



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

---

## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of July 8, 2015**

---

**DATE:** June 30, 2015

**FROM:** Anthony Raguine                      CDD                      541-617-4739

**TITLE OF AGENDA ITEM:**

Public hearing on two appeals of the Hearings Officer's decisions on The Tree Farm, LLC, subdivision applications.

**PUBLIC HEARING ON THIS DATE?** No.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Tree Farm, LLC (Applicant), submitted applications to establish five cluster subdivisions. These applications were referred to a Hearings Officer and a public hearing on November 6, 2014. The Hearings Officer's decisions denied the applications due to a lack of detail associated with the submitted wildfire and wildlife management plans. These decisions were timely appealed by the Applicant and Rio Lobo Investments, LLC. By Order of the Deschutes County Board of County Commissioners (Board), dated April 22, 2015, the Board agreed to hear both appeals via a de novo hearing limited to the specific issues identified in both appeals.

**FISCAL IMPLICATIONS:**

None.

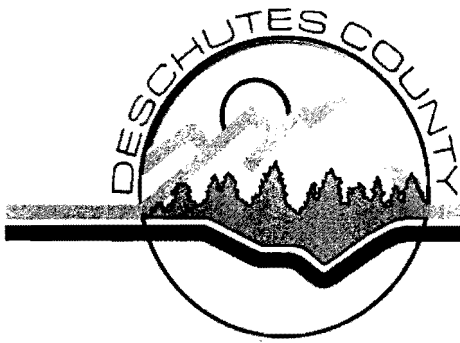
**RECOMMENDATION & ACTION REQUESTED:**

Open and conduct the public hearing.

**ATTENDANCE:** Anthony Raguine and Legal Counsel

**DISTRIBUTION OF DOCUMENTS:**

Anthony Raguine, CDD  
David Doyle, Legal Counsel



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

### MEMORANDUM

**DATE:** June 30, 2015  
**TO:** Board of County Commissioners (Board)  
**FROM:** Anthony Ragguine, Senior Planner  
**RE:** Board Public Hearing on Miller Tree Farm (247-14-000242-CU, 243-TP, 244-CU, 245-TP, 246-CU, 247-TP, 248-CU, 249-TP, 250-CU, 251-TP)

---

Before the Board are two timely appeals. One appeal was filed by the applicant, The Tree Farm, LLC. The other appeal was filed by Rio Lobo Investments, LLC. The appeals were submitted in response to Deschutes County Hearings Officer's decisions denying the applicant's request for five, 10-lot subdivision approvals. Per Board Order 2015-023, the Board has decided to conduct the hearing via a limited *de novo* review on the issue areas listed below:

1. Adequacy of the proposed wildfire plan;
2. Adequacy of the proposed wildlife plan;
3. Rear yard setbacks for proposed residential lots located outside of the Wildlife Area Combining Zone; and
4. Whether publicly dedicated roads are required under Deschutes County Code Section 17.36.020(B).

### BACKGROUND

The Tree Farm, LLC, submitted applications to establish five, 10-lot subdivisions, for a total of 50 residential lots west of Bend. For the purposes of the record, the five individual subdivisions are referred to as Tree Farms 1-5, and the collective project is referred to as "The Tree Farm."

Each of the Tree Farm properties encompasses at least 104 acres, with The Tree Farm encompassing 533.5 total acres. Each Tree Farm subdivision would include ten residential lots with one open space lot. Every residential lot would be approximately two acres in size, with each open space lot at least 81 acres in size. Primary access to The Tree Farm would be via a series of private roads connecting to Skyliners Road.

Tree Farms 1-3 are split-zoned Rural Residential (RR-10) and Urban Area Reserve (UAR-10). The residential lots in Tree Farms 1-3 would be located in the UAR-10 portion of the properties. Tree Farm 4 is also split-zoned RR-10 and UAR-10. The residential lots in Tree Farm 4 would be located in both the RR-10 and UAR-10 portions of the property. Tree Farm 5 is zoned solely RR-10.

A public hearing was conducted on November 6, 2014. The Hearings Officer's decisions were issued on March 18, 2015. In her decisions, the Hearings Officer denied the applications based on a lack of specificity regarding the applicant's wildfire and wildlife management plans. The Hearings Officer found that in order to be effective, both the wildfire and wildlife plans must include more detail such as an action plan that:

1. Identifies specific roles and responsibilities for the developer and HOA;
2. Describes how and when the developer will hand off responsibility to the HOA; and
3. Details what specific measures will be undertaken consistent with the plans.

For the above-reasons, the Hearings Officer found that the applicant's wildfire and wildlife plans were inadequate, and did not meet the approval criteria.

### **THE TREE FARM, LLC, APPEAL**

The Tree Farm, LLC, appeals the Hearings Officer decisions to address the following issues:

1. The Tree Farm, LLC, requests an opportunity to provide a revised wildfire management plan, and demonstrate that this plan addresses the Hearings Officer's concerns and complies with applicable approval criteria.
2. The Tree Farm, LLC, requests an opportunity to provide a revised wildlife management plan, and demonstrate that this plan addresses the Hearings Officer's concerns and complies with applicable approval criteria.
3. The Tree Farm, LLC, requests an opportunity to correct an ambiguity regarding the required 100-foot setback for lots adjoining lands within the Wildlife Area Combining Zone.

#### *Wildfire and Wildlife*

On June 26, 2015, The Tree Farm, LLC, submitted a revised Wildfire Protection Management Plan and a revised Wildlife Management Plan. As of the date of this memorandum, staff has not had an opportunity to review the plans. Staff will provide comments either at the public hearing or during the post-hearing open record period.

Pursuant to the design provisions from the National Fire Protection Association (NFPA) Code 1141, the applicant proposes the following roadway revisions<sup>1</sup>:

1. Larger diameter cul-de-sac bulb at the terminus of Canopy Court
2. Increased paved width from 20 feet to 24 feet for all private streets within The Tree Farm (Ridgeline Drive, Golden Mantle Loop, and Canopy Court)
3. Increased paved width from 20 feet to 26 feet for Sage Steppe Drive

#### *100-foot Setbacks*

Pursuant to DCC 18.1238.200(B)(3)(c)<sup>2</sup>, in a cluster subdivision a 100-foot yard setback is required on all lots within a Wildlife Area Combining Zone and adjacent to required open space.

---

<sup>1</sup> The proposed roadway width for Tree Farm Drive of 26 feet meets current NFPA 1141 standards.

The applicant proposed to meet this criterion for all applicable lots. The Hearings Officer made findings that all lots in The Tree Farm, including lots outside of the WA Combining Zone, will meet the required 100-foot setback. This was likely a clerical error. The applicant requests the Board make revised findings to limit the 100-foot yard setback to only those lots within the WA Combining Zone that are adjacent to required open space. Staff agrees with this proposed amendment to the Hearings Officer's finding.

## **RIO LOBO INVESTMENTS, LLC, APPEAL**

Rio Lobo Investments, LLC, appeals the Hearings Officer decisions to address primary access. Primary access to the residential lots in The Tree Farm would be via private roads built upon public access easements. Construction and maintenance of the private roads would be the responsibility of the developer and HOA. The public access easements would allow the public to use these roads.

Under Deschutes County Code (DCC) Section 17.36.020(B) is the following approval criterion,

*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. Planned developments shall include public streets where necessary to accommodate present and future through traffic.* (emphasis added)

Public streets would require the applicant to dedicate a 60-foot right-of-way along Tree Farm Drive north from Skyliners Road to Ridgeline Drive, then Ridgeline Drive east to Sage Steppe Drive. Rio Lobo argues that publicly dedicated roads are necessary to provide "to and thru" access to the Rio Lobo property to the north of The Tree Farm. The applicant argues that the public access easements are adequate to provide "to and thru" access, and are adequate to accommodate traffic generated by The Tree Farm and future traffic generated by development of the Rio Lobo property. Further, the applicant argues that requiring the 60-foot right-of-way dedication would constitute an unconstitutional "taking" and would not meet the "essential nexus/roughly proportional test" required under current case law.<sup>3</sup> The Hearings Officer agreed with the applicant and did not require any publicly dedicated roads.

In response to staff concerns regarding the need for publicly dedicated roads, the applicant proposes to dedicate 60 feet of public right-of-way dedication along Tree Farm Drive from Skyliners Road north to its intersection with Ridgeline Drive. The applicant's appeal narrative (attached) indicates that the applicant and Rio Lobo have reached a tentative agreement which may result in the withdrawal of the Rio Lobo appeal. The applicant indicates that regardless of the status of the Rio Lobo appeal, the applicant is willing to dedicate the 60 feet of right-of-way along Tree Farm Drive.

---

<sup>2</sup> This criterion is in Title 18 and only applies to those lots which are zoned Rural Residential (RR-10). The lots which are zoned Urban Area Reserve (UAR-10) are subject to Title 19, which does not have a similar yard requirement.

<sup>3</sup> *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)

## **150-DAY LAND USE CLOCK**

The applicant submitted a written request to restart the 150-day land use clock as of the day that the applicant's appeal was accepted for review by the Board, pursuant to DCC 22.32.027. Per Board Order 2015-023, the Board accepted *de novo* review of the applicant's appeal on April 22, 2015. Therefore, the 150-day land use clock re-started on April 22, 2015. The public hearing is scheduled for July 8, 2015, which is day 78 of the 150-day land use clock.

### **Attachments:**

1. The Tree Farm Appeal Narrative

**The Tree Farm  
Appeal Narrative**

Deschutes County Board of Commissioners  
c/o Deschutes County Community Development Department  
Post Office Box 6005  
117 N.W. Lafayette Avenue  
Bend, Oregon 97701

Subject: Tree Farm 1: 247-14-000242-CU, 247-14-000243-TP  
Tree Farm 2: 247-14-000244-CU, 247-14-000245-TP  
Tree Farm 3: 247-14-000246-CU, 247-14-000247-TP  
Tree Farm 4: 247-14-000248-CU, 247-14-000249-TP  
Tree Farm 5: 247-14-000250-CU, 247-14-000251-TP

**I. Specific Reasons for the Appeal.**

**A. Nature of the Decision on Appeal.** Deschutes County Hearings Officer Karen Green denied five applications submitted by The Tree Farm LLC ("Applicant") to create a 50-lot, 533-acre cluster development west of Bend due to insufficient information relating to how the Applicant's wildfire and wildlife management plans would be implemented and enforced. However, Hearings Officer Green also concluded that it was feasible for The Tree Farm to create compliant plans based upon the record. Hearings Officer Green provided detailed guidance to the Applicant with regard to what the plans should contain and address in order to remedy the deficiencies. The Applicant has filed this appeal in order to address the denials and to correct one ambiguity as follows:

**1. Wildfire Protection Management Plan.** The Applicant appealed the denials of the applications based upon the Wildfire Protection Management Plan ("WPMP"). The Applicant has submitted a revised WPMP and additional evidence and argument demonstrating that such plan addresses Hearings Officer Green's decision and complies with the applicable criteria. The Applicant respectfully requests that the Deschutes County Board of Commissioners (the "Board") find that the revised WPMP complies with the applicable criteria and amends the Hearings Officer's findings as described below.

**2. Wildlife Management Plan.** The Applicant also appealed denial of the applications based upon the Wildlife Management Plan ("WMP"). The Applicant has submitted a revised WMP and additional evidence and argument demonstrating that such plan addresses Hearings Officer Green's decision and complies with the applicable criteria. The Applicant respectfully requests that the Board find that the revised WMP complies with the applicable criteria and amends the Hearings Officer's findings as described below.

**3. 100-Foot Setback From Building Envelopes on UAR-10 Lots to Open Space.** Deschutes County Code Section 18.128.200(B)(3)(c) provides that, in the WA Combining Zone, a special yard setback of 100 feet is imposed on lots adjacent to the required open space. Therefore, the Applicant's burden of proof proposed 100-foot setbacks on all lots within the WA Combining Zone adjacent to Open Space within the WA Combining Zone. Hearings Officer Green makes findings that the Applicant has provided 100-foot setbacks for all of The Tree Farm Lots, including lots and open space zoned UAR-10 outside of the WA Combining Zone. This is not correct. The Code provides no basis for imposing the special setback on properties outside of the WA Combining Zone. The Applicant believes this is likely a drafting error given the voluminous nature of the decision and the fact that this issue was not contested by any of the parties. The Applicant would like this ambiguity corrected on appeal to avoid future confusion. The Applicant respectfully requests that the Board find that the 100-foot setback in Section 18.128.200(B)(3)(c) applies only to lots located within the WA Combining Zone.

## **II. De Novo Review Justified by the Significance of the Policy Issues.**

Pursuant to DCC 22.32.020(2), the Applicant requested a de novo review of the wildlife and wildfire management plan issues, and the Board of County Commissioner granted a de novo review limited to the issues raised in the appeal. In accordance with the Commission's order, and in order to address Hearings Officer Green's decision and overturn the denial, the Applicant has prepared and hereby submitted substantially revised wildlife and wildfire management plans, along with additional evidence and argument in support of the plans. For the reasons stated above, new plans are necessary for the Board to "fully and properly evaluate" significant policy issues relevant to the decisions within the meaning of 22.32.020(2)(d). Submittal of new plans and supporting documentation will require the reopening of the record to accept the plans and to allow the parties to submit new evidence and arguments with regard to the plans.

## **III. New Submittals in Support of The Tree Farm.**

In order to address the shortcomings identified by the Hearings Officer (addressed specifically below), the Applicant hereby submits the following new evidence:

**Appendix 1: Wildfire Protection Management Plan (WPMP) and the following exhibits incorporated by reference into the WPMP:**

**Exhibit 1: Map of Fire Fuel Reduction Work from 2012 to Date**

**Exhibit 2: Land Development Standards (copies of the applicable NFPA 1141 and 1144 standards and matrices showing how the standards would be implemented and enforced)**

**Exhibit 3: Impacts of Slopes on Homesites**

**Exhibit 4: Map of Open Space Lands**

**Exhibit 5: Wildlife Management Plan**

**Exhibit 6: Fire Prevention Zones**

**Exhibit 7: Evacuation Route Map**

**Exhibit 8: Owner Informational Evacuation Form**

**Appendix 2: Draft CCRs<sup>1</sup>**

**Appendix 3: Draft Association Bylaws**

**Appendix 4: Draft Design Guidelines<sup>2</sup>**

**Appendix 5: Wildlife Management Plan ("WMP")**

**Appendix 6: Updated Exhibit B (Tentative Plans), Exhibit C (Open Space/Trail Plan), and Exhibit D (Road Improvement Plan)**

**Appendix 7: Transcript of Prior Hearing (to be provided under separate cover prior to the hearing)**

#### **IV. Outline of Arguments on Appeal.**

**A. Introduction.** The Applicant based its WPMP on compliance with National Fire Protection Association ("NFPA") standards and the requirement to obtain and maintain Firewise Community status. As the Applicant's wildfire consultant, former City of Bend Fire Marshal Gary Marshall, testified before the Hearings Officer, these standards are state-of-the-art requirements for building fire-resistant developments in the wildland/urban interface area. These standards exceed current fire and building code requirements. These standards require fire protection zones, fuel reduction requirements, fire-resistant construction, sprinklers in the homes, and community disaster planning and awareness, among many other requirements. If approved, Mr. Marshall testified that The Tree Farm will be the most fire-adapted rural development in the state.

Hearings Officer Green agreed that compliance with these standards would satisfy the conditional use criterion regarding protection from natural hazards. But she concluded that the Applicant's plan lacked sufficient detail as to which of these standards applied, how they would be applied, and how they would be enforced. She did provide detailed guidance as to what a compliant wildfire plan should contain.

The Applicant's WMP was developed by Dr. Wendy Wente, an ecologist and wildlife biologist with Mason, Bruce & Girard, Inc. Hearings Officer Green found Dr. Wente's analysis persuasive that the WMP would comply with the conditional use criterion regarding protection of natural resource values, but concluded the WMP similarly lacked sufficient detail as to which

---

<sup>1</sup> The CCRs, Bylaws and Design Guidelines are marked "draft" because they could change between approval of these land use applications and recording. The provisions that are required to comply with and implement the WPMP and WMP will not change.

<sup>2</sup> This document only includes those portions of the Design Guidelines that implement the NFPA and Firewise Standards.



standards applied, how they would be applied, and how they would be enforced. She also concluded that Dr. Wentz's analysis failed to adequately address the potential conflicts between wildfire brush reduction requirements and wildlife habitat protection as applied to The Tree Farm 5 development. Hearings Officer Green also provided detailed guidance as to what a compliant wildlife plan should address.

The purpose of the updated plans and Burden of Proof is to address the deficiencies noted by Hearings Officer Green and bring the WPMP and WMP into compliance with the Deschutes County Code as interpreted by the Hearings Officer.

**B. Wildfire Protection Management Plan.** The Hearings Officer's decision on the Wildfire Protection Management Plan (as well as the Wildlife Management Plan) hinged on the following criterion from the Deschutes County Code:

**"Chapter 18.128, Conditional Use**

**b. Section 18.128.015, General Standards Governing Conditional Uses**

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

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

In response to this criterion, the Hearings Officer reached the following conclusion:

*"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 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;" (TF1, page 39<sup>3</sup>).*

**Response:** Section IV.H of the WPMP describes in detail the "Zone Model," composed of three fire protection zones that will be required to surround each dwelling in concentric rings:

---

<sup>3</sup> The Applicant references the Hearings Officer's decisions on the five Tree Farm Applications as TF1, TF2, TF3, TF4, and TF5. Hearings Officer Green's findings on the WPMP are basically the same throughout the five decisions, and so the Applicant cites to TF1 for convenience.

Zone 1: 30 feet adjacent to home. A well-irrigated area surrounding the home and a fire-free area within 5 feet of the home using non-flammable landscaping.

Zone 2: 30-100 foot zone of low growing, well-irrigated plants and trees thinned to a spacing of 15-20 feet between trunks.

Zone 3: 100-200 feet around home sites in which thinning of vegetation will occur, woody debris and brush will be removed, and tall trees will be thinned so canopies don't touch.

WPMP, Exhibit 6, shows these zones affect each dwelling and lot in the five developments as well as the open space. The lots on steeper slopes (particularly in Tree Farm 5) have the most extensive Zone 2 designated areas.

As depicted in Exhibit 6, the WPMP, Zones 2, and Zone 3 will overlap each other between home sites and extend onto adjoining open space areas. Beyond the 200-foot, Zone 3 boundaries, the open space will continue to be maintained to Zone 3 specifications.

Hearings Officer Green states that the plan should include:

- *"the setback from upper edge of the slope(s) for each building envelope and dwelling"* (TF1, page 39).

**Response:** The WPMP, Section IV.A and Exhibit 3 describe/depict the special 30-foot slope setback that will be imposed on combustible construction on lots that adjoin slopes in excess of 20 percent. The wildfire treatment practices, many of which have already been completed, expand into the open space areas. The current Shevlin Park Vegetation Management Plan employs many of the same techniques. WPMP, Section IV.G.

These special slope setbacks will meet the recommended setbacks prescribed in NFPA 1144, Annex A (Table A.4.1.2 and Fig. A.5.1.3.2), and the Firewise Community Guidelines to provide sufficient fire protection from the potential for wildfire advancing up the adjacent slopes.

Hearings Officer Green continues:

- *"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;"* (TF1, page 40).

**Response:** Additional fire fuels reduction in the way of ladder fuel removal and thinning of the tree canopy will be employed on slopes below homesites as described in Section IV.G of the WPMP and as described and shown in WPMP, Exhibit 6. All open space will be treated to Zone 3 standards, with the exception that pockets of vegetation will be retained pursuant to the WMP. The area in the vicinity of the residences will be treated to Zone 2 standards.

Dr. Wentz concludes that these fuel treatments on slopes will have minimal impact on wildlife habitat:

*"Treatments to slopes below home sites represent a small proportion of the total acreage of brush, and they will be implemented in a manner consistent with maintaining pockets of habitat for animals to continue utilizing as cover. Therefore, the vegetation treatments on the sloped areas are not expected to significantly impact wildlife habitat beyond the management already occurring as a part of the currently applied Zone 3 treatments." (WMP, page 11.)*

The WPMP addresses surface water drainage in Section IV.E. The WPMP concludes that proposed fuel treatments will have no impact on drainage because they do not disturb soil or the root systems.

Hearings Officer Green:

- *"whether and where decks and outbuildings would be permitted on each lot;" (TF1, page 40).*

**Response:** Decks and outbuildings (and all combustible construction) are subject to the same fire-zone setbacks as the dwelling itself. WPMP, Section IV.A. Non-flammable patios and retaining walls may extend into the fire zones and, in some cases, on sloped lots that may act as an additional fire barrier for the home itself. Section IV.H.1, Exhibit 6 of the WPMP depicts "typical" building footprints and outbuildings within the proposed building envelopes and how those buildings will be located within the protective fire zones.

Hearings Officer Green:

- *"what specific construction methods and building materials will be required for each dwelling to meet specific, identified NFPA standards;" (TF1, page 40).*

**Response:** Included with this submittal is a revised WPMP (Appendix 1) and proposed Design Guidelines (Appendix 4), both of which outline specific construction methods and building materials that will be required within The Tree Farm to comply with NFPA 1144 guidelines. WPMP, Exhibit 2 contains redlined versions of NFPA 1141 and 1144 that identify the segments of these NFPA standards that will be applicable to The Tree Farm (some of the standards apply to multi-family and commercial buildings, building types that will not be located in The Tree Farm and so are not relevant to the development). Exhibit 2 also includes two matrixes listing citations to the applicable NFPA 1141 and 1144 standards, describe which governing documents will incorporate those standards, and which entity will be responsible for compliance. For example, much of Section 1144 (Standard for Reducing Structure Hazards from Wildland Fire) contains standards for structure materials, location, and site landscaping that are incorporated into the Design Guidelines and administered by the Architectural Review Committee of the Homeowners Association or the CCRs administered by the Board of Directors. In contrast, most of Section 1141 standards deal with infrastructure design and review and will be implemented by the Applicant pursuant to engineering and building plans subject to review and approval by Deschutes County. Approval of the WPMP will impose these standards as requirements of the affected documents.

Hearings Officer Green:

- *"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;"* (TF1, page 40).

**Response:** In addition to the matrixes in Exhibit 2, included with this submittal are draft Covenants, Conditions & Restrictions ("CCRs") (Appendix 2) and draft Homeowners Association ("HOA") Bylaws (Appendix 3) which establish the requirements for and powers of the HOA and Architectural Review Committee as related to enforcement of the WPMP and WMP.

CCRs: In the CCRs, Wildland Fire Protection is specifically addressed in sections:

- Sections 1.27 and 1.28 define the applicable WPMP and WMP as the plans adopted pursuant to this Development Application.
- Section 4.2.B and .J provide for the payment of costs of compliance with the WPMP and WMP and for obtaining and maintaining Firewise Communities recognition.
- Section 4.4 requires compliance with the WPMP and for the Association to obtain and maintain Firewise Communities recognition.
- Section 5.5 requires the Association to maintain the Common Areas, including compliance with the WPMP and WMP.
- Section 5.7 requires maintenance of all unimproved Common Areas in compliance with the WPMP and the WMP.
- Section 5.10 requires the designated open space areas to comply with the WPMP and WMP.
- Article 6 establishes the Architectural Review Committee ("ARC") and Sections 6.1.C and 6.2 empower and require the ARC to apply the standards in the Design Guidelines required to comply with the WPMP.
- Section 7.8 empowers the Association or the ARC to enter onto any homesite to correct any violation of the CCRs.
- Sections 10.2, 10.13, and 10.14 require landscaping to be installed, completed, and maintained in compliance with WPMP.
- Section 10.9 prohibits homeowners from allowing any animal to roam the common area unattended in compliance with the WMP.
- Section 10.10 prohibits wood storage outside of an enclosed fire-resistant structure in compliance with the WPMP.

- Section 10.15 requires compliance with the Wildfire Prevention requirements of the WPMP.
- Section 10.16 requires each homeowner to comply with the WMP.
- Section 10.19 prohibits perimeter fencing, as required by the WPMP and WMP.
- Section 15.6 and 16.2 prohibit the Declarant (the developer) or the HOA from amending the CCRs to lessen their requirements without land use approval from Deschutes County.

Design Guidelines: The portion of the Design Guidelines attached as Appendix 4 addresses the adoption and application of the NFPA, Firewise, and wildlife requirements to development on individual lots. These guidelines are administered by the ARC under the CCRs.

- Section 5 contains the site guidelines, including setbacks, compliance with NFPA standards, compliance of the driveways with NFPA 1141, fence limitations and requirements, limitations on outdoor barbecues (gas only), wood burning fireplaces and fire pits (prohibited), and outdoor heaters, firewood storage (prohibited except in enclosed, fire-resistant structures), pet control, and outdoor wildfire protection and wildlife management requirements.
- Section 6 describes the architectural guidelines, including the requirement that new construction comply with the applicable provisions of NFPA 1141 and 1144.
- Section 7 describes the requirements of the landscaping zones, irrigation, and maintenance.
- Sections 8 and 9 contain the construction and ongoing maintenance requirements.
- Appendixes A through N contain the diagrams and applicable criteria, including the applicable provisions of NFPA 1141 and 1144 (Appendix H), and the WPMP (Appendix M) and WMP (Appendix N).

Taken together, these standards and criteria create a comprehensive framework for applying, enforcing, and paying for compliance with the WPMP and WMP, as required by Sections VII and VIII of the WPMP and pages 16 and 17 of WMP.

The relative responsibilities of and transition between the Declarant (The Tree Farm, LLC) and the HOA is described in detail in Sections 1.6, 1.19, 3.2, and 13 of the HOA Bylaws, and in Sections 1.10, 2.4, and 2.6, and 4.1 of the CCRs. Essentially, the Declarant is responsible for compliance with the CCRs until the HOA homeowners assume control, at which point authority and responsibility transfers to the HOA.

Finally, Section VII of the WPMP now describes in detail the relative roles and responsibilities of the developer and the HOA and how those roles transition.

Hearings Officer Green concludes her list of required WPMP plan contents with the following two requirements:

- *"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." (TF1, page 40.)*

**Response:** Section VI of the WPMP contains the specific Evacuation Plan information required by the Hearings Officer, including plans for communicating of the evacuation plan to owners and guests via annual meetings, the project website, and directional signage on site. Exhibit 7 and Exhibit 8 of the WPMP show the designated evacuation routes, and the Emergency Evacuation Information Form and Instructions that will be provided to and required from every homeowner.

Based on these submittals, the Applicant believes that the revised documents provide the specific details for a Wildfire Protection Management Plan deemed necessary for approval by Hearings Officer Green to satisfy DCC 18.128.015.A.3. In addition to the Hearings Officer's findings of compliance on all other issues of note, the submittals support a finding by the Commission that the site is suitable for the proposed use based on natural hazards.

**C. Wildlife Management Plan.** The Hearings Officer's **findings** on The Tree Farm's Wildlife Management Plan hinged on a different provision of the same general conditional use criterion under which she found the WPMP insufficient:

**"Chapter 18.128, Conditional Use**

**b. Section 18.128.015, General Standards Governing Conditional Uses**

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

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

The Hearings Officer made the following findings noting deficiencies in the Wildlife Management Plan (WMP) in response to this criterion (all quoted from TF5):

*"As discussed in the findings below, the applicant's wildlife expert testified that in her opinion, management of vegetation on Tree Farm 5 for fire fuel reduction can and will be accomplished in a manner consistent with preservation of wildlife habitat. However, because of the sloped lots and moderate vegetative cover in Tree Farm 5, and the suggestion in Mr. Marshall's testimony that Firewise and*

*NFPA standards might require thinning and/or removal of vegetation on slopes below the dwellings – potentially within the open space tract – the Hearings Officer finds fire fuel reduction in Tree Farm 5 may be more extensive than in the other Tree Farm cluster/PUDs." (P 39, TF5.)*

*"Dr. Wente's opinion would support a finding that the applicant's proposed fire fuels management will be consistent with conservation of the Tumalo winter deer range in Tree Farm 5. However, as discussed in the findings above, the Hearings Officer has found the record, including the applicant's wildfire plan evidence, suggests that in order to adequately address predicted wildfire behavior it may be necessary to remove significant vegetation downslope from dwellings, including from the adjacent open space tract(s). It is not clear that Dr. Wente considered removal of vegetation beyond historic fire fuel treatments in forming her opinion about impacts on the winter deer range. Moreover, as discussed above, I have found the applicant's wildfire plan is inadequate because, among other deficiencies, it does not specify what fuel treatments will be required to reduce the fire risk for dwellings on each Tree Farm lot." (P 42, TF5.)*

**Response:** The WPMP submitted in support of this appeal provides a detailed outline and a series of diagrams clearly depicting the fire fuel treatments on the slopes below the homesites in The Tree Farm for each lot. All of the open space tract will be treated to the Zone 3 standard outlined in the WPMP (with retention of some pockets of vegetative cover for wildlife as discussed by Dr. Wente below), and some portions of the open space tract will be treated to the Zone 2 standard adjacent to some lots as depicted in Exhibit 6.

With this information, Dr. Wente has provided an updated Wildlife Management Plan (attached as Appendix 4 and incorporated as a requirement of the WPMP as Exhibit 5). Dr. Wente discusses these more detailed fuels-treatment requirements in the revised WPMP (pages 9-11). Dr. Wente notes that the proposed management of the Zone 3 (open space) area is consistent with practices on the property under the prior Miller Tree Farm LLC management plan, but will be modified with wildlife-specific standards. (WMP, page 11.) Dr. Wente concludes:

*"Past application of the Zone 3 standards described above has resulted in the current landscape which continues to support deer and other wildlife. In particular, although the treated ponderosa pine stands (brushed and limbed) have an open understory which could expose deer and other wildlife to a higher level of visual disturbance, the interspersed ridges and other topographic features specific to this PSA such as rock piles and rock outcrops, as well as more temporary features such as isolated downed logs with associated brush, provide some visual screens for deer utilizing the area. In addition, a mosaic of brush pockets associated with the steeper slopes and other isolated areas provide patches of hiding cover as well as travel corridors for deer and other wildlife. (Figure 3.)*

*"Treatments to slopes below home sites represent a small proportion of the total acreage of brush, and they will be implemented in a manner consistent with*

*maintaining pockets of habitat for animals to continue utilizing as cover. Therefore, the vegetation treatments on the sloped areas are not expected to significantly impact wildlife habitat beyond the management already occurring as a part of the currently applied Zone 3 treatments.*

*"The 3 to 4-year cycle of brushing that results in a more open understory mimics the effect of fire and also encourages the growth of forage species which deer rely upon during the winter months. Forage will continue to be more accessible in winter due to the maintenance of a ponderosa pine tree canopy throughout most of the WA Zone which will reduce the depth of the snowpack relative to the more open areas to the east in the UAR- 10 portion of the proposed development.*

*"Implementation of the Zone 3 Standards will potentially disturb wildlife for short periods of time as workers move through areas to complete vegetation alteration and slash removal. These activities will be short in duration, and similar to those practiced in the past on the PSA as well as on surrounding lands including the Deschutes National Forest (USFS 1990) and Shevlin Park (Boldenow 2008)." (WMP, pages 10-11.)*

Dr. Wente's revised WMP thus directly addresses the deficiencies noted above by Hearings Officer Green.

Hearings Officer Green further noted:

*"The proposed Tree Farm 5 configuration with ten dwellings also will significantly intensify human activity over more recent human use in this habitat consisting of low-intensity recreation, tree and brush thinning, and historical logging. In contrast to these mostly seasonal activities, dwellings would create year-round human activity. Opponents question whether developing Tree Farm 5 at the proposed density will create too great an impact on the winter range compared with lower density development, or no development at all. The applicant's WMP does not address this issue, which I find may well be relevant in the context of this very general "suitability" approval criterion." (P 43, TF5.)*

**Response:** Dr. Wente addresses these concerns on pages 17 and 18 of the revised WMP:

*"The conceptual site plan (Appendix A) was designed to focus the development of residential home lots on the property zoned UAR-10 (Tree Farm East) and reduce the development pressure on the property zoned RR- 10 (Tree Farm West), which is also the portion of the development within the WA Zone. Current design specifies only 13 of the 50 total lots within the WA Zone. This configuration also allows for an open space area that is larger than that required by the DCC for cluster development within a WA Zone. The open space will specifically be protected from future development, and it will be managed for the benefit of deer and other wildlife.*

*"There will be an increase of human use of the open space area associated with the development because it will partially encroach on the WA Zoned portion of*



*the PSA, and because humans will continue to use the open space to access nearby recreational resources. However, the level of increase in human use of the open space is expected to be less than what would occur if the Developer followed the allowable site development guidelines (37 lots within the WA Zone). Additionally, the closure and decommissioning of existing roads and designation of fewer trails will concentrate the human disturbance to those routes of conveyance to the nearby recreational resources (e.g. Shevlin Park). In addition, the maintenance of brush patches in accordance with the WPMP (Figure 3), as well as the topographic relief and isolated structures (e.g. rock piles, downed logs) located within the WA Zoned portion of the PSA will provide visual screens and hiding cover that will allow deer and other wildlife to continue to utilize the forage and move through the open space area.*

*"Protecting the open space within the WA Zone will perpetuate its use as winter range habitat and also as an unobstructed wildlife travel corridor contiguous with other protected areas (Shevlin Park and other nearby public lands to the west). The currently proposed lot configuration also allows for a north/south deer and other wildlife movement corridor within the residential development, providing connectivity along the eastern edge of Tree Farm West, the portion of the property within the WA Zone. This wildlife corridor is located between Lots 43 and 37 on its northern terminus as depicted in the conceptual site plan (Appendix A). Where proposed access roads intersect the planned corridor, there will be reduced speed signs and signage indicating wildlife crossings. The corridor is designed to provide at least a 100-meter-wide passage between structures and should be sufficient for muledeer given the minor topographic relief and habitat type (Sperger 2006). The corridor is also sited to take advantage of a natural break in the topography at its northern outlet. Deer likely already use this break in the northwestern ridge to access the flatter portions of the property to the east, and the development corridor will allow them to continue this movement pattern.*

*"In the context of the broader landscape, the PSA is located on the eastern edge of the designated deer winter range for the Tumalo herd (Appendix A; The Tree Farm - Deer Winter Range Project Overlap Figure). The WA Zoned area of the PSA (379 acres) represents approximately 0.6% of the 62,993 acre winter range. Direct impacts from structural development will be concentrated within approximately 26 acres where the proposed development overlaps with the WA Zone, far less than 1% of the winter range."*

Hearings Officer also Green found:

*"However, the Hearings Officer finds WMP suffers from the same lack of detail and clarity as 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." (P45, TF1.)*

\* \* \*

*"The WMP does not explain the meaning of the terms "development" and "completion" in this context. They could signify that once all Tree Farm infrastructure has been completed by The Tree Farm LLC, management of The Tree Farm open space and habitat shifts to the HOA, which at that point might only exist on paper." (P43, TF5.)*

*"As is the case with the applicant's wildfire plan, the Hearings Officer finds that to be effective, the WMP must include more detail, such as an action plan that identifies specific measures addressing each residential lot in the WA Zone, as well as roles, responsibilities, and timing of measures to implement the action plan. And 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 proposal approvable." (P43, TF5.)*

*"For the foregoing reasons, the Hearings Officer finds the applicant has failed to demonstrate the site for Tree Farm 5 is suitable for the proposed use considering natural resource values." (P 43-44, TF 5; emphasis in original.)*

**Response:** These identified deficiencies have been addressed in the revised WMP prepared by Dr. Wendy Wentz, as outlined below in response to specific sections of the Hearings Officer's decision quoted above:

1. *"an action plan that identifies specific roles and responsibilities for the developer and HOA."*

Implementation, monitoring, and enforcement are addressed on pages 16-17 of the WMP and implemented by the CCRs as noted above. In addition, Section 4.5 of the CCRs imposes an ongoing requirement on both the developer and the successor HOA to periodically audit compliance with WMP Wildlife Habitat Conservation Measures and adjust management actions accordingly.

2. *"describes how and when the developer will hand off to the HOA"*

Transition is described on page 16 of the WMP and is implemented by the CCRs and Bylaws as described under the response to the similar issue with the WPMP.

3. *"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."*

The WPMP is specifically subject to the WMP as provided in Section IV.F which incorporates the WMP by reference in the WPMP as Exhibit 5. Pages 10 to 12 of the Action Plan explain how the WPMP fire management requirements will interact with the WMP Wildlife Habitat measures. The first measure under the Action Plan on page 15 of the WMP provides that if more aggressive fuel reduction treatments are required than currently specified by the WMP, the impact of these new measures must be assessed by a professional biologist and that modifications to lessen impacts must be considered prior to modification. The periodic audit by a professional biologist as required by CCR 4.5 and WMP will ensure that these measures remain effective.

4. *"explain the meaning of the terms "development" and "completion" in this context"*

Pages 14 through 16 of the WMP clarify that compliance with the Wildlife Habitat Mitigation and Conservation Measures are an ongoing responsibility of the developer and the successor HOA. As noted on page 16 of the WMP, compliance with WMP is incorporated in the CCRs (as referenced above), will be periodically reviewed by a professional biologist as required by CCR Section 4.5, and are also enforceable on an ongoing basis by Deschutes County as a condition of approval of The Tree Farm Developments. These responsibilities run with the land and will not change when the HOA homeowners assume control of the Association from the developer. As noted above, the timing and shift of authority over the development from the developer to the HOA homeowners is now described in detail in the CCRs and Bylaws (and in the WMP on page 15).

5. *"include more detail, such as an action plan that identifies specific measures addressing each residential lot in the WA Zone"*

Pages 14 to 16 of the WMP now identify such specific measures which are enforced via the land use decision and the CCRs as described above.

6. *"roles, responsibilities, and timing of measures to implement the action plan."*

As noted above, the roles, responsibilities, and timing of implementation of the action plan is now set forth in detail in the WMP, the CCRs, and the Bylaws.

Based on these submittals, the Applicant believes that the revised WMP provides the specific details deemed necessary for approval by Hearings Officer Green to satisfy DCC 18.128.015.A.3. In addition to the Hearings Officer's findings of compliance on all other issues of note, the submittals support a finding by the Commission that the site is suitable for the proposed use based on natural resource impacts.

**D. 100-Foot Setback from Building Envelopes on UAR-10 Lots to Open Space.** Deschutes County Code Section 18.128.200(B)(3)(c) provides that, in the WA Combining Zone, a special yard setback of 100 feet is imposed on lots adjacent to the required open space:

- "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."

Therefore, the Applicant's burden of proof proposed 100-foot setbacks on all lots within the WA Combining Zone adjacent to Open Space within the WA Combining Zone. Hearings Officer Green makes findings that the Applicant has provided 100-foot setbacks for all of The Tree Farm Lots, including lots and open space zoned UAR-10 outside of the WA Combining Zone as follows.

The Hearings Officer discussed this issue as follows:

***"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." (P 53, TF 3.)*

The Hearings Officer is incorrect in this finding. While all lots in the WA/RR-10 Zone portion of The Tree Farm propose 100-foot setbacks from adjacent open space, this is not the case for lots in the UAR-10 Zone adjacent to WA-zoned open space. Further, such an interpretation would be inconsistent with the Hearings Officer's own findings on the topic of the applicability of zoning restrictions in The Tree Farm across zone boundaries:

***"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. 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. 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." (P 12, TF3.)*

As drafted, the Hearings Officer's findings with regard to application of the 100-foot setback to lots that are not located within the WA Combining Zone would run directly contrary to her finding on applicability across zone boundaries. The Applicant believes this is likely a simple drafting error given the voluminous nature of the decision and the fact that this issue was not contested by any of the parties. The Applicant would like this ambiguity corrected on appeal to avoid future confusion. The Applicant respectfully requests that the Board find that the 100-foot setback in Section 18.128.200(B)(3)(c) only applies to lots located within the WA Combining Zone.

#### **V. Ancillary Issues.**

The Hearings Officer made a number of related findings on the topic of wildfire and wildlife that were predicated on her findings and conclusions noted above that the prior WPMP and WMP were insufficiently detailed. With the submittal and approval of updated Wildfire and Wildlife plans that address the Hearings Officer's concerns, these other findings of deficiency should also be reversed. These other findings include:

1. DCC 18.128.015.A. On pages 40 and 41, the Hearings Officer concludes that the Applicant failed to sufficiently address predictive wildfire behavior because of the lack of specificity in the WPMP as to which NFPA standards are applicable and how they will be enforced.
2. DCC 18.128.015.B. On page 46 and 48 of TF1, the Hearings Officer concludes that due to the lack of an adequate wildfire plan, that The Tree Farm is not compatible with existing and proposed uses on Shevlin Park and nearby forest lands.
3. DCC 18.128.200.A.2. On pages 49 and 50 of TF1, the Hearings Officer makes a similar finding regarding ESEE impacts based on her prior findings that the Wildfire and Wildlife plan lacked sufficient specificity.
4. DCC 18.128.200.A.4. On pages 52 and 53 of TF1, the Hearings Officer makes a similar finding regarding the effect of the proposal on forestry, wildlife, and natural resources uses based on her prior findings with regard to the plans.
5. DCC 18.128.200.B.3 and 3.a. On pages 53 and 54 of TF1, the Hearings Officer reaches the same conclusion based on the WMP not addressing the potential impacts on vegetation from more aggressive fire-fuel reduction required to protect ridge-top dwellings from fire.
6. DCC 18.128.200.C.5. On page 60 of TF1, the Hearings Officer concludes that the WMP narrative doesn't adequately address the potential impacts on vegetation from more aggressive fire-fuel reduction required to protect ridge-top dwellings.

7. DCC 19.76.070.A. On page 66 of TF1, the Hearings Officer concludes that she cannot conclude that The Tree Farm provides a safe living environment without a compliant WPMP.

8. DCC 19.76.070.B. On page 66 of TF1, the Hearings Officer concludes that she cannot find that the proposal preserves landscape is preserved to the maximum practical degree without a compliant WPMP.

9. DCC 19.100.030.A. On page 74 of TF1, the Hearings Officer concludes she cannot find the site suitable for the proposed use or compatible with Shevlin Park forest lands to the west without compliant Wildfire and Wildlife plans.

10. DCC 19.104.070.E. On page 79 of TF1, the Hearings Officer concludes the proposal is not compatible with Shevlin Park and forest lands to the west without compliant Wildfire and Wildlife plans.

11. DCC 17.16.100.A. On page 84 of TF1 and absent complete Wildfire and Wildlife plans, the Hearings Officer concludes that Applicant has not demonstrated The Tree Farm will provide for the preservation of natural features and resources.

With approval of the WPMP and WMP, these findings in TF1 and corresponding findings in TF 2-5 should be updated to findings of compliance based on a finding that the WPMP and WMP demonstrate compliance.

## **VI. Conclusion.**

With the additional submittals and findings included with this appeal, the Applicant has satisfied all applicable approval criteria as identified and applied by Hearings Officer Green. We therefore respectfully request approval of the five Tree Farm applications subject to the conditions of approval recommended by Hearings Officer Green in her five decisions.

## **VII. Response to Rio Lobo Appeal.**

In addition to the appeal by the Applicant, The Tree Farm, LLC, Rio Lobo Investments, LLC has also filed an appeal on completely separate issues pertaining to access to and through The Tree Farm project to the adjoining Rio Lobo property to the north. In an effort to resolve these issues, representatives of The Tree Farm have met with both County Staff and representatives of Rio Lobo. While some of the issues raised in the Rio Lobo appeal have also been expressed as concerns of some County Staff members (i.e., public versus private right-of-way over streets within The Tree Farm), the concerns of Rio Lobo and the County are not completely overlapping.

In response to meetings with County Staff, we have prepared and hereby submit the following revised drawings that both respond to Staff requests to provide a 60-foot wide public right-of-way for Tree Farm Drive, as well as incorporating additional design provisions from NFPA 1141 pertaining to street widths (the minimum street width in The Tree Farm will now be 24 feet of pavement).

- **Revised Exhibit B,<sup>4</sup> Tentative Plans for Tree Farm 1-5.** The revised plans depict a 60-foot wide right-of-way for Tree Farm Drive, as well as a larger diameter cul-de-sac bulb for Canopy Court in accordance with NFPA 1141 5.2.17.1.
- **Revised Exhibit C, Open Space/Trail Plan.** No substantive changes are made to this plan, but it has been updated for consistency with revised Exhibits B and D.
- **Revised Exhibit D, Road Improvement Plan.** The Road Improvement Plan has been revised to reflect the 60-foot wide public right-of-way for Tree Farm Drive requested by Staff. Tree Farm Drive will remain at 26 feet in paved width. In addition, the private streets within The Tree Farm have all been increased from 20 feet to 24 feet in width (still within a 30-foot wide private right-of-way) to demonstrate The Tree Farm's voluntary compliance with NFPA 1141, 5.2.3. Finally, Sage Steppe Drive has also been widened from 20 feet to 26 feet of paved width within its 60-foot wide public right-of-way, both to conform with NFPA 1141, 5.2.3 and to be consistent with Tree Farm Drive.

As of this writing, The Tree Farm has reached a tentative agreement with Rio Lobo regarding the future extension of Sage Steppe Drive to Skyliners Road through the adjoining Miller Tree Farm property to the south. We believe this agreement will result in the withdrawal of the Rio Lobo appeal. This creates a potential procedural anomaly in that the Rio Lobo appeal provides the venue that would allow the County to request the change in Tree Farm Drive to a 60-foot wide public right-of-way (a 40-foot wide private right-of-way with a 26-foot wide paved road section was proposed and was approved by the Hearings Officer). However, The Tree Farm is not adverse to Staff's request to convert Tree Farm Drive to a 60-foot public right-of-way, and is willing to provide such a dedication regardless of the status of the Rio Lobo appeal. In our discussions, Rio Lobo itself has suggested it is neutral in regard to this change.

Other than the 60-foot wide right-of-way, the other modifications to Exhibits B, C, and D all pertain to The Tree Farm demonstrating voluntary compliance with the road standards contained in NFPA 1141, which we believe fall under the umbrella of The Tree Farm's appeal of the Wildfire Protection Management Plan issues.

In the event that the settlement is not completed and Rio Lobo does not withdraw its appeal as anticipated, The Tree Farm reserves the right to respond to issues raised in the Rio Lobo appeal through a separate submittal.

---

<sup>4</sup> The exhibits referenced in this section are revisions to the exhibits attached to the Applicant's original submittals. Revised Exhibits B, C, and D are attached to this Burden of Proof as Appendix 6.