



Deschutes County Board of Commissioners
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AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 9, 2015

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

DATE: December 7, 2015

FROM: Paul Blikstad Department CDD Phone # 6554

TITLE OF AGENDA ITEM:

Board consideration of the written decision on the Clough conditional use permit appeal.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

The Board voted to approve the Conditional Use Permit application for the Clough's property on Erickson Road. The decision clarifies that the generally unsuitable standard for nonfarm dwellings is the controlling criterion, and that meeting the generally unsuitable test assures compliance with the least suitable criterion. This was before the Board last week, however staff inadvertently issued a draft decision for the Board approval and signature that was inconsistent and in error

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Board approval and signature of the corrected written decision prepared by staff.

ATTENDANCE: Paul Blikstad

DISTRIBUTION OF DOCUMENTS:

Planning Division staff will distribute the Board's written decision on this application.

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

**DECISION OF THE BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY**

FILE NUMBERS: 247-15-000035-CU/247-15-000403-A

APPLICANT/OWNER: Dana and Karen Clough
63080 Stenkamp Road
Bend, Oregon 97701

APPLICATION: Conditional Use Permit for a Nonfarm Dwelling

PROPERTY: 22075 Erickson Road, Bend, Oregon

I. APPLICABLE STANDARDS AND CRITERIA

Title 18, Deschutes County Code

- A. Chapter 18.16, Exclusive Farm Use Zones**
 - 1. Section 18.16.030, Conditional Uses Permitted**
 - 2. Section 18.16.040, Limitations on Conditional Uses**
 - 3. Section 18.16.050, Standards for Dwellings in the EFU Zones**
 - 4. Section 18.16.060, Dimensional Standards**
 - 5. Section 18.16.070, Yards**
- B. Chapter 18.80, Airport Safety Combining (AS) Zone**
 - 1. Section 18.80.020, Application of Provisions**
 - 2. Section 18.80.028, Height Limitations**
 - 3. Section 18.80.044, Land Use Compatibility Requirements**
 - 4. Section 18.80.054, Conditional Uses**

II. FINDINGS OF FACT

- A. LOCATION:** The property is located at 22075 Erickson Road, Bend, Oregon. It is Tax Lot 200 on Assessor's Map 17-13-30.
- B. LOT OF RECORD:** The subject property is a legal lot of record. It is Parcel 1 of Partition MP-82-14.

- C. **ZONING:** The subject property is zoned EFU-TRB (Exclusive Farm Use – Tumalo/Redmond Bend subzone). The AS (Airport Safety) overlay zoning district also applies.
- D. **PROPOSAL:** The Board adopts the Hearings Officer’s findings under Section II, D of her decision, said findings being incorporated by reference herein. A copy of that decision is **Exhibit A** of the Board’s decision. Only those parts of the decision specifically incorporated by reference herein are a part of the County’s final decision in this matter.
- E. **SITE DESCRIPTION:** The subject property is 18.08 acres in size and has a little over 16 acres of irrigation water rights. On June 2, 2014, the applicants quitclaimed .58 acres of water right to the Central Oregon Irrigation District in the northeast part of their property. The property has been used to grow grass hay. It produces a commercial yield of hay in the western part of the property and a low yield of hay in the eastern part of the property. The property is generally level and has an existing storage shed and small fence area. The property also contains an irrigation pond, wheel line and pivot. A driveway runs along the east part of the property and provides access for the property to Erickson Road. An underground gas pipeline and 100’-wide easement crosses the eastern part of the property at an angle moving from southwest to northeast across the eastern quarter of the property. The soils and rocks in the area of the pipeline were disturbed by the work required to place the line below ground with the result of making the area relatively level.
- The northeast part of the property where the nonfarm dwelling is proposed is the part of the pasture that contains Class VII soils that grow weeds and short grass hay that is not marketable. Soils analysis indicates that the home site area was once a part of the lava rock ledge formation found north and south of the area but was cleared when the pipeline was constructed. The result is that a rock shelf exists a short distance below shallow soils. This substantially impairs the ability of this part of the property to produce crops or to support a pasture.
- F. **SURROUNDING ZONING AND LAND USE:** The Board adopts the Hearings Officer’s findings under Section II, F of her decision, said findings being incorporated by reference herein with the exception that the last name of the owner of Tax Lot 206 is Carroll, not Grant.
- G. **SOILS:** The Board adopts the Hearings Officer’s findings under Section II, G of her decision, said findings being incorporated by reference herein and makes the following additional findings. The applicant provided the County with a copy of an addendum to the October 17, 2014 soils analysis conducted by soil scientist Roger Borine dated September 10, 2015 as **Exhibit C** of the burden of proof. Mr. Borine is a Certified Professional Soils Classifier and Certified Professional Soils Scientist as designated by the Soil Science Society of American Soils Certification Board. Mr. Borine also has a B.S. degree in Soil Science from Oregon State University, Corvallis and attended the Soil Science Institute at Iowa State University. He worked for many years as a soils scientist

and soil survey project leader for the USDA-Natural Resources Conservation Service (NRCS), assisting in preparing some of the NRCS soils maps used by the State in land use matters. Mr. Borine is one of only four persons in the State currently qualified to perform a soils assessment of agricultural lands by the Department of Land Conservation and Development. The 2015 addendum provides the results of detailed soils testing in the eastern one third of the subject property and also reports testing results contained in the October 17, 2014 analysis. The supplemental testing occurred in the southeast part of the subject property, including the southeast area of the property opponents claim is the least suitable for the production of farm crops and livestock. The results of the additional soils work showed that the entire area identified as Class VII soil by Mr. Borine's October 17, 2014 analysis was correctly identified as an area of Class VII. This area is predominantly comprised of Class VII Gosney soils and was properly rated Class VII by Mr. Borine and by the NRCS. The results of the study also show that the area south of the proposed home site is essentially the same as the 1.2-acre area identified as the site of the proposed nonfarm dwelling shown on Figure 3 of the October 17, 2014 soils analysis and this fact was confirmed by Mr. Borine in his September 10, 2015 addendum.

- H. PUBLIC AGENCY COMMENTS:** The Board adopts the Hearings Officer's findings under Section II, H of her decision, said findings being incorporated by reference herein.
- I. PUBLIC COMMENTS:** The Board adopts the Hearings Officer's findings under Section II, I of her decision. Additionally, additional public comments were filed in the record after this matter was appealed by the applicant and prior to the close of the record for new evidence on October 14, 2015. Final argument was filed by the applicant's attorney on October 21, 2014.
- J. REVIEW PERIOD:** The Board adopts the Hearings Officer's findings under Section II, J of her decision. The Hearings Officer's decision was signed July 20, 2015 and mailed on July 21, 2015. The decision was appealed by the applicants on August 3, 2015 within the appeal period set by DCC 22.32.015(B), as computed using the rule set out in DCC 22.08.070. The appeal requested that the appeal be limited to the issues contained in the Notice of Appeal only. Those issues related to the "least suitable for the production of farm crops or livestock" criterion of DCC 18.16.040, Limitations on Conditional Uses. On August 17, 2015 the Board agreed to hear the appeal "limited de novo only on the issue of least suitable land." A hearing was held by the Board on October 7, 2015. The record remained open after the hearing until October 14, 2015 for comments from any party. The applicant was given until October 21, 2015 to file final legal argument. On November 23, 2015 the Board deliberated and unanimously approved the Clough's nonfarm dwelling application.
- K. LAND USE HISTORY:** The Board adopts the Hearings Officer's findings under Section II, K of her decision.
- L. RECORD:** The scope of review on appeal was limited to the issue of compliance with the "least suitable" for the production of farm crops and livestock approval criterion. The Board received a great deal of information and argument that was only tangentially related to that issue. None of the other approval criterion were open for consideration on appeal.

As a result, the evidence is not accepted as relevant to any other approval criterion. Furthermore, the Board specifically rejects any and all evidence filed after July 17, 2015 (the date that the record of this matter was closed by the Hearings Officer) for any purpose other than to determine whether the nonfarm dwelling development area is the “least suitable” for the production of farm crops and livestock and any evidence related to issues other than the “least suitable” issue. Any arguments that the home site area is suitable for farm use or is not generally unsuitable for farm use filed after that date are rejected by the Board. That issue was settled at the local level by the decision of the Hearings Officer and should be reviewed on appeal, if any, on the record before the Hearings Officer, not the record presented to the Board.

III. CONCLUSIONS OF LAW

The Board adopts the following as conclusions of law and findings of fact to support its approval of the Cloughs’ nonfarm dwelling application:

A. LEAST SUITABLE CRITERION

CODE INTERPRETATION

DCC 18.16.040(3) requires that the site of a conditional use in an EFU zone be the least suitable for the production of farm crops or livestock. This requirement is a requirement of the County’s code, not of State law. This decision is intended to provide guidance to County hearings officers and staff regarding the proper application of the least suitable criterion. The Board’s interpretation is also due deference by appellate bodies, if appealed.

The County code also requires that all nonfarm dwellings be located on a parcel or part of a parcel that is generally unsuitable for farm use considering terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. DCC 18.16.050(G)(1)(iii). This requirement is also imposed by State law. Parcels that are unsuitable solely due to size or location are not unsuitable if they can reasonably be put to farm use with other land. The “generally unsuitable” standard, like the “least suitable” standard of the County’s code, looks to the suitability of agricultural land. It prohibits development on the property unless the parcel or a portion of the parcel is generally unsuitable for farm use.

DCC 18.16.040(3) requires:

- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.**

“Least Suitable”

The “least suitable” standard is a County standard that applies to all conditional uses allowed in the exclusive farm use zones. It is applied to uses that are not required to be located on land that is generally unsuitable for farm use and are allowed on agricultural land that merits Goal 3 protections because they contain soils that are predominantly Class I through VI soils or are

otherwise suitable for farm use. The County applies the “least suitable” standard to minimize the impact of conditional uses on farm uses occurring elsewhere on the property by limiting development to areas that are the least suitable for the production of farm crops and livestock. These areas may either be: (a) areas that are generally unsuitable for the production of farm crops or livestock; or (b) areas that are suitable for the production of farm crops and livestock that are less productive than other areas of the property. If the site of the conditional use meets either requirement, it meets the least suitable approval criterion.

When a conditional use is sited on land that is generally unsuitable for the production of farm crops, livestock and merchantable tree species, the area is clearly less suitable for the production of farm crops or livestock than any other part of the property that is suitable for the production of farm crops and livestock. When the site selected is generally unsuitable for farm use, it is unclear whether this fact, alone, is sufficient to demonstrate that the area is the least suitable for the production of farm crops and livestock. The Board finds that it is – that the generally unsuitable standard is the lowest level of suitability that must be searched for and identified on a property when applying the “least suitable” test. At this level, the area selected is not of sufficient value for farm use to merit distinguishing between areas that are generally unsuitable. All areas of generally unsuitable land on a property are the “least suitable” for the production of farm crops and livestock.

The Board rejects the argument of Central Oregon Land Watch that the “least suitable” means the “most unsuitable.” The “least suitable” test applies to lands that are suitable or to lands that are unsuitable. Nothing limits the test to lands that are all unsuitable. If this had been the Board’s intent, the law would use the term “most unsuitable” rather than the term “least suitable.”

Legislative History

Until 2009, the “least suitable” standard applied to conditional uses with the exception of nonfarm dwellings. In 2009, the “least suitable requirement” was inadvertently applied to nonfarm dwellings during a code update project. The purpose of the 2009 update was to bring the County code into compliance with changes State law, not to create a new criterion that would regulate nonfarm dwellings more stringently than required by State law.

“Least Suitable” Compared to “Generally Unsuitable”

The generally unsuitable standard requires the County to find that a proposed nonfarm dwelling home site on an EFU-zone parcel is on poor soils that are not generally suitable for the production of farm crops, livestock or merchantable tree species. This standard is stringent and it protects productive land for farm use as intended by Goal 3.

The least suitable standard has not been clearly defined. In prior conditional use permit decisions issued by County staff, however, the two criteria are treated as being essentially the same requirement and this practice is consistent with Goal 3 and its implementing regulations by meeting the stringent “generally unsuitable” State standard. This approach is consistent with the Board’s interpretation of the term, above.

As a matter of basic semantics, "least suitable" assumes some level of suitability for farming and may include some level of unsuitability for farming relative to other lands on the property. "Generally unsuitable" assumes some level of unsuitability for farming and may include some level of suitability for farming. Additionally, the least suitable area may be suitable for farming but be suitable than other areas of the property for that purpose. In operation in the context of a nonfarm dwelling application, these two standards are virtually indistinguishable.

As a matter of basic code interpretation, whenever there is a conflict or inconsistency, the specific controls over the general. In this instance the "least suitable" criterion is associated with general limitations on conditional uses whereas the "generally unsuitable" criterion is associated with specific standards for dwellings in EFU zones. Accordingly, the "generally unsuitable" criterion controls and is an appropriate floor for the County's analysis of its "least suitable" code criterion.

Summary

All areas of a property that are "generally unsuitable" are the least suitable part of a farm property for purposes of the least suitable criterion of DCC 18.16.040(C). The development of any part of that generally unsuitable area meets the "least suitable" approval criterion. It is not necessary for an applicant seeking approval of a nonfarm dwelling to show that an area that is generally unsuitable for the production of farm crops, livestock or merchantable tree species is comprised of the "worst of the worst" soils. This interpretation protects all land that is suitable for the production of farm crops and livestock for those purposes and does not violate state law, Goal 3 or the Goal 3 administrative rules.

APPLICATION OF LEAST SUITABLE TO THE CLOUGHS' APPLICATION

The applicant has established by expert evidence that the eastern area of the property depicted on Figure 2 of the Agricultural Soils Suitability Analysis for Nonfarm Dwelling report prepared by Roger Borine dated October 17, 2014 is a unit of Class VII land with or without irrigation water rights. NRCS soils surveys and publications report that land rated Class VII "have very severe limitations that make them unsuitable for cultivation." There is no other competent evidence in the record to the contrary. If the applicant had proposed to develop this entire area of Class VII soils with a nonfarm dwelling and its related outbuildings and septic system, the entire area would qualify as the least suitable for farm use as all other land on the property is comprised of Class III soils. The applicants have, however, proposed to limit nonfarm development to the north part of the Class VII soils area where it close to MUA-10 exceptions land and farther away from EFU-zoned land to the south.

The applicant presented credible expert evidence from soil scientist and Central Oregon farmer Roger Borine that the Class VII soils on the property are all the same in terms of their suitability for farm use. Mr. Borine explained that these soils lack the ability to hold a sufficient quantity of water to support sustained plant growth. Sparse grass will grow in any part of this area to a low height when irrigated. The area appears green in aerial photographs but the area grows short hay that is hard or impossible to market.

The Hearings Officer found that the northeast part of the subject property is generally unsuitable for farm use due to adverse soil or land conditions and poor crop growth. As this area was determined to be generally unsuitable for farm use, it and other similarly poor areas of the property are the least suitable for the production of farm crops, livestock and merchantable tree species. Developing this area with a nonfarm dwelling and related structures and improvements meets the least suitable test. The Board disagrees with and rejects the Hearings Officer's finding that the applicants failed to show that the area chosen for the nonfarm dwelling was the least suitable for farm use because their soils report did not analyze the soils found in the south part of the Class VII soils area of the property at the same level of detail applied to the north part.

The applicants provided the detailed soils testing required by the Hearings Officer. It, and other evidence in the record, showed that the south part of the Class VII area: (a) was in fact properly identified by Mr. Borine as Class VII soil in his 2014 soils analysis; and (b) that the soils in this part of the property are no more unsuitable for farm use than those found in the north part of the Class VII soils map unit.

Project opponents have claimed that the south part of the Class VII area is less suitable than the north part of that area identified as the site of the proposed nonfarm dwelling on Figure 3 of the October 17, 2014 soils analysis and that the nonfarm dwelling should be located there. They argued that a small area of the soils in the south half of the area are not currently irrigated and that crops are not grown here. The fact that one area is irrigated and another is not does not, however, in this case, change the area's soils classification or its inherent suitability for producing farm crops and livestock. In both cases, the soil has very severe limitations that make them unsuitable for cultivation. Irrigating such poor soils is wasteful as well as unproductive. Furthermore, much of the south part of the Class VII soils area is irrigated and aerial photographs show that green grass grows in irrigated and non-irrigated areas alike. These differences, therefore, are not meaningful in terms of suitability for the production of farm crops and livestock.

Furthermore, the applicant presented credible expert evidence from soil scientist and Central Oregon farmer Roger Borine to rebut the neighbor's claims. Mr. Borine advised that all areas of land mapped as Class VII are the same in terms of their suitability for the production of farm crops and livestock – they are all generally unsuitable. Mr. Borine explained that these soils all lack the ability to hold a sufficient quantity of water and nutrients to support sustained plant growth. Mr. Borine explained that fertilizing the soil will not materially improve the crop yield or make the land more suitable for farm use. Sparse grass will grow in any part of this Class VII area but will only grow to a low height and will be of poor quality. The quality of the hay in the northern part of this area is so poor that an area goat farmer rejected it as feed for his goats and so poor that when this hay from the property was given away in return for harvesting it, it was left in the field.

Project opponents, all whom lack training and certification in soils sciences, attacked Mr. Borine's soils report in a number of ways. The Board finds that Mr. Borine's evidence is credible and is not undermined by these attacks. In particular:

Carol MacBeth/COLW

Ms. MacBeth made the argument that Mr. Borine's report is not related to the NRCS land capability classification system based on OAR 660-033-0030(5)(a). This claim is incorrect for three reasons: (1) OAR 660-033-0030(5)(a) is not applicable to soils reports prepared for nonfarm dwelling applications because a nonfarm dwelling application does not seek to change the designation of land as "agricultural land"; and (2) Mr. Borine's report is based on the Soil Conservation Service's *Guide for Placing Soils in Capability Classes in Oregon*, revised 1977 and the NRCS land capability classification system as stated on page two of the 2014 soils assessment; and (3) Mr. Borine's classification of the Gosney soils found on the property as NRCS Class VII is the same classification applied by the NRCS to Gosney soils.

Ms. MacBeth makes claims that the Gosney soil must be Class III soil, not Class VII soil, because it grows green grass and because some opponents claim that the area that contains Class VII soils is productive. This argument is not accepted because the NRCS classifies the Gosney soil found in the eastern area of the Cloughs' property as Class VII, not as Class III soil. No higher classification is applied to this property if it is irrigated. Mr. Borine has explained that the nonfarm dwelling area is a part of a blister ridge that has been partially removed due to the construction of an underground natural gas pipeline on the property. The visible areas of the blister ridge are rated 58C by the NRCS. The predominant soil found in mapping unit 58C is Class VII Gosney soil. This explains why the soil found here is Gosney soil, why the depth of soil to bedrock is so shallow and why the area is generally unsuitable for the production of farm crops and livestock as borne out by the Cloughs's stated unsuccessful efforts to farm this part of their property.

Ms. MacBeth claims that Mr. Borine's report should be disregarded because it studied the Class VII soils "in their current unwatered and unfertilized state." This statement implies that water and fertilizer would change the soils classification of the Gosney soils. This claim, however, is contradicted by the NRCS soils survey that classifies Gosney soils Class VII and does not provide an improved rating when irrigated.

Ms. MacBeth's lay effort to classify soils and attack the Class VII rating applied by the NRCS and Mr. Borine based on the NRCS Handbook fails as, she failed to consult the proper reference – the *Guide for Placing Soils in Capability Classes* – and her lay claims are at odds with the NRCS, the agency that prepared the guides and used them to classify Gosney soil Class VII.

Kurt and Jennifer Bomke

The Bomkes attempted to cast doubt on Mr. Borine's professional opinion regarding the Class VII rating of soils in the home site area by submitting a page from the NRCS Capability Classification Handbook 210. The Bomkes read the text as saying that soil that is 10 to 20 inches deep is Class III soil. The Handbook says that where other unfavorable factors occur in combination with depth (e.g. those present in Central Oregon), the capability decreases. The Handbook notes that "[i]n arid and semiarid areas, irrigated soils in Class I are more than 60 inches in depth" as opposed to 36 inches. This does not contradict Mr. Borine's professional evidence about soils depth and water holding capacity of Class VII soils in Central Oregon. The *Guide for Placing Soils in*

Capability Classes in Oregon; SCS, Portland, OR revised June 1977 that is referenced on pages 4 and 8 of Mr. Borine's October 17, 2014 soils report provides more detailed information that supports Mr. Borine's LCC 7 soils classification. Furthermore, the NRCS agrees with Mr. Borine that Gosney soil in mapping unit 58C is properly classified LCC VII.

The Cloughs applied appropriate agricultural management to the NE part of their property in the past. Their testimony and evidence bears that out. With such efforts, the applicant's testified to have lost a significant sum of money and produced hay that was not marketable – a goat farmer would not feed the hay grown in the NE part of the property to his goats. This could be a predictable outcome given the very poor and shallow LCC VII Gosney soils found there.

The Bomkes' claims that Gosney soil that the NRCS rates as Class VII is a good agricultural soil that could be made productive by the Cloughs does not appear to be correct. The NRCS says that such soils are not suitable for the production of crops. Mr. Borine agrees with that assessment and soils classification. The Cloughs' experience is consistent with the scientific evidence.

The Bomkes argue that Mr. Borine should have elevated the soils capability classification of the Cloughs' property because crops have been grown there. The Gosney soil found on the property, however, is properly rated Class VII soil and, therefore, is not suitable for the production of crops according to the NRCS. The fact that someone attempted and failed to grow a saleable hay crop on such poor soils does not mean that the NRCS and Mr. Borine are wrong.

B. ADOPTION OF CONCLUSIONS OF LAW OF HEARINGS OFFICER

The Board hereby adopts the findings contained in the Conclusions of Law section of the Hearings Officer's decision with the exception of the following findings related to compliance with DCC 18.16.040(3)'s least suitable criterion that begin on page 7 and end on page 10 of that decision: (a) paragraph one of this section, page 7; and (b) the last full paragraph on page 8 is adopted but corrected to change "Weinman" to "Wyman" and to change "SE corner" to "NW corner" and to find that the NE corner of the property that was fill is rated Class III soil when irrigated by the NRCS and Mr. Borine; and (c) the paragraph that begins at the bottom of page 9 and continues on the top of page 10 with the exception of the first sentence; and (d) the two full paragraphs on page 10.

The Board also notes that the Hearings Officer indicated, on page 24 of her decision, that a condition of approval could be imposed to prohibit the return of COID water to any part of the nonfarm dwelling area. The sale of water is not, however, needed to achieve compliance with any approval criterion as the suitability of the soil has been assessed with irrigation water rights. As a result, the condition will not be imposed.

IV. CONDITIONS OF APPROVAL

Based on the foregoing, the Board of Commissioners APPROVES the applicants' conditional use permit application and authorizes them to establish a nonfarm dwelling on the part of the subject property identified in the application, SUBJECT TO COMPLIANCE WITH THE FOLLOWING CONDITIONS OF APPROVAL:

1. The approval is based on the applicants' submitted burden of proof. Any substantial change to the approved proposal will require a new land use application.

PRIOR TO THE ISSUANCE OF A BUILDING PERMIT:

2. The applicant/owner shall sign and record with the Deschutes County Clerk a document binding the landowner and future owners that prohibits them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices for which no action or claim is allowed by ORS 30.936 to 90.937.
3. The applicant/owner shall provide to the Planning Division written documentation from the Deschutes County Assessor's Office that the property has been disqualified from special assessment for farm use under ORS 308A.113 or ORS 308A.116 and that any additional tax or penalty imposed by the Assessor as a result of disqualification has been paid.

WITH BUILDING PERMIT ISSUANCE AND/OR CONSTRUCTION

4. The applicant/owner shall assure that the approved nonfarm dwelling does not exceed thirty feet in height except as allowed by DCC 18.120.040.
5. The nonfarm dwelling shall be setback 60 feet from Erickson Road and 100 feet from the east and south boundaries of the property.
6. Nonfarm dwelling and related development may not occur on lands mapped Class III soils by Mr. Borine's October 17, 2014 soils analysis.

DURATION OF APPROVAL:

7. The applicant/owner shall apply for a building permit for the approved nonfarm dwelling within four years of the date this decision becomes final, or shall obtain an extension from the Planning Division, or this approval shall be void.

V. DECISION:

Based on the findings of fact and conclusions of law set out above, the Board concludes that the applicant has demonstrated that all applicable approval criteria have been met. The Board reverses the Hearings Officer's decision and approves the conditional use permit application.

DATED this ____ day of December, 2015.

MAILED this ____ day of December, 2015.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

ALAN UNGER, VICE CHAIR

ATTEST:

Recording Secretary

TAMMY BANEY, COMMISSIONER

THIS DECISION BECOMES FINAL UPON MAILING. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.