINDINGS: The applicant's burden of proof states the statutory references in this criterion no longer are correct because the Oregon Unit Ownership Law was substantially amended in 1977 and 1981 and renamed the "Oregon Condominium Act." (1977 Oregon Laws Chapter 484; 1981 Or Laws Chapter 841.) The burden of proof notes that in 1989 the Oregon Condominium Act was relocated to ORS Chapter 100. Because of these changes, the applicant argues, and the Hearings Officer agrees, that The Tree Farm and Tree Farm 3 are not subject to the Oregon Condominium Act (ORS 100.105 to 100.910), and therefore Section 19.104.080(C) and (D) are applicable to this development.

E. **Streets and roads in planned unit development designated developments shall be public roads and ways developed to county standards or be private roads of a minimum 14 feet wide paved surface for one way traffic, minimum 20 feet wide paved surface for two way traffic, and parallel parking as permitted shall require minimum additional eight feet of width for each side of parking. If pedestrian walkways or bikeways are included in the road, an additional five feet of pavement width on each side of the roadway shall be provided and striped to separate such use from motor vehicle traffic and parking. In addition to these requirements, the Planning Director or Hearings Body may specify other requirements including, but not limited to, increased or decreased pavement width.**

FINDINGS: The applicant proposes that the private road in Tree Farm 3 will be improved with 20 feet of pavement, and no on-street parking will be permitted. All private Tree Farm roads will be owned and maintained by The Tree Farm HOA but will be subject to public access easements. As discussed in the findings above, the applicant proposes to provide separate pedestrian/bicycle paths according to the plan included in the record as Exhibit "C" to the applicant's burden of proof. The pedestrian/bicycle path will be included in a 10-foot-wide space on the southern portion of Tree Farm Drive within Tree Farm 3, and on separate eight- and ten-foot-wide paved pathways running parallel to the rest of The Tree Farm roads.

County staff and opponent Rio Lobo argue that under Section 17.36.020(B) the applicant is required to dedicate and improve a public road between the southern boundary of the Rio Lobo property and Skyliners Road to provide for through traffic from future development of the Rio Lobo property. However, as discussed in the findings below, incorporated by reference herein, the Hearings Officer finds that section does not require dedication of a public road in the circumstances presented here.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

F. **Pedestrian walkways and bikeways shall be provided for adequate pedestrian and bicycle traffic, and shall connect to any adjacent existing or planned sidewalks, bikeways, access corridors, or public trails. Off street pedestrian walkways and bikeways shall be at least 10 feet in width to accommodate**

two way traffic and shall be constructed with portland cement or asphaltic concrete to county standards, except as varied by the provisions of DCC 19.104.080 or by the Planning Director or Hearings Body.

FINDINGS: The applicant proposes a system of paved multi-use paths and natural surface recreation trails throughout The Tree Farm and within Tree Farm 3 designed to accommodate pedestrians and bicycles. According to the trail plan, Exhibit "C" to the applicant's burden of proof for Tree Farm 3, four types of trails are proposed: (1) main connection trails; (2) neighborhood trails; (3) proposed recreation/mountain bike trails; and (4) existing perimeter trails. The applicant proposes that the main connection trails would consist of ten-foot-wide paved multi-use paths paralleling Tree Farm Drive from its intersection with Skyliners Road to the point where the path splits to go west to Shevlin Park. The neighborhood trails would extend from that point east to the Golden Mantle Loop/Ridgeline Drive intersection and along the rest of the roads in The Tree Farm. These paths would be paved to a width of eight feet and would roughly parallel the internal road network in The Tree Farm.[31]

The applicant has requested an exception to the ten-foot width requirement for the multi-use neighborhood paths for the reason that they will serve a lower-use function for bicycle/pedestrian access within the homesite area. The applicant notes there are only 50 lots in The Tree Farm, so traffic volume on the neighborhood paths would be low. In addition, the applicant suggests, and the Hearings Officer agrees, that most of the trail use near The Tree Farm homesites will be by residentsc. Finally, the applicant notes the proposed paths will be relatively flat and will have adequate sight distance to avoid the opposite-direction traffic conflicts that ten-foot wide paths are intended to address. As discussed above, I have found this requested exception is justified by the significant community benefits from the proposed cluster/PUD.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

G. All utility facilities shall be installed underground and in accordance with County standards.

FINDINGS: The applicant proposes that all new utilities will be installed underground, satisfying this criterion.

H. The design of all planned unit development projects shall provide direct access for all units and lots to open space areas and facilities. Open space areas and facilities include such things as landscaped areas, natural areas, golf courses, and other recreational facilities, but do not include streets, sidewalks, bikeways, access corridors or trails.

FINDINGS: The tentative plan for Tree Farm 3 shows each residential lot will have direct access to the proposed open areas throughout The Tree Farm via the network of multi-use paths and recreation trails, therefore satisfying this criterion.

[31] The proposed recreation/mountain biking trails would be soft-surface trails developed to the mountain bike trail standards in Section 17.48.140(E). These trails would connect with the trail network in Shevlin Park. The applicant's burden of proof states the existing perimeter trails within the western open space tracts are composed primarily of old roads that will be converted to trail use and will have native dirt surfaces. However, none of these trails is located in Tree Farm 2.

I. **A statement must be submitted relative to the solar access to be provided by the planned unit development.**

FINDINGS: The applicant's burden of proof includes the following statement on solar access:

> *"All of the lots within The Tree Farm will be at least 2 acres in size with setbacks on all lot lines of no less than 20 feet. This alone will provide ample solar access to the lots. However, many of the open ridge top lots in Tree Farm 1, 2 and 3 will have nearly ideal solar access."*

The Hearings Officer finds that the size and configuration of the ten Tree Farm 3 residential lots will assure a dwelling can be sited on each lot in compliance with the required solar access standard under Sections 18.60.040(D) and 19.12.050(F).

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies, or with imposition of the conditions of approval described above will satisfy, all applicable urban area PUD standards.

E. Title 17 of the Deschutes County Code, the Subdivision/Partition Ordinance

SUBDIVISION STANDARDS

1. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans

a. Section 17.16.100, Required Findings for Approval
A tentative plan for a proposed subdivision shall not be approved unless the Planning Director or Hearings Body finds that the subdivision as proposed or modified will meet the requirements of this title and Titles 18 through 21 of this code, and is in compliance with the comprehensive plan. Such findings shall include, but not be limited to, the following:

A. The subdivision contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forest lands and other natural resources.

FINDINGS:

Orderly Development and Land Use Patterns in the Area. The applicant proposes to develop Tree Farm 3 as cluster/PUD with an overall density of one dwelling per ten acres as permitted in the RR-10 and UAR-10 Zones. This density is the same as that in The Highlands at Broken Top PUD located south across Skyliners Road. However, unlike that development with 37 ten-acre lots and dwellings scattered throughout the 390-acre site, Tree Farm 3 would have 2-acre residential lots clustered in the north-central part of The Tree Farm in order to preserve a large tract of open space. Tree Farm dwellings would be sited within designated building envelopes, retaining the rest of the lots in native vegetation. As discussed above, the applicant intends The Tree Farm to provide a permanent transition between urban and urbanizable land to the east

and Shevlin Park and vast public and private forest lands to the west. The also applicant intends that The Tree Farm never will be annexed into the Bend UGB or redeveloped. PUD roads would connect with Skyliners Road, and eventually with roads developed on the Rio Lobo property to the north and the Miller Tree Farm property to the east. As also discussed above, the Hearings Officer has found affected transportation facilities will continue to operate at acceptable levels of service with the addition of traffic generated by The Tree Farm. Each residential lot will be served by an on-site septic system and domestic water from the City of Bend, Avion, or groundwater wells. For these reasons, I find Tree Farm 3 will contribute to orderly development and land use patterns in the area.

Preservation of Natural Features and Resources. Natural features and resources on Tree Farm 3 consist of topography, native vegetation, and wildlife habitat. As discussed above, the applicant has proposed cluster/PUDs in order to maximize open space and to preserve native vegetation. Residential lots will be located on relatively level land on or near the central ridge on the property, minimizing the need for grading and filling, and PUD roads will follow the site's existing contours minimizing the need for steep road cuts or slopes. As also discussed above, the applicant proposes to protect the deer winter range habitat on The Tree Farm and Tree Farm 3 by clustering most of the dwellings outside the winter range, creating gaps between clusters of dwellings where there are existing deer migration corridors, and preserving native vegetation except where removal or modification is necessary for fire fuel treatments or to enhance wildlife habitat. However, as discussed in the findings above, the Hearings Officer has found the applicant failed to demonstrate The Tree Farm and Tree Farm 3 will be compatible with Shevlin Park and forest lands to the west because its wildfire plan is inadequate. I also have found the applicant failed to demonstrate The Tree Farm and Tree Farm 3 will adequately protect winter deer range if more aggressive fire fuel treatments, such as clearing of slopes on the lots and/or in the open space tracts, are required to reduce the risk of fire for ridgetop dwellings such that Tree Farm 3 is suitable for the proposed cluster/PUD and is compatible with surrounding lands. For the same reasons, I find the applicant has not demonstrated Tree Farm 3 will provide for the preservation of natural features and resources.

B. The subdivision will not create excessive demand on public facilities and services, and utilities required to serve the development.

FINDINGS: The public facilities and services required by Tree Farm 3 include sewage treatment, water, roads, electricity, natural gas, telephone and cable service, and police and fire protection. Each of these is addressed below.

Sewage Treatment. The applicant proposes to serve the residential lots with individual on-site septic systems. The applicant submitted as Exhibit "F" to the Tree Farm 3 burden of proof a septic suitability study showing the soils on Tree Farm 3 are suitable for installation of on-site septic systems. The Hearings Officer finds the applicant will be required as a condition of approval to obtain an approved septic site evaluation for each residential lot in Tree Farm 3 prior to final plat approval.

Water. The applicant proposes to provide domestic water to the residential lots in Tree Farm 3 through one of three options: (1) extending and connecting to City of Bend water service as proposed in the applicant's Preliminary Utility Plan; (2) extending and connecting to Avion Water Company facilities; or (3) utilizing one or more individual wells on The Tree Farm property and/or the adjacent Miller Tree Farm property. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the city's water system will have adequate

capacity to serve the residential lots in Tree Farm 3, and with the water facilities proposed by the applicant, including 12-inch and 24-inch water mains and pressure pumps at each lot, the city's water system will provide adequate pressure and fire flow at each lot. Therefore, I find providing domestic water to The Tree Farm and Tree Farm 3 will not create excessive demand on the city's water system. However, I have found that if the applicant does not obtain city water service for The Tree Farm, it will be required as a condition of approval, and before submitting for approval the final plat for any Tree Farm development, to provide to the Planning Division a water system analysis prepared by a registered professional engineer, demonstrating whatever alternate source of domestic water is chosen will provide each residential lot with at least 40 psi of water pressure at peak periods, 20 psi residual water pressure, and at least 2,000 gpm for fire flow.

Roads. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found from the applicant's traffic study that the addition of traffic generated by the 50 proposed dwellings for The Tree Farm will not cause any affected transportation facilities to operate below acceptable levels of service at buildout, and in the years 2017 and 2022 with the addition of future traffic. Neither the road department nor the city identified the need for additional right-of-way or improvements to affected transportation facilities.
Electricity. The applicant submitted a will-serve letter from Pacific Power for electric service in Exhibit "G" to the Tree Farm 3 burden of proof.

Natural Gas. The applicant submitted a will-serve letter from Cascade Natural Gas for gas service in Exhibit "G" to the Tree Farm 3 burden of proof.

Telephone. The applicant submitted a will-serve letter from CenturyLink for telephone service in Exhibit "G" to the Tree Farm 3 burden of proof.

Cable. The applicant submitted a will-serve letter from Bend Broadband for cable service in Exhibit "G" to the Tree Farm 3 burden of proof.

Police. Police protection will be provided by the Deschutes County Sheriff.

Fire Protection. Fire protection will be provided by the City of Bend Fire Department. In his September 2, 2014 comments on the applicant's proposal, Deputy Bend Fire Chief/Fire Marshal Larry Medina identified a number of Oregon Fire Code (OFC) provisions applicable to The Tree Farm. These comments can be summarized as follows:

1. Standards for fire apparatus access roads. The OFC requires that fire apparatus access roads: (a) extend within 150 feet of all buildings; (b) have an unobstructed width of at least 20 feet; (c) have unobstructed vertical clearance of at least 13 feet 6 inches; (d) be designed and maintained with an all-weather surface that can support vehicles weighing 60,000 pounds; (e) have a grade not exceeding 10 percent; and (f) if gated, have a "Knox Key Switch" operable by the fire department. The Hearings Officer finds the applicant will be required as a condition of approval to design and construct all roads in Tree Farm 3 and the gated temporary emergency access road in compliance with these standards.

2. Standards for fire protection water supplies. The OFC requires that The Tree Farm have an approved water supply capable of supplying the required fire flow for fire protection to buildings, the adequacy to be determined "by an approved method." The OFC also requires that the applicant provide documentation of adequate fire flow to the fire department prior to final approval of the water supply system. The OFC states installation of fire hydrants along fire

apparatus access roads may be required by the fire code official. Finally, the OFC states that if fire hydrants are installed they must be no farther than 400 feet apart.

As discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found the city's water supply analysis shows extension of and connection to its water facilities can provide fire flow of 2,000 gpm at each residential lot, the minimum flow prescribed by the city. In addition, the applicant's Preliminary Utility Plan diagram, included in Exhibit "E" to the Tree Farm 3 burden of proof, shows fire hydrants placed at 400-foot intervals along all PUD roads abutting the residential lots. As also discussed above, the Hearings Officer has found that if the applicant does not secure city water service for The Tree Farm, the applicant will be required as a condition of approval, and prior to submitting for approval the final plat for any Tree Farm development, to provide to the Planning Division a water system analysis from a registered professional engineer demonstrating the alternate water system will provide at each residential lot water pressure of 40 psi during peak periods, 20 psi residual water pressure, and at least 2,000 gpm for fire flow.

3. Other fire service features. The OFC requires that each dwelling in Tree Farm 3 have an address number placed on a monument, pole or other sign so that it is plainly visible from the private road. The Hearings Officer finds the applicant will be required as a condition of approval to provide address numbers as required by the OFC.

For the foregoing reasons, and with imposition of the conditions of approval described above, the Hearings Officer finds Tree Farm 3 will not create excessive demand on public facilities, services and utilities required to serve the development.

C. The tentative plan for the proposed subdivision meets the requirements of Oregon Revised Statutes Section 92.090.

FINDINGS: ORS 92.090(1) states a new subdivision can only use the same name if it is a continuation of an existing subdivision, with a sequential numbering system, and must either be platted by the same party or have the consent of the previous party. The applicant is requesting approval of five separate but interconnected ten-lot cluster/PUDs to be known as Tree Farms 1 through 5, with the overall project to be known as The Tree Farm. The Hearings Officer finds this subdivision name plan conforms to Subsection (1) of the statute.

Subsection (2) of this statute requires that roads be laid out to conform with existing plats on adjoining property, that streets and roads held for private use are clearly indicated on the tentative plan, and that all reservations or restrictions relating to such private roads and streets are set forth on the plat. The Hearings Officer finds there are no adjoining plats with which The Tree Farm must conform. As discussed above, Sage Steppe Drive is proposed to be dedicated to the public in order to provide a future road connection with the undeveloped UAR-zoned parcels to the north. The remainder of the PUD roads would be private but would be subject to public access easements. The Hearings Officer finds the applicant will be required as a condition of approval to show all public easements on the final plat for Tree Farm 3. I find that with imposition of this condition of approval, Tree Farm 3 will comply with Subsection (2).

Subsections (3), (4) and (5) of the statute relate to final platting and therefore are not applicable to Tree Farm 3.

D. For subdivisions or portions thereof proposed within a Surface Mining Impact Area (SMIA) zone under Title 18 of the Deschutes County Code . . . .

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not located within a SMIA Zone.

E. The subdivision name has been approved by the County Surveyor.

FINDINGS: Exhibit "P" to the Tree Farm 3 burden of proof indicates the proposed names for The Tree Farm cluster/PUDs have been approved by the County Surveyor, therefore satisfying this criterion.

b. Section 17.16.105, Access to Subdivisions

No proposed subdivision shall be approved unless it will be accessed by roads constructed to County standards and by roads accepted for maintenance responsibility by a unit of local or state government. This standard is met if the subdivision will have direct access to an improved collector or arterial, or in cases where the subdivision has no direct access to such a collector or arterial, buy demonstrating that the road accessing the subdivision from a collector or arterial meets relevant County standards and has been accepted for maintenance purposes.

FINDINGS: Access to Tree Farm 3 will be from Skyliners Road, a designated county collector road improved to the county's collector road standards and maintained by the county, therefore satisfying this criterion.

c. Section 17.16.115, Traffic Impact Studies

* * *

C. Guidelines for Traffic Impact Studies

* * *

4. The following vehicle trip generation thresholds shall determine the level and scope of transportation analysis required for a new or expanded development.

* * *

c. Traffic Impact Analysis (TIA): If the development or change in use will generate more than 200 trip ends and 20 or more PM peak hour trips, then a Traffic Impact Analysis (TIA) shall be required . . . .

FINDINGS: The applicant submitted a traffic study prepared by Kittelson & Associates, included in the record as Exhibit "H" to the burden of proof for Tree Farm 3. The traffic study was submitted because the applicant's traffic engineer predicted traffic generated by the 50 dwellings in The Tree Farm would generate over 400 trip ends. The traffic study concludes traffic

generated by The Tree Farm will not exceed the capacity of affected transportation facilities at buildout, or in 2017 and 2022 with the addition of other traffic from the surrounding area. The traffic study also found that no additional right-of-way or improvements are required, and neither the road department nor the city indicated the need for addition right-of-way or improvements. Therefore, the Hearings Officer finds the applicant's proposal satisfies this criterion.

2. Chapter 17.36, Design Standards

a. Section 17.36.020, Streets

A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles and automobiles, with intersection angles, grades, tangents and curves appropriate for the traffic to be carried, considering the terrain. The subdivision or partition shall provide for the continuation of the principal streets existing in the adjoining subdivision or partition or of their property projection when adjoining property which is not subdivided, and such streets shall be of a width not less than the minimum requirements for streets set forth in DCC 17.36.

FINDINGS: The applicant proposes to construct all Tree Farm roads in conformance with the applicable county local road standards – i.e., the public local road standards for Sage Steppe Drive, and the private local road standards for the private roads in Tree Farm 3. The proposed road layout generally follows the topographical contours of The Tree Farm and Tree Farm 3, and will provide direct access to each proposed residential lot. Separate multi-use paths are proposed along all new roads to provide adequate circulation for bicycles and pedestrians and adequate separation from vehicular traffic. There are no principal streets in adjoining partitions or subdivisions that require the continuation of those streets into Tree Farm 3. No alterations to road layout or design were identified by the road department. For these reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

B. Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned or cluster development, where roads can be privately owned. <u>Planned developments shall include public streets where necessary to accommodate present and future through traffic.</u> (Emphasis added.)

FINDINGS: With the exception of Sage Steppe Drive, the roads in The Tree Farm would be private roads as permitted for cluster/PUDs. Sage Steppe Drive would have a dedicated 60-foot right-of-way to facilitate a future public road connection between the Rio Lobo property and Skyliners Road or Crosby Road at such time as the Miller Tree Farm property is developed. The applicant has proposed an interim gated secondary emergency access road from the southern terminus of Sage Steppe Drive through the adjacent Miller Tree Farm property to Crosby Drive.

The applicant states all private roads within The Tree Farm will be subject to public access easements to be shown on the final plats for The Tree Farm.[32]

In his August 28, 2014 comments on the applicant's proposal, George Kolb stated that Paragraph (B) of this section requires the applicant to dedicate 60 feet of right-of-way for, and improve to the county's public road standards, a public road from the northern boundary of The Tree Farm to Skyliners Road. This argument also was made by Peter Russell and by Miles Conway on behalf of opponent Rio Lobo. In his December 19, 2014 memorandum, Mr. Russell suggested the applicant be required to dedicate to the public and improve to public road standards all of Tree Farm Drive, the southern portion of Golden Mantle Loop, and all of Ridgeline Drive as the "primary access road" for The Tree Farm. Mr. Conway argued that this paragraph requires the applicant to dedicate to the public not only to provide for through traffic from development on the Rio Lobo property, but also to accommodate through traffic within The Tree Farm itself.
Both Mr. Conway and Mr. Russell argue the language in Paragraph (B) provides no discretion to deviate from the public road dedication requirement. The Hearings Officer disagrees. I find the plain language of this paragraph makes clear the public road requirement is contingent on a finding that such a road is "necessary to accommodate present and future through traffic." In his December 30, 2014 memorandum, Jeffrey Condit argued the dedication of public road right-of-way does not meet this "necessity" test.

Mr. Condit argues a requirement that all PUD roads, and/or the proposed secondary access road, be dedicated to the public would constitute an unconstitutional "taking" under the Fifth Amendment to the U.S. Constitution as interpreted in Nollan v. *California Coastal Commission*, 483 US 825, 107 S Ct 3141, 97 L Ed 2d 677 (1987), *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994), and *Schultz v. City of Grants Pass*, 133 S Ct 2586, 186 L Ed 2d 697 (2013). Specifically, he argues such a requirement would not meet the "essential nexus/roughly proportional" test articulated in the above cases. He also asserts the county cannot require public road dedication through the adjacent Miller Tree Farm property because the county has no jurisdiction over that property. In response, LandWatch argues the Miller Tree Farm property is subject to the county's jurisdiction because the applicant proposed the secondary emergency access road across that property, and Miller Tree Farm owns both the adjacent property and The Tree Farm. The Hearings Officer disagrees. The applicant proposed off-site road improvements to which the off-site property owner consented. I find that proposal does not confer jurisdiction on the county to require public dedication and improvement of that off-site road without the off-site property owner's consent. At most, I have authority to deny an application if I find an off-site road improvement were required for the proposal to meet the applicable approval criteria and no such off-site improvement were proposed.

Even assuming for purposes of discussion that the Hearings Officer has jurisdiction to require the public dedication of the proposed secondary access road, I agree with Mr. Condit that such a requirement – or a requirement to dedicate to the public the Tree Farm Roads identified by

[32] In his January 6, 2015 letter on behalf of Rio Lobo, Miles Conway states the applicant is offering only a "temporary" public access easement over the system of Tree Farm roads, and therefore The Tree Farm HOA, which would own and manage the subdivision roads, could erect barriers to "through traffic" within the subdivision. Mr. Conway is mistaken. The applicant's burden proof for Tree Farm 3 makes clear the public access easements for Tree Farm roads will be permanent. For example, the Tree Farm 1 burden of proof states at page 54 that the private streets would have "public access to be dedicated with the final plat." (Emphasis added.) It is the easement across the Miller Tree Farm property *for the secondary emergency access road* that will be "interim" until such time as the Miller Tree Farm property is developed with public roads that will connect Sage Steppe Drive and Skyliners Road.

Mr. Russell -- does not have a sufficient nexus with, and is not roughly proportional to, traffic impacts from The Tree Farm development. I agree with Mr. Condit's analysis, set forth in his December 30, 2014 letter as follows:

> *"A public street is not necessary to accommodate the through traffic that would be generated by development of the Rio Lobo property under the existing UAR-10 zoning. Attached as Exhibit 4 is a December 29, 2014 analysis provided by Joe Bessman, PE, of Kittelson responding to Rio Lobo's December 11, 2014, testimony prepared by Marten Law and Lancaster Engineering ('Kittelson Memo'). The Kittelson Memo confirms that the local street system proposed by the Applicant is more than sufficient to accommodate the development of up to 37 single-family home sites on the Rio Lobo Property.[13] As the County notes, '[t]he transportation effects [on the surrounding street system] of such nominal development would be de minimis.'*
>
> * * *
>
> *Rio Lobo argues that 'future through traffic' has to include consideration of the potential development of the Rio Lobo property as a destination resort or as urban development. The County correctly rejects such development as too speculative to require the Applicant to address it as part of this application.*
>
> *Development of the Rio Lobo property as a destination resort would require compliance with the multiple criteria of DCC Chapter 19.106, which, at a minimum, would require a new traffic impact analysis and approval of a Master Plan. Most significantly, as noted in the Kittelson Memo, DCC 19.106.0060(C) requires all destination resorts to 'have direct access onto a state, county, or city arterial or collector roadway as designated by the Bend Area General Plan.' As discussed in more detail below, the only designated collector or arterial to which the Rio Lobo property currently has direct access is the future extension of Skyline Ranch Road. A destination resort on the Rio Lobo property would be prohibited from taking indirect access via a Sage Steppe road extension over The Tree Farm and Miller Properties unless and until Rio Lobo seeks and obtains an amendment to the Bend Area General Plan to designate such a roadway as a collector. Because such an amendment would have to be based on a demonstrated need, at a minimum it would have to occur in conjunction with an actual application for a destination resort. Rio Lobo has submitted no evidence that such an application is imminent, viable, or would otherwise be compliance with Chapter 19.106.*
>
> *Although UAR-10 zoning does anticipate eventual urbanization, urbanization of the Rio Lobo property requires subsequent legislative decisions by the City and the County in compliance with state law, and would bring the property under the City's transportation jurisdiction. It also, as noted by Kittelson, would require an amendment to the BUAGP transportation system plan, which would require a needs analysis for urbanization of all the newly added properties.[16] There are thus multiple future opportunities to obtain the necessary connections in the event the properties are added to the UGB.*
>
> *Such speculative future development does not justify imposition of a condition requiring the Applicant to dedicate additional right-of-way or construct a street*

under the County Code or the Takings Clause as interpreted in Schultz. The Applicant has addressed the impacts on future connectivity that arise from its development by providing for and dedicating Sage Steppe right-of-way. That right-of-way will be available for use at such time as Rio Lobo and/or Miller Tree Farm properties are developed and the requirement for its dedication and construction can be imposed at that time. The fact that Rio Lobo may have to await development of the Miller Property for the connection to Skyliners Road to be dedicated and constructed puts Rio Lobo in no different position than it is in now. Indeed, the dedication of Sage Steppe ensures that a connection will occur at this point pursuant to DCC 17.36.020(B) when development of the Miller Property occurs. For these reasons, dedication of the Sage Steppe right-of-way by the Applicant addresses the future connectivity impacts on surrounding properties that arise from the development of the Tree Farm property. No additional exactions are warranted under the Takings Clause.

[13]Indeed, the County is only requesting dedication of additional right-of-way; it is not requesting any change in the construction of the street system. The requirements for local public streets and local private streets are virtually the same. See DCC Chapter 17 Table A.

[16]Given the relative location of the Rio Lobo property vis-à-vis the Miller Property and the Anderson Ranch property [located north of the Rio Lobo property], *which are directly adjacent to the current Bend city limits, the Rio Lobo property is unlikely to be added to the Bend UGB unless or until (or after) the Miller and Anderson Ranch properties are added."*

The Hearings Officer finds Section 17.36.020(B) does not require the applicant to dedicate a public road – either off-site or within The Tree Farm – as part of The Tree Farm development in order to provide access from the Rio Lobo property to Skyliners Road.

b. Section 17.36.040, Existing Streets

Whenever existing streets, adjacent to or within a tract, are of inadequate width to accommodate the increase in traffic expected from the subdivision or partition by the county roadway network plan, additional rights of way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the Planning Director or Hearings Body, together with the Public Works Director, shall determine whether improvements to existing streets adjacent to or within the tract, are required. If so determined, such improvements shall be required as a condition of approval for the tentative plan. Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.

FINDINGS: The only existing street adjacent to Tree Farm 3 is Skyliners Road, a designated county collector road with a 60-foot right-of-way. No additional right-of-way or other improvement to Skyliners Road was identified in the applicant's traffic study or by the road department. For these reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

c. **Section 17.36.050, Continuation of Streets**

Subdivision or partition streets which constitute the continuation of streets in contiguous territory shall be aligned so that their centerlines coincide.

FINDINGS: The Hearings Officer finds this criterion is not applicable because Tree Farm 3 has no streets that would constitute a continuation of other streets.

d. **Section 17.36.060, Minimum Right of Way and Roadway Width**

The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in chapter 17.48 of this title. Where chapter 17.48 refers to street standards found in a zoning ordinance, the standards in the zoning ordinance shall prevail.

FINDINGS: The applicant proposes to improve all PUD roads to the county's standards for public and private local roads and to improve them with 20 feet of paved surface as provided in Table A of Title 17. As discussed above, the applicant proposes that all private PUD roads be subject to public access easements, and the Hearings Officer has found that as a condition of approval the applicant will be required to show those easements on the final plats for The Tree Farm. For these reasons, I find Tree Farm 3 satisfies this criterion.

e. **Section 17.36.070, Future Resubdivision**

Where a tract of land is divided into lots or parcels of an acre or more, the Hearings Body may require an arrangement of lots or parcels and streets such as to permit future resubdivision in conformity to the street requirements contained in this title.

FINDINGS: The applicant's burden of proof for Tree Farm 3 states the applicant intends that The Tree Farm never will be annexed into the Bend UGB or redeveloped. The applicant has proposed deed restrictions for The Tree Farm open space tracts that would preclude further division or development thereof. However, as discussed in the findings above, the Hearings Officer has required the applicant as a condition of approval to provide to the Planning Division for its review, and to record, revised deed restrictions that provide for *permanent* preservation of The Tree Farm open space tracts. For these reasons, and with imposition of that condition of approval, I find it is not necessary or appropriate to require an arrangement of lots in Tree Farm 3 permitting future resubdivision.

f. **Section 17.36.080, Future Extension of Streets**

When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition.

FINDINGS: Sage Steppe Drive will be dedicated to the public and will be stubbed off at the northern boundary of Tree Farm 1 in order to provide a future road connection to the vacant UAR-10 Rio Lobo property to the north. The Hearings Officer has found the applicant is not required to dedicate and improve other public roads within The Tree Farm, or the proposed off-

site secondary emergency access road, to accommodate future through traffic from the Rio Lobo property. For these reasons, I find Tree Farm 3 satisfies this criterion.

g. Section 17.36.100, Frontage Roads

If a land division abuts or contains an existing or proposed collector or arterial street, the Planning Director or Hearings Body may require frontage roads, reverse frontage lots or parcels with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. All frontage roads shall comply with the applicable standards of Table A of DCC Title 17, unless specifications included in a particular zone provide other standards applicable to frontage roads.

FINDINGS: Tree Farm 3 does not abut Skyliners Road, a designated county collector road, and therefore the Hearings Officer finds this criterion is not applicable to Tree Farm 3.

h. Section 17.36.110, Streets Adjacent to Railroads, Freeways and Parkways

When the area to be divided adjoins or contains a railroad, freeway or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right of way widths of the cross street.

FINDINGS: The Hearings Officer finds this criterion is not applicable because The Tree Farm and Tree Farm 3 are not adjacent to a railroad, freeway or parkway.

i. Section 17.36.120, Street Names

Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County.

FINDINGS: Exhibit "Q" to the Tree Farm 3 burden of proof indicates the applicant has received county approval for all Tree Farm road names, therefore satisfying this criterion.

j. Section 17.36.130, Sidewalks

A. **Within an urban growth boundary, sidewalks shall be installed on both sides of a public road or street any in any special pedestrian way within the subdivision or partition, and along any collectors and arterials improved in accordance with the subdivision or partition.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because Tree Farm 3 is not located within the Bend UGB.

B. **Within an urban area, sidewalks shall be required along frontage roads only on the side of the frontage road abutting the development.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because there are no frontage roads in Tree Farm 3.

C. **Sidewalk requirements for areas outside of urban area are set forth in section 17.48.175. In the absence of a special requirement set forth by the Road Department Director under DCC 17.48.030, sidewalks and curbs are never required in rural areas outside unincorporated communities as that term is defined in Title 18.**

FINDINGS: The Hearings Officer finds no sidewalks are required in Tree Farm 3 because it is located in a rural area outside unincorporated communities.

k. **Section 17.36.140, Bicycle, Pedestrian and Transit Requirements**

A. **Pedestrian and Bicycle Circulation within Subdivision.**

1. **The tentative plan for a proposed subdivision shall provide for bicycle and pedestrian routes, facilities and improvements within the subdivision and to nearby existing or planned neighborhood activity centers, such as schools, shopping areas and parks in a manner that will (a) minimize such interference from automobile traffic that will discourage pedestrian or cycle travel for short trips; (b) provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers, and (c) otherwise meet the needs of cyclists and pedestrians, considering the destination and length of trip.**

FINDINGS: The Tree Farm would include a multi-use path system including eight- and ten-foot-wide paved paths that would run parallel to all subdivision roads. The multi-use paths will provide access to Skyliners Road and beyond to NorthWest Crossing, the three nearby public schools, and the rest of the Bend urban area. The applicant also proposes a number of soft-surface recreation/mountain bike trails within the open space tracts and linking with trails in

Shevlin Park and the DNF to the west. For these reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

B. Subdivision Layout

1. Cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through-street connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or inappropriate. In such instances, where applicable and feasible, there shall be a bicycle and pedestrian connection connecting the ends of cul-de-sacs to streets or neighborhood activity centers on the opposite side of the block.

FINDINGS: The applicant proposes cul-de-sacs at the eastern terminus of Ridgeline Court in Tree Farm 1 and at the western terminus of Canopy Court in Tree Farm 4. The Hearings Officer has found in my decisions in Tree Farms 1 and 4 that these cul-de-sacs are justified by topography and the lack of through-street connections.

2. Bicycle and pedestrian connections between streets shall be provided at mid-block where the addition of a connection will reduce the walking or cycling distance to an existing or planned neighborhood activity center by 400 feet and by at least 50 percent over other available routes.

FINDINGS: The Hearings Officer finds this criterion is not applicable to Tree Farm 3 because there are no existing or planned neighborhood activity centers for which mid-block connections are warranted or necessary.

3. Local roads shall align and connect with themselves across collectors and arterials. <u>Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400 foot intervals.</u>

4. <u>Connections shall not be more than 400 feet long and shall be as straight as possible.</u>

C. Facilities and Improvements

1. Bikeways may be provided by either a separate paved path or an on-street bike lane, consistent with the requirements of DCC Title 17.

2. Pedestrian access may be provided by sidewalks or a separate paved path, consistent with the requirements of DCC Title 17.

3. **Connections shall have a 20-foot right-of-way, with at least a 10-foot usable surface.** (Emphasis added.)

FINDINGS: The Hearings Officer finds there are no existing local roads that must be aligned across Skyliners Road.

The parties and county staff disagree as to the meaning of the above-underscored language. Miles Conway argues on behalf of Rio Lobo that this language requires the applicant to provide stubbed *road connections* at least 400 feet long and at 400-foot intervals along the northern boundary of The Tree Farm to provide future connections to the undeveloped Rio Lobo property. Peter Russell responded in his December 11, 2014 memorandum that the underscored language must be read in the context of the title of this section -- "Bicycle, Pedestrian and Transit Requirements" -- and the rest of the section which addresses *bicycle and pedestrian connections*. In particular, Mr. Russell notes the term "connections" in Paragraph (C)(3) of this section clearly refers to bicycle/pedestrian paths because it requires a minimum paved width of 10 feet, far less than minimum 20-foot pavement width required for roads. For this reason, Mr. Russell argues the better reading of the underscored language is that, at most, it establishes a requirement of 10-foot-wide paved *bicycle/pedestrian connections* at 400-foot intervals along the Tree Farm's borders with adjacent undeveloped property.

In his December 30, 2014 letter, Mr. Condit agreed with Mr. Russell's interpretation of the connection requirement, but argues this requirement should not be applied to rural subdivisions because it would produce an absurd result. For example, he notes that if The Tree Farm lots along the Rio Lobo border were 10 acres in size, the 400-foot-interval/400-foot-long connections would bisect the lots and create paths "leading to nowhere."[33] Mr. Condit also argues that if this connection requirement is applicable to Tree Farms 1, 2 and 3, it also would apply to the adjacent undeveloped Miller Tree Farm property and therefore to the entire border between that property and Tree Farm 1. Since most of the land in Tree Farms 1, 2 and 3 is less than 400 feet wide, compliance with the connection requirement would not be feasible in Tree Farms 1, 2 and 3. Mr. Condit also notes the county did not apply this bicycle path connection requirement to prior approvals for three rural PUDs on nearby properties: *Tumalo Creek Development* (CU-05-17, TP-05-958) (adjacent to the Rio Lobo property on the north); *Cascade Highlands* (CU-02-73, TP-02-931) (The Highlands at Broken Top subdivision across Skyliners Road to the south); and *Shevlin Heights (Anderson Ranch)* (ZC-00-5, CU-00-112, TP-00-916) (north of the Rio Lobo property). A review of these decisions indicates the connection standard was not applied to these PUDs based on findings that there were no existing or planned neighborhood activity centers in the vicinity, and/or that the standard does not apply to private roads. Finally, Mr. Condit argues that if the Hearings Officer concludes the bicycle/pedestrian path connection requirement is applicable to The Tree Farm, I should grant an exception under Section 19.104.070(C), discussed in the findings above, in light of The Tree Farm's demonstrated benefits in general, and the extensive multi-use path/trail system proposed for The Tree Farm.

The Hearings Officer agrees with Mr. Russell that read in context, the "connections" required by Section 17.36.140(B)(3) and (4) are bicycle/pedestrian path connections and not road connections. I also agree with Mr. Condit that application of this requirement to rural subdivisions including The Tree Farm would be inappropriate and infeasible. Finally, I find the applicant has demonstrated an exception to this requirement is justified by the benefits provided by The Tree Farm, particularly the extensive multi-use path/trail system.

[33] As noted in the findings above under the UAR-10 Zone, the minimum lot width in that zone is 300 feet.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies these criteria with approval of the exception described above.

l. **Section 17.36.150, Blocks**

A. **General. The length, width and shape of blocks shall accommodate the need for adequate building size, street width, and direct travel routes for pedestrians and cyclists through the subdivision and to nearby neighborhood activity centers, and shall be compatible with the limitations of the topography.**

FINDINGS: Section 17.08.030 defines "block" as "an area of land bounded by streets or by a combination of streets and public parks, cemeteries, railroad rights of way, lines or shorelines or waterways, or corporate boundary lines of a city." The Hearings Officer finds Tree Farm 3 does not contain any "blocks" inasmuch as no area of land within the proposed development is bounded by streets or the other listed features.

B. **Within an urban growth boundary, no block shall be longer than 1,200 feet between street centerlines. In blocks over 800 feet in length, there shall be a cross connection consistent with the provisions of DCC 17.36.140.**

FINDINGS: Tree Farm 3 is not located within the Bend UGB. Therefore, the Hearings Officer finds this criterion is not applicable.

m. **Section 17.36.160, Easements**

A. **Utility easements. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to unsubdivided land may be reduced to 10 feet in width.**

FINDINGS: The Tree Farm 3 burden of proof states the applicant intends to locate all utilities in roadside trenches, either within the private road rights-of-way or within multiple use easements (MUEs) paralleling the rights-of-way, as shown on the Preliminary Water Plan included in the record as Exhibit "E" to the burden of proof. The Hearings Officer finds that as a condition of approval the applicant will be required to show all MUEs on the final plat for Tree Farm 3.

B. **Drainage. If a tract is traversed by a watercourse such as a drainageway, channel or stream, there shall be provided a stormwater easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or**

parkways parallel to major watercourses or drainageways may be required.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not traversed by a watercourse.

n. Section 17.36.170, Lots - Size and Shape

The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and/or the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of Titles 18 through 21 of this code, with the following exceptions:

A. In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and the County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table and related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.

FINDINGS: The proposed residential lots in Tree Farm 3 will be two acres in size. The applicant submitted a septic suitability study, included in the record as Exhibit "F" to the Tree Farm 3 burden of proof, indicating the soils on the subject property are suitable for on-site septic systems. In addition, the applicant proposes to establish building envelopes on each lot within which dwellings must be constructed. As discussed above, I have granted an exception to the minimum lot width for Lot 1 in Tree Farm 1. And I have found the applicant will be required as a condition of approval to obtain an approved septic site evaluation for each residential lot in Tree Farm 3 prior to final plat approval. For these reasons, the Hearings Officer finds the size, width and orientation of the proposed lots are appropriate for the proposed planned development, consistent with the minimum lot sizes in the RR-10 and UAR-10 Zones, and large enough to accommodate on-site septic systems.

o. Section 17.36.180, Frontage

A. Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet, except for lots or parcels fronting on the bulb of a cul de sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads. Frontage for partitions off U.S. Forest Service or Bureau of Land Management roads shall be decided on a case by case basis based on the location of the property, the condition of the road, and the orientation of the proposed parcels, but shall be at least 20 feet. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards.

Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.

B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.

FINDINGS: With the exception of Lot 1 in Tree Farm 1, all proposed residential lots in The Tree Farm will have at least 50 feet of road frontage, or at least 30 feet of road frontage for those lots located on a cul-de-sac. In the Hearings Officer's decision in Tree Farm 1, I approved an exception to the 50-foot road frontage requirement for Lot 1 based on my finding that the benefits of the proposed cluster/PUDs justify the requested exceptions. Generally, Tree Farm 3 lot lines are at right angles to Golden Mantle Loop. For the foregoing reasons, I find Tree Farm 3 satisfies this criterion.

p. Section 17.36.190, Through Lots

Lots or parcels with double frontage should be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots or parcels abutting such a traffic artery or other incompatible use.

FINDINGS: Section 17.08.030 defines "through lot" as "an interior lot having frontage on two streets." As discussed in my Tree Farm 1 decision, I have found the tentative plan for Tree Farm 1 shows Lots 4, 5, 8, and 9 will have frontage on both Sage Steppe Drive and Ridgeline Drive. However, because the tentative plan for Tree Farm 3 shows no through lots, I find this criterion is not applicable to Tree Farm 3.

q. Section 17.36.200, Corner Lots

Within an urban growth boundary, corner lots or parcels shall be a minimum of five feet more in width than other lots or parcels, and also shall have sufficient extra width to meet the additional side yard requirements of the zoning district in which they are located.

FINDINGS: The Hearings Officer finds this criterion is not applicable because Tree Farm 3 is located outside the Bend UGB.

r. Section 17.36.210, Solar Access Performance

A. As much solar access as feasible shall be provided each lot or parcel in every new subdivision or partition, considering topography, development pattern and existing vegetation. The lot lines of lots or parcels, as far as feasible, shall be oriented to provide solar access at ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st. If it is not feasible to provide solar access to the southern building line, then solar access, if feasible, shall be provided at 10 feet above

ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st, and three hours before and after the solar zenith from March 22nd to September 21st.

B. This solar access shall be protected by solar height restrictions on burdened properties for the benefit of lots or parcels receiving the solar access.

C. If the solar access for any lot or parcel, either at the southern building line or at 10 feet above the southern building line, required by this performance standard is not feasible, supporting information must be filed with the application.

FINDINGS: The Hearings Officer finds the size, shape and orientation of the residential lots in Tree Farm 3 will allow for the dwellings on these lots to meet the solar access standards.

s. Section 17.36.220, Underground Facilities

Within an urban growth boundary, all permanent utility services to lots or parcels in a subdivision or partition shall be provided from underground facilities; provided, however, the Hearings Body may allow overhead utilities if the surrounding area is already served by overhead utilities and the proposed subdivision or partition will create less than ten lots. The subdivision or partition shall be responsible for complying with requirements of this section and shall: . . . .

FINDINGS: The Hearings Officer finds this section is not applicable because the property is located outside the Bend UGB.

t. Section 17.36.260, Fire Hazards

Whenever possible, a minimum of two points of access to the subdivision or partition shall be provided to provide assured access for emergency vehicles and ease resident evacuation.

FINDINGS: The applicant proposes two points of access to The Tree Farm and Tree Farm 3 – the main PUD road that intersects with Skyliners Road at the southern boundary of Tree Farm 1, and the proposed secondary emergency access road running from the southern terminus of Sage Steppe Drive in Tree Farm 1 south through the adjacent Miller Tree Farm property to Crosby Drive. As discussed in the findings above, the Hearings Officer has found the secondary access road will provide an adequate means of evacuation and emergency vehicle access with imposition of conditions of approval requiring the road to be improved to the fire department's standards for such roads, and with installation of a gate/lock system that allows the gate to be opened by residents and guests. I also have found the applicant will be required to develop Tree Farms 1, 2 and 3 concurrently to assure access to the residential lots. Such access will allow use of the emergency access by lots in Tree Farms 2 and 3.

u. Section 17.36.280, Water and Sewer Lines

Where required by the applicable zoning ordinance, water and sewer lines shall be constructed to County and city standards and specifications. Required water mains and service lines shall be installed prior to the curbing and paving of new streets in all new subdivisions or partitions.

FINDINGS: No new sewer lines are proposed because residential lots in Tree Farm 3 would be served by on-site septic systems. The Hearings Officer finds that if these residential lots are connected to the City of Bend water facilities, the applicant will be required as a condition of approval to construct all required water lines in compliance with the city's standards and specifications therefor.

v. Section 17.36.290, Individual Wells

In any subdivision or partition where individual wells are proposed, the applicant shall provide documentation of the depth and quantity of potable water available from a minimum of two wells within one mile of the proposed land division. Notwithstanding DCC 17.36.300, individual wells for subdivisions are allowed when parcels are larger than 10 acres.

FINDINGS: The applicant has stated its preferred alternative for providing domestic water to the residential lots in Tree Farm 3 is the extension of City of Bend water service. However, if that connection is not possible, and the applicant does not obtain water service from Avion Water Company, the applicant proposes to provide domestic water through one or more groundwater wells. The applicant submitted as Exhibit "M" to the Tree Farm 3 burden of proof well logs for two wells on property in the vicinity of the subject property demonstrating that water is available in the area. Therefore, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

w. Section 17.36.300, Public Water System

In any subdivision or partition where a public water system is required or proposed, plans for the water system shall be submitted and approved by the appropriate state or federal.

FINDINGS: The Hearings Officer finds that if the residential lots in Tree Farm 3 are served by City of Bend or Avion water service, compliance with this criterion will be accomplished through the city's or Avion's compliance with applicable public water system requirements.

3. Chapter 17.44, Park Development

a. Section 17.44.010, Dedication of Land

* * *

B. For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to $350 per dwelling unit within the development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.

C. **For either DCC 17.44.010 (A) or (B), the developer shall either dedicate the land set aside to the public or develop and provide maintenance for the land set aside as a private park open to the public.**

D. **The Planning Director or Hearings Body shall determine whether or not such land is suitable for park purposes.**

E. **If the developer dedicates the land set aside in accordance with DCC 17.44.010(A) or (B), any approval by the Planning Director or Hearings Body shall be subject to the condition that the County or appropriate park district accept the deed dedicating such land.**

F. **DCC 17.44.010 shall not apply to the subdivision or partition of lands located within the boundaries of the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.**

FINDINGS: The record indicates all proposed residential lots in Tree Farm 3 are located within the boundaries of the park district, and therefore the Hearings Officer finds these requirements are not applicable.

b. **Section 17.44.020, Fee in Lieu of Dedication**

A. **In the event there is no suitable park or recreation area or site in the proposed subdivision or partition, or adjacent thereto, then the developer shall, in lieu of setting aside land, pay into a park acquisition and development fund a sum of money equal to the fair market value of the land that will have been donated under DCC 17.44.010 above. For the purpose of determining the fair market value, the latest value of the land, unplatted and without improvements, as shown on the County Assessor's tax roll shall be used. The sum so contributed shall be deposited with the County Treasurer and be used for acquisition of suitable area for park and recreation purposes or for the development of recreation facilities. Such expenditures shall be made for neighborhood or community facilities at the discretion of the Board and/or applicable park district.**

B. **DCC 17.44.020 shall not apply to subdivision or partition of lands located within the boundaries of the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.**

FINDINGS: The Hearings Officer finds that because all proposed residential lots in Tree Farm 3 are located within the boundaries of the park district, this section does not apply.

4. **Chapter 17.48, Design and Construction Specifications**

a. **Section 17.48.140, Bikeways**

A. General Design Criteria.

1. Bikeways shall be designed in accordance with the current standards and guidelines of the Oregon (ODOT) Bicycle and Pedestrian Plan, the American Association of State Highway Transportation Officials (AASHTO) Guide for Development of New Bicycle Facilities, and the Deschutes County Bicycle Master Plan. See DCC 17.48 Table B.

2. All collectors and arterials shown on the County Transportation Plan map shall be constructed to include bikeways as defined by the Deschutes County Bicycle Master Plan.

3. If interim road standards are used, interim bikeways and/or walkways shall be provided. These interim facilities shall be adequate to serve bicyclists and pedestrians until the time of road upgrade.

B. Multi-use Paths.

1. Multi-use paths shall be used where aesthetic, recreation and safety concerns are primary and a direct route with few intersections can be established. If private roads are constructed to a width of less than 28 feet, multi-use paths shall be provided.

2. Multi-use paths are two way facilities with a standard width of 10 feet, but with a 12 foot width if they are subjected to high use by multiple users. These paths shall meet County multi-use path standards and shall connect with bike facilities on public roads.

FINDINGS: The applicant proposes to provide multi-use paths in The Tree Farm through additional width on a segment of Tree Farm Drive, and eight- or ten-foot-wide multi-use paths along the rest of the PUD roads. A ten-foot-wide multi-use path is proposed to parallel Tree Farm Drive from its intersection with Skyliners Road to the point where the path splits to go to Shevlin Park to the west. From that point to the intersection of Golden Mantle Loop and Ridgeline Drive, and throughout the rest of The Tree Farm, the multi-use paths are proposed to be eight feet wide. The Hearings Officer has approved an exception to allow reduced width from ten to eight feet for neighborhood multi-use paths, requested by the applicant because of projected low traffic volumes, based on my finding that the benefits from The Tree Farm justify the exception. For these reasons, and with the exception granted for the eight-foot path, I find Tree Farm 3 satisfies these criteria.

C. Bike Lanes. Six foot bike lanes shall be used on new construction of curbed arterials and collectors.

D. Shoulder Bikeways.

1. **Shoulder bikeways shall be used on new construction of uncurbed arterials and collectors.**

2. **Shoulder bikeways shall be at least four feet wide. Where the travel lane on an existing arterial or collector is not greater than eleven feet, the bikeway shall be a minimum of four feet wide.**

FINDINGS: The Hearings Officer finds these criteria are not applicable because no new collectors or arterials are proposed.

E. **Mountain Bike Trails.**

1. **Mountain bike (dirt or other unpaved surface) trails may be used as recreational or interim transportation facilities.**

2. **Trails used for transportation shall have a two foot minimum tread width and a six foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet. Trails used solely for recreational use may be narrower with less clearing of vegetation.**

FINDINGS: As shown on Exhibit "C" to the Tree Farm 3 burden of proof, the applicant proposes a network of soft-surface recreation/mountain bike trails linking with trails in Shevlin Park and in the DNF to the west. A segment of one of these trails would be located in the southwest portion of Tree Farm 3. Therefore, the Hearings Officer finds these criteria are applicable to Tree Farm 3. The applicant's Tree Farm 3 burden of proof states the proposed recreation/mountain bike trails will satisfy these standards, and I find the applicant will be required as a condition of approval to do so.

b. **Section 17.48.160, Road Development Requirements – Standards**

A. **Subdivision Standards. All roads in new subdivisions shall either be constructed to a standard acceptable for inclusion in the county maintained system or the subdivision shall be part of a special road district or homeowners association in a planned unit development.**

FINDINGS: The applicant proposes to dedicate to the public and to improve Sage Steppe Drive in compliance with the county's standards for public rural roads, and to improve all public and private PUD roads with 20 feet of paved surface as provided in Table "A" to Title 17. The applicant also proposes that all Tree Farm roads will be maintained by the HOA. As noted above, the record indicates the county is not accepting new roads into its road maintenance system. For these reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

B. **Improvements of Public Rights of Way.**

1. **The developer of a subdivision or partition will be required to improve all public ways that are adjacent or within the land development.**

2. **All improvements within public rights of way shall conform to the improvement standards designated in DCC Title 17 for the applicable road classification, except where a zoning ordinance sets forth different standards for a particular zone.**

FINDINGS: The only public right-of-way adjacent to the subject property is Skyliners Road, an improved county collector. As discussed above, the road department did not identify any necessary improvements to Skyliners Road. The applicant proposes to improve all PUD roads to the to the county's standards for local public and private roads, including 20 feet of paved surface. Therefore, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

C. **Primary Access Roads. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A (or the applicable standard set forth in a zoning ordinance). The applicable standard shall be determined with reference to the road's classification under the relevant transportation plan. For the purposes of this section a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.**

FINDINGS: The primary access road to The Tree Farm consists of Tree Farm Drive, Golden Mantle Loop, and Ridgeline Drive. The Hearings Officer finds the applicant will be required as a condition of approval to improve the segments of these roads within Tree Farm 3 to the county's standards for local private roads in Table "A" to Title 17. In addition, as discussed in the findings above, I have found the applicant will be required as a condition of approval to develop Tree Farms 1, 2 and 3 concurrently to assure the primary access road is in place to serve all lots in those developments.

D. **Secondary Access Roads. When deemed necessary by the County Road Department or Community Development Department, a secondary access road shall be constructed to the subdivision. Construction shall be to the same standard used for roads within the subdivision.**

FINDINGS: The road department did not identify the need for a secondary access road. However, the applicant proposes to construct a temporary emergency access road from the southern terminus of Sage Steppe Drive south through the adjacent Miller Tree Farm property to Crosby Drive. The applicant proposes to improve this emergency access road to the fire department's standards for fire apparatus access roads, including a 24-foot-wide all-weather surface. As discussed above, this emergency access road will be an interim access until the Miller Tree Farm property is developed with public roads to which Sage Steppe Drive can

connect. Under these circumstances, the Hearings Officer finds the proposed level of improvement is appropriate for the secondary access road.[34]

E. Stubbed Roads. Any proposed road that terminates at a development boundary shall be constructed with a paved cul-de-sac bulb.

FINDINGS: The Hearings Officer finds this criterion is not applicable to Tree Farm 3 because no cul-de-sacs are proposed for Tree Farm 3. In my decision in Tree Farm 1, I found the proposed cul-de-sac at the eastern terminus of Ridgeline Court, and the stubbed street at northern terminus of Sage Steppe Drive, are justified because of the steep topography and lack of through-street connections in the vicinity.

F. Cul-de-sacs. Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road. The maximum grade on the bulb shall be four percent.

FINDINGS: The tentative plan for Tree Farm 3 shows a cul-de-sac at the western end of Canopy Court in Tree Farm 3 that is longer than 600 feet. Because the fire department did not address the length of Canopy Court in its comments on The Tree Farm, I find the applicant will be required as a condition of approval, and before submitting the final plat for Tree Farm 3, to submit to the Planning Division written documentation from the fire department that it has approved the length of Canopy Court.

c. Section 17.48.180, Private Roads

The following minimum road standards shall apply for private roads:

A. The minimum paved roadway width shall be 20 feet in planned unit developments and cluster developments with two-foot wide gravel shoulders;

B. Minimum radius of curvature, 50 feet;

C. Maximum grade, 12 percent;

FINDINGS: The applicant's burden of proof for Tree Farm 3 states the private roads will meet these standards, and the Hearings Officer finds the applicant will be required to construct the PUD's private roads in compliance with these standards as a condition of approval.

D. At least one road name sign will be provided at each intersection for each road;

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to comply with this criterion.

[34] The burden of proof for Tree Farm 3 states the applicant would request a variance to the requirement that the secondary access road be paved. However, in an e-mail message dated August 15, 2014, the applicant's representative Romy Mortensen clarified the applicant is not seeking a variance and does not believe one is required.

E. **A method for continuing road maintenance acceptable to the County;**

FINDINGS: The applicant proposes that The Tree Farm HOA will own and maintain all tree farm roads. The Hearings Officer finds the applicant will be required as a condition of approval to execute a road maintenance agreement with the county that is acceptable to the county.

F. **Private road systems shall include provisions for bicycle and pedestrian traffic. In cluster and planned developments limited to ten dwelling units, the bicycle and pedestrian traffic can be accommodated within the 20-foot wide road. In other developments, shoulder bikeways shall be a minimum of four feet wide, paved and striped, with no on-street parking allowed within the bikeway, and when private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.**

FINDINGS: As discussed in findings throughout this decision, the applicant proposes to accommodate bicycle and pedestrian traffic in The Tree Farm through a system of paved multi-use paths running parallel to PUD roads. The segment of Tree Farm Drive in Tree Farm 3 would have a 26-foot-wide paved surface to its intersection with Golden Mantle Loop, and all other public and private road segments would have a 20-foot paved width with adjacent or nearby eight- or ten-foot-wide paved bicycle/pedestrian paths. For these reasons, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

d. **Section 17.48.190, Drainage**

A. **Minimum Requirements.**

1. **Drainage facilities shall be designed and constructed to receive and/or transport at least a design storm as defined in the current Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council and all surface drainage water coming to and/or passing through the development or roadway.**

2. **The system shall be designed for maximum allowable development.**

FINDINGS: The applicant proposes a surface water drainage plan for The Tree Farm that would contain surface water on site through use of vegetated swales, roadside ditches, culverts, and natural drainage ways. According to this plan, runoff would shed to vegetated swales with 3:1 slopes for on-site infiltration, or would enter a natural drainage way via a roadside ditch and culvert. The applicant states these culverts will be designed for a ten-year storm event, and infiltration facilities will be designed for a fifty-year storm event. The drainage plan notes that because of the site's topography, natural drainage patterns on The Tree Farm generally are toward Tumalo Creek to the west and to the undeveloped open space to the east. However, the applicant states none of the runoff from impervious areas such as roads and driveways will create any additional drainage contributions to Tumalo Creek as no surface water will be disposed of off-site. The applicant also proposes that if hydrological calculations determine

additional runoff storage is needed, the applicant will construct a catch basin near the main entry to The Tree Farm at Skyliners Road.

The Hearings Officer has found that prior to submitting for approval the final plat for any part of The Tree Farm, the applicant will be required as a condition of approval to submit to the Planning Division a statement from a registered professional engineer stating whether an additional runoff storage basin is necessary, and if such a facility is determined to be necessary, the applicant will be required as a condition of approval to show it on the final plat for Tree Farm 3 and to construct it. I find that with imposition of this condition of approval Tree Farm 3 will satisfy this criterion.

Finally, the Hearings Officer finds the drainage plan for Tree Farm 3 need not be designed to serve the site with "maximum allowable development" – i.e., urban-density development on the UAR-10 zoned portion of the site – inasmuch as the applicant intends that The Tree Farm never will be annexed into the Bend UGB, and the applicant will be required as a condition of approval to record deed restrictions permanently prohibiting development on The Tree Farm open space tracts.

C. Noncurbed Sections

1. Road culverts shall be concrete or metal with a minimum design life of 50 years.

2. All cross culverts shall be 18 inches in diameter or larger.

3. Culverts shall be placed in natural drainage areas and shall provide positive drainage.

FINDINGS: The applicant's burden of proof for Tree Farm 3 states culverts used for The Tree Farm will be corrugated metal pipe with a minimum fifty-year design life, and that two 18-inch culverts and one 24-inch culvert will be installed. The Hearings Officer finds the applicant will be required as a condition of approval to place all culverts in natural drainage areas and provide positive drainage.

D. Drainage Swales. The Design Engineer is responsible to design a drainage swale adequate to control a design storm as defined in the Central Oregon Stormwater Manual created by Central Oregon Intergovernmental Council.

FINDINGS: The applicant's burden of proof for Tree Farm 3 states the drainage swales will be designed for a 50-year storm event. Therefore, the Hearings Officer finds Tree Farm 3 satisfies this criterion.

E. Drainage Plans. A complete set of drainage plans including hydraulic and hydrologic calculations shall be incorporated in all road improvement plans.

FINDINGS: The applicant's burden of proof for Tree Farm 3 includes a narrative description of its proposed drainage plan, and states complete modelling will be performed and incorporated into the storm disposal infrastructure design during engineering and construction plan

development. The Hearings Officer finds the applicant will be required as a condition of approval to incorporate the drainage plan for Tree Farm 3 into the road improvement plan for Tree Farm 3, and to provide to the Planning Division a copy of that plan before submitting the Tree Farm 3 final plat for approval.

F. Drill Holes. Drill holes are prohibited.

G. Injection wells (drywells) are prohibited in the public right-of-way.

FINDINGS: The Hearings Officer finds the applicant's proposal complies with these criteria because no drill holes or injection wells are proposed.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 satisfies, or with the conditions of approval described above will satisfy, all applicable criteria in Title 17.

COMPREHENSIVE PLANS

FINDINGS: Comprehensive plans can be a potential source of approval standards for quasi-judicial land use applications. *The Flight Shop v. Deschutes County*, __ Or LUBA __ (LUBA No. 2013-073, January 10, 2014). Even if a comprehensive plan provision does not constitute an independently applicable mandatory approval criterion, it may nonetheless represent a relevant and necessary consideration that must be reviewed and balanced with other relevant plan provisions pursuant to ordinances that require that the proposed land use be consistent with applicable plan provisions. *See, Bothman v. City of Eugene*, 51 Or LUBA 426 (2006). Therefore, the Hearings Officer finds that whether the county's comprehensive plans apply to Tree Farm 3 depends on whether their text and context indicates they include mandatory standards, requirements, and/or considerations applicable to quasi-judicial development approvals.

F. Deschutes County Comprehensive Plan

FINDINGS: The applicant and staff identified the following plan provisions as applicable.

1. Chapter 2 Resource Management Section

Goal 1, Maintain and enhance a diversity of wildlife and habitats.

Policy 2.6.8, Balance protection of wildlife with wildland fire mitigation on private lands in the designated Wildland Urban Interface.

FINDINGS: The Hearings Officer finds this goal and policy are written in aspirational terms and appear directed at the county rather than to applicants for land use approval. Therefore, I find these provisions are not applicable to Tree Farm 3.

2. Chapter 3, Rural Growth Management

Goals and Policies

Goal 1 Maintain the rural character and safety of housing in unincorporated Deschutes County.

Policy 3.3.1. The minimum parcel size for new rural residential parcels shall be 10 acres.

FINDINGS: The Hearings Officer finds this policyis written in mandatory terms suggesting it is applicable to Tree Farm 3. I have found Tree Farm 3 complies with the ten-acre minimum size for lots or parcels in the RR-10 and UAR-10 Zones, and therefore I find it also is consistent with this plan policy.

Policy 3.3.4. Encourage new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.

FINDINGS: The Hearings Officer finds this policy is aspirational and directed at the county rather than at an applicant for a quasi-judicial land use application, and therefore it is not applicable to Tree Farm 3.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 is consistent with applicable county comprehensive plan goals and policies identified by planning staff.

G. Bend Area General Plan[35]

1. Chapter 5: Housing and Residential Lands

36. Sidewalks shall be required in all new residential developments. Separated sidewalks shall be required, as practical, on streets that provide or will provide access to schools, parks, or commercial areas. However, an alternative system of walkways and trails that provide adequate pedestrian circulation may be approved.

FINDINGS: The Hearings Officer finds this plan provision is written in mandatory terms suggesting it is applicable to Tree Farm 3. However, as discussed in the findings above, the applicant does not propose sidewalks, and I have found they are not required in rural areas under Title 17. Instead, the applicant proposes a network of paved multi-use paths along all new PUD roads. I find this path network constitutes an alternate system that will provide adequate pedestrian access within Tree Farm 3, and therefore it is consistent with this plan policy.

2. Chapter 8: Public Facilities and Services

* * *

15. Dry wells or storm drains with appropriate water quality treatment using landscaping, retention ponds or other approved treatment controls shall be used for surface drainage control.

16. The preservation and use of natural drainage ways for storm drainage shall be required in new developments as much as possible.

* * *

[35] The Bend Area General Plan applies to lands within the Bend urban area reserve.

20. **Developments shall be designed to meet appropriate drainage quantity and quality requirements (e.g., meeting the requirements of the City's National Pollutant Discharge Elimination System MS4 Stormwater Permit, the City's Stormwater Master Plan and Integrated Stormwater Management Plan, and Total Maximum Daily Load requirements). Low impact site designs shall be encouraged.**

* * *

27. **Development on slopes in excess of 10 percent shall require special consideration to prevent construction-related and post-construction erosion.**

FINDINGS: The Hearings Officer finds these plan provisions are written in mandatory terms suggesting they are applicable to public facilities and services in Tree Farm 3. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant's proposed drainage plan will dispose of stormwater through the use of vegetated swales, roadside ditches, culverts, and natural drainage ways. I find these methods will assure that stormwater runoff infiltrates into native soil to the maximum degree possible and does not run off into Tumalo Creek or onto other off-site areas. For the foregoing reasons, I find the drainage plan for Tree Farm 3 is consistent with these plan policies.

For the foregoing reasons, the Hearings Officer finds Tree Farm 3 is consistent with the applicable urban area comprehensive plan policies identified by planning staff.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **DENIES** the applicant's proposed conditional use, tentative plan, and site plan for a cluster development/PUD on the subject property, to be called Tree Farm 3.

In the event this decision is appealed to the Board of County Commissioners, and the Board elects to hear the appeal and approves the applicant's proposal on appeal, the Hearings Officer **RECOMMENDS** such approval be **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

1. This approval for Tree Farm 3 is based upon the applicant's submitted tentative plan, site plan, burden of proof statements, and written and oral testimony. Any substantial change to the approved plan will require new land use applications and approvals.

PRIOR TO SUBMITTING THE FINAL SUBDIVISION PLAT FOR APPROVAL:

2. The applicant/owner shall demonstrate to the Planning Division that conditions of approval for The Tree Farm lot line adjustments have been met.

3. The applicant/owner shall submit to the Planning Division an updated title report for Tree Farm 3.

4. The applicant/owner shall submit to the Planning Division for review and approval a copy of nonrevocable deed restrictions for the Tree Farm 3 open space tract, stating that no portion of that tract shall be developed with a dwelling or other non-open space use in perpetuity, and that off-road motor vehicle use is prohibited. After county approval, the applicant/owner shall record these nonrevocable deed restrictions and shall provide copies of the recorded deed restrictions to the Planning Division.

5. The applicant/owner shall record with the Deschutes County Clerk the bylaws of the homeowner's association.

6. The applicant/owner shall record with the Deschutes County Clerk the covenants, conditions and restrictions for Tree Farm 3.

7. The applicant/owner shall execute and record a Conditions of Approval Agreement for Tree Farm 3.

8. The applicant/owner shall execute and record with the Deschutes County Clerk a development agreement for the private roads in Tree Farm 3 on a form approved by Deschutes County Legal Counsel. The development agreement shall incorporate the drainage plan for Tree Farm 3. The applicant shall provide a copy of the recorded development agreement to the Planning Division.

9. The applicant/owner shall submit to the Deschutes County Road Department for its review and approval a draft Road Maintenance Agreement outlining the maintenance responsibilities for all new roads in Tree Farm 3, and following road department approval the applicant/owner shall record the Road Maintenance Agreement with the Deschutes County Clerk

10. The applicant/owner shall record with the Deschutes County Clerk the wildfire plan and WMP for the Tree Farm 3 open space tract. The applicant/owner shall provide copies of these recorded management agreements to the Planning Division.

11. The applicant/owner shall obtain an approved septic site evaluation for each residential lot in Tree Farm 3.

12. The applicant/owner shall obtain from the Deschutes County Road Department an access permit for the new road connection to Skyliners Road in Tree Farm 1.

13. The applicant/owner shall obtain from the Deschutes County Road Department a gate permit for the gates on the new secondary emergency access road for The Tree Farm.

14. The applicant/owner shall submit to the Planning Division proof of City of Bend approval to extend domestic water service to Tree Farm 3. If City of Bend water is not available, prior to final plat approval for any Tree Farm development the applicant shall submit to the Planning Division proof that domestic water is available via the alternative means identified by the applicant.

15. If the applicant/owner elects, or is required to, provide water to The Tree Farm through means other than extension of city water service, the applicant/owner shall provide to the Planning Division a water system analysis performed by a registered professional engineer and demonstrating water service from the alternative domestic water source

will provide at each residential lot water pressure of at least 40 psi during peak demand periods, 20 psi residual pressure, and 2,000 gpm for fire flow.

16. The applicant/owner shall provide to the Planning Division a statement from a registered professional engineer indicating whether a runoff storage basin is necessary.

17. The applicant/owner shall submit to the Planning Division written verification from the Bend Fire Department that all standards for subdivision roads, including the secondary emergency access road, have been met, and that it approves the length of the Canopy Court cul-de-sac.

18. The applicant/owner shall pay all taxes for Tree Farm 3 in accordance with ORS 92.095.

WITH OR ON THE FINAL SUBDIVISION PLAT:

19. The applicant/owner shall prepare the final plat for Tree Farm 3 in accordance with Title 17 of the Deschutes County Code, including all the necessary information required by Section 17.24.060.

20. The applicant/owner shall show the following on the final plat for Tree Farm 3:

    a. the exact lot size of each residential lot, and of the open space tract which shall be platted as a separate tract;

    b. the building envelope for each lot;

    c. all easements of record and existing rights-of-way;

    d. a statement of water rights as required by ORS 92.120;

    e. all utility easements;

    f. all public access easements; and

    g. if a runoff storage basin is necessary, the location of the storage basin.

21. The surveyor or registered professional engineer submitting the final plat for Tree Farm 3 shall submit information to the Deschutes County Road Department showing the location of any existing roads in relationship to the road right-of-way. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current county standards.

22. The final plat for Tree Farm 3 shall be signed by all persons with an ownership interest in the property, as well as the Deschutes County Assessor and Tax Collector.

PRIOR TO OR WITH CONSTRUCTION:

23 The applicant/owner shall obtain from the Deschutes County Road Department approval of all construction plans for all required road improvements prior to commencement of any construction.

24. All private road designs shall be in accordance with the standards in Chapter 17.48 and Table "A" of the Deschutes County Code for rural local private roads.

25. All private roads constructed in Tree Farm 3 shall include bicycle and pedestrian paths as proposed on the tentative subdivision plan and burden of proof.

26. The applicant/owner shall construct all road improvements under the inspection and approval of the Deschutes County Road Department. The road department may accept certification of improvements by a registered professional engineer pursuant to ORS 92.097.

27. The applicant/owner shall assure that all road improvements in Tree Farm 3 are surveyed and staked in accordance with DCC 17.48.200

28. The applicant/owner shall place all culverts in natural drainage areas and provide positive drainage.

29. If a runoff storage basin is determined to be necessary, the applicant/owner shall construct such a basin at the lowest point in Tree Farm 1, or in such other location as determined to be appropriate by a registered professional engineer;

30. The applicant/owner shall install all utilities underground.

31. The applicant/owner shall install at least one road name sign at each intersection for each road.

32. If the applicant/owner provides domestic water service to Tree Farm 3 through extension of and connection to the City of Bend water system, the applicant/owner shall construct all required water lines to the city's standards and specifications therefor.

33. The applicant/owner shall install on the residential lot side of the gate at the southern terminus of Sage Steppe Drive at least one means of opening the gate by Tree Farm residents and guests, such as special keys, key codes and/or automatic gates.

34. The applicant/owner shall construct all recreation/mountain bike rails with a two-foot minimum tread width and a six foot minimum clearing width centered over the trail, and a minimum overhead clearance of seven feet.

FOLLOWING FINAL PLAT APPROVAL:

35. The applicant/owner shall begin construction of Tree Farms 1, 2 and 3 within six months of the date this decision becomes final, or such longer period of time as the Planning Director may allow.

AT ALL TIMES:

36. The applicant/owner shall satisfy all requirements of the Bend Fire Department for fire protection within Tree Farm 3.

37. The applicant/owner shall limit uses permitted in the Tree Farm 3 open space tract to management of natural resources, trail systems, and low-intensity outdoor recreation uses, and shall prohibit golf courses, tennis courts, swimming pools, marinas, ski runs or other developed recreational uses of similar intensity and off-road vehicle use on the open space tract. The applicant/owner shall enforce these open space restrictions and prohibitions through the Tree Farm 3 covenants, conditions and restrictions.

38. The applicant/owner shall install any fencing in the WA-zoned portion of Tree Farm 3 in accordance with the WA Zone standards therefor.

39 The applicant/owner shall assure the building height and setback standards in the UAR-10, RR-10 and WA-10 Zones are met for dwellings in Tree Farm 3.

40. The applicant/owner shall assure that address numbers are provided for each dwelling in Tree Farm 3 as required by the Oregon Fire Code.

DURATION OF APPROVAL:

41. The applicant/owner shall complete all conditions of approval and apply for final plat approval from the Planning Division for Tree Farms 1, 2 and 3 within two (2) years of the date this decision becomes final, or obtain an extension the approval in this decision in accordance with the provisions of Title 22 of the County Code, or the approval shall be void.

Dated this 18th day of March , 2015 Mailed this 18th day of March, 2015

Karen H. Green, Hearings Officer

THIS DECISION BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE OF MAILING, UNLESS APPEALED BY A PARTY OF INTEREST.

Community Development Department
Planning Division Building Safety Division Environmental Soils Division

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

CERTIFICATE OF MAILING

FILE NUMBERS: 247-14-000242-CU, 243-TP
247-14-000244-CU, 245-TP
247-14-000246-CU, 247-TP
247-14-000248-CU, 249-TP
247-14-000250-CU, 251-TP

DOCUMENTS MAILED: Hearings Officer Decisions – Tree Farms 1 thru 5

MAP/TAX LOT NUMBERS: 17-11-35D00-0400; 17-11-6002, 6205, 6207, 6208, 6209, 6210, 6211, 6212 and 6213

I certify that on the 18th day of March, 2015, the attached notice(s)/report(s), dated March 18, 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 18th day of March, 2015.

COMMUNITY DEVELOPMENT DEPARTMENT

By: Moonlight BPO

Romy Mortensen The Tree Farm, LLC 409 NW Franklin Avenue Bend, OR 97701	Charley Miller Miller Tree Farm 110 NE Greenwood Avenue Bend, OR 97701
Ken Pirie Walker Macy 111 SW Oak St #200 Portland, OR 97204	Ron Hand WHPacific 123 SW Columbia Street Bend, OR 97702
Jeffrey Condit Miller Nash LLP 3400 US Bancorp Tower 111 SW Fifth Avenue Portland, OR 97204-3699	Dale Van Valkenburg Brooks Resources Corporation 409 NW Franklin Avenue Bend, OR 97701

Connie Peterson 2203 NW Clearwater Drive Bend, OR 97701-2203	Paul Dewey 1539 NW Vicksburg Avenue Bend, OR 97701
Doug Wickham 61971 Kildonan Court Bend, OR 97702	Christine Herrick 2281 NW High Lakes Loop Bend, OR 97701
Corey Heath & Nancy Bruener Oregon Department of Fish & Wildlife 61374 Parrell Road Bend, OR 97702	Larry Medina Bend Fire Department 1212 SW Simpson, Suite B Bend, OR 97702
Michelle Healy & Steve Jorgensen Bend Metro Parks and Recreation District 799 SW Columbia Street Bend, OR 97702	Jennifer Taylor & Christine Pollard 19001 Squirreltail Loop Bend, OR 97701
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Al Johnson 2522 NW Crossing Drive Bend, OR 97701	Edward & Lynn Funk 2138 Toussaint Drive Bend, OR 97701
Kelly Esterbrook 16322 Skyliners Road Bend, OR 97701	<u>Deschutes County</u> Ed Keith, Forester George Kolb, Road Department Peter Russell, CDD