



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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STAFF REPORT

FILE NUMBER: 247-15-000668-MP

APPLICANT/OWNER: Bull Springs Ranch
c/o Todd Taylor
18500 Bull Springs Road
Bend, OR 97703

REQUEST: Approval of a minor partition to divide the approximate 528 acre subject property into three parcels of 40, 246 and 242 acres.

LOCATION: The subject property has an assigned address of 18500 Bull Springs Road, Bend and is also identified as Tax Lot 2722 on County Assessor's Map 17-11-0000 (index).

STAFF CONTACT: Chris Schmoyer, Associate Planner

I. STANDARDS AND APPLICABLE CRITERIA

Title 17 of the Deschutes County Code, Subdivision Ordinance
Chapter 17.22, Approval of Tentative Plans for Partitions
Chapter 17.36, Design Standards
Chapter 17.44, Park Development
Chapter 17.48, Design and Constructions Specifications

Title 18 of the Deschutes County Code, Zoning Ordinance
Chapter 18.36, Forest Use (F1) Zone
Chapter 18.52, Surface Mining (SM) Zone
Chapter 18.56, Surface Mining Impact Area (SMIA) Combining Zone
Chapter 18.60, Rural Residential (RR-10)
Chapter 18.84, Landscape Management (LM) Combining Zone
Chapter 18.88, Wildlife Area (WA) Combining Zone

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

A. LOCATION: The subject property has an assigned address of 18500 Bull Springs Road, Bend, and is identified on Deschutes County Assessor's Map 17-11 as tax lot 2722.

- B. ZONING:** The subject property is zoned Forest Use (F-1) and Surface Mining (SM), and is also within the Wildlife Area (WA) and Surface Mining Impact Area (SMIA) Combining Zones. A small portion of the property, abutting Johnson Road, is zoned RR-10. The portion of the property zoned F-1 is designated forest; SM is designated surface mining and RR-10 is designated Rural Residential Exception Area by the Deschutes County Comprehensive Plan.
- C. SITE DESCRIPTION:** The subject property is 528 acres in size and is irregular in shape. The eastern portion of the property consists of a “panhandle” just under 3,000 feet long on its east-west axis, and from 600 to 1,000 feet wide on its north-south axis that connects the rest of the subject property to Johnson Road. The remainder of the property is roughly a square in shape with sides approximately 2,600 feet long, with the exception of a small square projection that extends north approximately 980 feet to the property’s northwest corner. The most eastern segment of the subject property’s northern boundary abuts Bull Springs Road. The remainder of the northern boundary abuts the Sisters Mainline Road. The subject property’s western boundary and the remainder of its southern boundary abut a large forest zoned parcel in private ownership.

The topography of the subject property varies from level to mildly sloping. The property once was part of the Bull Springs Tree Farm owned since 1922 by a succession of private timber companies and managed as an industrial tree farm with most of the original old-growth ponderosa pine trees harvested by the 1960’s. Forty acres of the subject property consists of surface mining site no. 296, which is located in the west half of the property and is included on the County’s Goal 5 inventory of mineral and aggregate resource sites. The property has a caretaker’s residence, as well as a large shop building, and is currently being mined.

The applicant’s burden of proof statement provides the following description of the property:

The site is located west of Johnson Road and northwest of Shevlin Park, near the northwest city limits of the City of Bend. The parcel is odd-shaped, being approximately 8700 feet long in an east-west direction and 4500 feet in a north-south direction. Topography is varied, with both level and steeply sloping ground throughout. Overall, the site and surrounding area slopes generally downward in a southwest-to-northeast direction. There is a mining operation on the 40-acre SM-zoned area proposed for Parcel 3, and a horse stable, pasture and clearing to the east and south. The remainder of the site is actively managed in forest use.

The east site boundary abuts Johnson Market Road, a designated County rural collector. Access to the site is from Bull Springs Road, a paved two lane street that intersects with Johnson Market Road at the northeast corner of the site and extends west approximately 3150 feet to Sisters Mainline Road, a gravel two lane road that extends south beyond the south site boundary, and northwest along the north site boundary where it becomes a Forest Service Road and continues to the north. A paved private drive extends west from the intersection of Bull Springs and Sisters Mainline Roads to the surface mining site, providing private access to all three proposed parcels. An occasionally-used (gated) gravel road in a 66-foot-wide Forest Service easement

connects the surface mining parcel (Parcel 3) to Sisters Mainline Road at the north site boundary.

The surrounding area is forestland with scattered residences. East of Johnson Market Road is the City of Bend, with low density residential development. Shevlin Park is approximately 1000 feet south and east along Johnson Market Road.

- D. PROPOSAL:** A Minor Partition to divide the approximate 528 acre subject property into three parcels of 40, 246 and 242 acres. The property is zoned Forest Use (F1), Rural Residential (RR-10) and Surface Mining (SM). No new uses are proposed as part of this land use review.

More specifically, Parcel 3, located in an SM Surface Mining Zone will be 40 acres in size, and the remaining two parcels will be 246 and 242 acres. The 246-acre Parcel 2 is zoned F1, Forest Use, while Parcel 1 has split zoning: 0.78 acres of the northeast corner is zoned RR-10, Rural Residential; and 241.22 acres is zoned F1. All three parcels have road frontage and no additional road extension or dedication is proposed, nor is it required. An active surface mining operation is located in the SM-zoned parcel that the applicant indicates will continue in the foreseeable future. No new development or land uses are proposed as part of this land use review.

The applicant has submitted burdens of proof statements addressing the criteria applicable to this matter, incorporated herein by reference.

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

County Transportation Planner:

I have reviewed the transmittal materials for 247-15-000668-MP to create a minor partition to divide a 528-acre parcel into three parcels of 40, 246, and 242 acres in the Forest Use (F-1), Rural Residential (RR-10), and Surface Mining (SM) zones at 18500 Bull Springs Road, aka 17-11-00, Tax Lot 2722.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family residence (Land Use 210) generates an average of approximately 10 daily weekday trips and one p.m. peak hour trip. Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. As the partition does not generate any traffic and even if it did, the three lots single-family lots would only generate 30 daily trips, no traffic analysis is needed.

Board Resolution 2013-020 as amended sets an SDC rate of \$3,852 per p.m. peak hour trip. County staff has determined given the residential mix of housing units between primary and secondary residences in the County, that a single-family home will generate 0.81 p.m. hour trips, so the applicable SDC is \$3,120 (\$3,852 X 0.81) per lot for a total of \$9,360 (\$3,120 X 3). The SDC does not come into play with the partition, but rather is triggered by development of the sites. The SDC amount is for informational purposes only.

Deschutes County Road Department:

- ◆ *This parcel was created on Partition Plat 2002-90*
- ◆ *This parcel is accessed by two (2) right-of-ways. The first is USFS Road 4606 (Sister Mainline Road) which is a 66 foot wide USFS easement which has also been dedicated to the public per dedication deeds 2006-62935, 2006-65229, 2006-65230, 2006-65231, 2006-65232 and 2006-65233 and the second right of way is Bull Springs Road from Johnson Market Road to USFS Road 4606 which was dedicated to the public per dedication deed 2006-62934.*
- ◆ *There will be no right of way dedications or road improvements required on this partition.*
- ◆ *The applicant has submitted correspondence from the USFS that the applicant can use USFS Road 4606 (Sisters Mainline Road) for access to the parcels.*

The applicant is to meet the following conditions if this land use application is approved:

1. *All easements of record or existing rights-of-ways shall be noted on the final mylar.*

County Environmental Soils Division:

Any future proposal that will include the use of an onsite wastewater system will require an approved and complete site evaluation and subsequent construction-installation permit.

Oregon Dept. of Fish & Wildlife: Nancy Breuner, Wildlife Biologist, provided the following comment via email to staff on 1/15/16 (excerpted):

I am interested in how the applicant will respond to your request regarding the RR-10 dimensional requirements. This is the crux of our concern with this proposed partition in deer winter range. Per the Deschutes County Comprehensive Plan, the land should be treated according to its underlying zoning standard, which for RR-10 means no partitions shall be permitted, except as a planned or cluster development, which has a requirement certainly greater than one acre.

Bend Fire Department: Larry Medina provided the following comments:

FIRE APPARATUS ACCESS ROADS:

- *Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. **The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building** as measured by an approved route around the exterior of the building or facility. **2014 OFC 503.1.***
- ***Fire apparatus roads shall have an unobstructed width of not less than 20 feet,** exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13*

feet 6 inches. Where a fire hydrant is located on a fire apparatus road, the minimum width shall be 26 feet, exclusive of shoulders. Traffic calming along a fire apparatus road shall be approved by the fire code official. Approved signs or other approved notices or markings that include the words NO PARKING-FIRE LANE shall be provided for fire apparatus roads to prohibit parking on both sides of fire lanes 20 to 26 feet wide and on one side of fire lanes more than 26 feet to 32 feet wide. **2014 OFC 503.2.1, D103.1, 503.4.1, 503.3**

- **Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (60,000 pounds GVW) and shall be surfaced (asphalt, concrete or other approved driving surface) as to provide all weather driving capabilities.** Inside and outside turning radius shall be approved by the fire department. All dead-end turnarounds shall be of an approved design. Bridges and elevated surfaces shall be constructed in accordance with AASHTO HB-17. The maximum grade of fire apparatus access roads shall not exceed 10 percent. Fire apparatus access road gates with electric gate operators shall be listed in accordance with UL325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. A Knox® Key Switch shall be installed at all electronic gates. **2014 OFC D102.1, 503.2.4**

FIRE PROTECTION WATER SUPPLIES:

- **An approved water supply capable of supplying the required fire flow for fire protection shall be provided** to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

OTHER FIRE SERVICE FEATURES:

- **New and existing buildings shall have approved address numbers,** building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum 4 inches high with a minimum stroke width of 0.5 inch. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole, or other sign or means shall be used to identify the structure. Address numbers shall be visible under low light conditions and evening hours. Provide illumination to address numbers to provide visibility under all conditions. Address signs are available through the Deschutes Rural Fire Protection District #2. An address sign application can be obtained from the City of Bend Fire Department website or by calling 541-388-6309 during normal business hours.
- **A KNOX-BOX® key vault is required for all newly constructed commercial buildings, facilities or premises to allow for rapid entry for emergency crews.** A KNOX® Key Switch shall be provided for all electrically operated gates restricting entry on a fire apparatus access road. A KNOX® Padlock shall be provided for all manually operated gates restricting entry on a fire apparatus road and security gates restricting access to buildings.

- F. PUBLIC COMMENTS:** The Planning Division sent notice of this application to property owners within 750 feet of the subject property. The following comments were received:

Paul Dewey: *I am writing to express LandWatch's opposition to this partition application. We have been waiting to see the completed application but still do not see the information on your website. Please note that proposed partitions in this area have been the subject of considerable dispute, including the Tweedfam application in 2004-05 that was eventually abandoned and the Bank of Whitman application which resulted in a LUBA remand and a denial.*

Please keep me informed of any decisions on this application or opportunities to comment.

Carol MacBeth of Central Oregon LandWatch: Ms. MacBeth did not provide comments but asked to be placed on mailing list for notification regarding this matter.

- G. LOT OF RECORD:** The subject property is a legal lot of record pursuant to being parcel 1 of Partition Plat 2002-90 (MP-01-16).

- H. REVIEW PERIOD:** This application was submitted on December 18, 2015. Initially, notice of the application was mailed to surrounding properties and affected agencies on December 23, 2015.

Due to the receipt of comments expressing concerns submitted by Oregon Department of Fish and Wildlife, and staff's initial concerns regarding the portion of the property zoned RR-10 regarding compliance with dimensional requirements of the Deschutes County Code (DCC) Sections 18.60.060 (C) and 18.88.050, staff decided the matter should be heard by a County Hearings Officer. On January 15, 2016, the applicant was sent an incomplete application letter identifying the need to address applicable sections of the code referenced above and submittal of a hearings officer deposit.

On February 18, 2016 the applicant submitted a revised burden of proof statement and on February 22, 2016 provided the Hearings Officer deposit fee. The application was deemed complete on February 22, 2016. Based on this, the 150th day on which the County must take final action on this application is therefore August 5, 2016.

On March 8, 2016 notice of a public hearing was mailed to surrounding property owners, parties and affected agencies. In a March 10, 2016 email to Planning Manager, Peter Gutowsky, the applicant requested cancellation of the April 12, 2016 hearing.

In an email to staff on March 16, 2016, the applicant (Todd Taylor) requested that the application be placed on hold for 6 months. This tolls the 150-day review clock from March 16, 2016 to September 16, 2016.

On March 17, 2016, notice of cancellation of the March 8, 2016 public hearing was mailed.

On April 4, 2016, the applicant provided another revised burden of proof statement.¹

On April 15, 2016, notice of the May 24, 2016 public hearing was mailed to surrounding property owners, agencies and parties of interest. Notice of the public hearing was posted in the Bend Bulletin Newspaper on Sunday, April 24, 2016.

The applicant has complied with the posted notice requirement of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit for the application dated December 28, 2015 that indicates that the applicant posted notice of the land use action on that same date.

- I. LAND USE HISTORY:** The property has a very lengthy land use history. It was approved for a large tract dwelling under File Nos. CU-05-106/SMA-05-41. An application for a modification to relocate the approved homesite (file no. MC-10-1) was approved in May of 2010. Additionally, the approval for CU-05-106 was extended under Land Use File E-11-18, to May 30, 2013. No extension application beyond File E-11-18 approval was submitted, thus, the conditional use permit had expired. Staff notes that the conditional use permit application was involved in an appeal to the Land Use Board of Appeals by Central Oregon LandWatch.

However, Land Use File 247-16-000-632-DR approved a declaratory ruling to determine if a land use permit for a large tract dwelling approved under County File Nos. CU-05-106/SMA-05-41 had been initiated on tax lot 2722. The large tract dwelling approval associated with these permit would be located on Parcel 2 of the proposed partition and is depicted on Sheet 1/1 dated 2/17/16 in the applicant's February 17, 2016 submittal.

Page 3 of the applicant's revised burden of proof statement, provides the following:

Related Land Use History

A portion of the site labeled as "Pt Parcel 1" of PP2002-90 was the subject of a previous land use review that sought to create two parcels (MP-5-31, CU-05-106, SMA-05-41, MA-06-1, MA-06-8). The partition was denied, but a conditional use for a large tract dwelling was approved. Through renewal of the approval and a recent declaratory ruling (247-15-000632-DR) the approval continues. Location of the approved dwelling is contained in Appendix F, Zoning and Large Tract Dwelling Location.

A subsequent lot line adjustment added portions of PP 210-14 to the site to give its present configuration as Tax Lot 2722 shown below.

Required Land Use Reviews

Because creation of three parcels from one existing tax lot is proposed, a land use review for a partition is required, and the applicable criteria of Chapter 17.22, Approval of Tentative Plans for Partitions, must be met. Because the site has base zones of F1 Forest Use and SM Surface Mining, the applicable requirements of Chapter 18.36 Forest

¹ The applicant submitted a revised burden of proof statement on February 18, 2016 and an additional revised burden of proof statement was received on April 4, 2016. For the purpose of simplicity, staff's reference to the revised burden of proof statement is referring to the April 4, 2016 submittal.

Use Zone and Chapter 18.52 Surface Mining Zone must be met. The 0.78 acres of RR-10 Rural Residential zoned land in the northeast corner of the site appears to be within 100 feet of the property boundary, so is eligible for exemption under Section 18.12.040.C to the requirements of Chapter 18.60 Rural Residential Zone. If it is determined that the exemption cannot be met, the applicable requirements of Chapter 18.60 Rural Residential Zone must also be met. Because there is a Winter Deer Range Combining Zone on the site, the applicable requirements of Chapter 18.88, Wildlife Area Combining Zone – WA, must be met. Because the SM Zone is surrounded by a Surface Mining Impact Area Combining Zone, the applicable requirements of Chapter 18.56, Surface Mining Impact Area Combining Zone – SMIA, must be met. As noted previously, no new uses are proposed for the site as part of this land use review.

It appears that the 0.78-acre RR-10 zoned portion of the site was applied in error during adoption of the official zoning maps. As part of this review it is requested that the Hearings Officer recommend that County planning staff include review of the zone application at this location during the next annual review and update of the zoning maps and, if appropriate, move the zone line to the property boundaries.

III. CONCLUSIONARY FINDINGS:

Title 17 of the Deschutes County Code, Subdivisions

A. Chapter 17.22, Approval of Tentative Plans for Partitions

- A. *Any person, or his authorized agent or representative, proposing a land partition, shall prepare and submit a minimum of 10 copies of the tentative plan and one (1) reduced scale copy 8 1/2" x 11" or 11" x 17", hereinafter described, unless more copies are required by the Planning Director, in accordance with the prescribed procedures, and the appropriate filing fee, to the Planning Division.***

STAFF COMMENT: The applicant has provided the required tentative plans with submittal.

B. *The tentative plan shall include the following:*

- 1. *A vicinity map locating the proposed partition in relation to parcels zoned SM, Surface Mining, under DCC Title 18, which are within one-half mile of the subject partition, and to adjacent subdivisions, roadways and adjoining land use and ownership patterns. The map must include names of all existing roadways shown therein;***

STAFF COMMENT: Proposed Parcel 3 is zoned entirely SM, Surface Mining. A vicinity map containing the required information concerning roads, ownership patterns and adjoining land uses is found in Appendix A of the applicant's revised burden of proof statement, Site and Surrounding Area and Appendix B, the tentative partition plat.

- 2. *A plan of the proposed partitioning showing tract boundaries and dimensions, the area of each tract or parcel, locations of all easements, and the names, rights of way, widths and improvement standards of existing roads in relation to the existing right-of-way.***

The tentative plan shall also show the location of all existing buildings, canals, ditches, septic tanks and drainfields; it shall also show the location of any topographical feature which could impact the partition, such as canyons, bluffs, rock outcroppings, natural springs and floodplains. In addition, the tentative plan shall show the location width, curve radius and grade of proposed rights of way;

STAFF COMMENT: A plan of the proposed partition and the information required by this section is found in Appendix B the applicant's revised burden of proof statement, and also submitted separately with this application.

- 3. If the partition is to be accessed by a U.S. Forest Service or Bureau of Land Management road, the applicant shall submit a written agreement with the appropriate land management agency providing for permanent legal access to the road and any required maintenance;***

STAFF COMMENT: Bull Springs Road and the portion of Sisters Mainline Road are dedicated public right-of way. The access road to Parcel 3 is in an existing Forest Service Easement. The required documents are contained in Appendix C of the applicant's revised burden of proof statement,

- 4. Names and addresses of the landowner, the applicant (if different), a mortgagee if applicable and the engineer or surveyor employed or to be employed to make the necessary surveys;***

STAFF COMMENT: The required information is found on the proposed partition plan (Appendix B of the applicant's revised burden of proof statement).

- 5. A statement regarding contemplated water supply, telephone and electric service, sewage disposal, fire protection and access, etc. If domestic water is to be provided by an on-site well, the application must include at least two well logs for wells in the area;***

STAFF COMMENT: The site presently has an onsite water supply (existing well) secured by water rights and a large water reservoir used for fire protection to the surrounding area. Well logs for these water sources on the property, and an adjacent property (17-11-0000, tax lot 4302) are found in Appendix D of the applicant's revised burden of proof statement. According to the applicant, water lines for existing uses (farm and mineral extraction), irrigation and fire protection, including fire hydrants, have been extended throughout the site. According to the applicant, telephone and electrical service is already extended to buildings and farm uses on Parcels 2 and 3, and is available in Bull Springs Road for Parcel 1. Additionally, the applicant states that onsite sewage disposal is installed on Parcels 2 and 3 for existing uses. Access for fire protection is from Bull Springs Road, Johnson Road, and Sisters Mainline Road (all County roads) and from the Forest Service Road serving Parcel 3 (Appendix C of the applicant's revised burden of proof statement). The applicant indicates that because no additional land uses are proposed with this land use review since no changes to services or utilities are contemplated or necessary.

6. ***True north, scale and date of map and property identification by tax lot, section, township and range;***

STAFF COMMENT: The proposed partition plan includes these items.

7. ***Statement regarding present and intended use of the parcels to be created, or the use for which the parcels are to be offered;***

STAFF COMMENT: In response to item 7, the applicant's revised burden of proof statement provides the following:

As noted in Chapter 1 of this Burden of Proof, there is a surface mining operation on Parcel 3 that will continue. There is a horse stables, pasture, and meadow on Parcel 2 that will also continue. A large tract dwelling has been approved on Parcel 2 but has not been constructed. Parcels 1 and 2 are and will continue to be in forest use. No additional uses are proposed at this time.

Sheet 1 of 2, the tentative partition plan, submitted with the applicant's revised burden of proof statement provides such statement.

8. ***If a tract of land has water rights, the application shall be accompanied by a water rights division plan which can be reviewed by the irrigation district or other water district holding the water rights, or when there is no such district, the County Watermaster;***

STAFF COMMENT: The applicant indicates that are two wells onsite that will provide water to all parcels and that existing water rights will be apportioned to each parcel at the time of final platting. The required information is found in Appendix D of the applicant's revised burden of proof statement

9. ***Title report or subdivision guarantee.***

STAFF COMMENT: A title report has been provided by the applicant and is included as Appendix E of the applicant's revised burden of proof statement.

- C. ***Information for parcels located within a Surface Mining Impact Area (SMIA) zones. For each parcel wholly or partially within a SMIA zone under DCC Title 18, an applicant shall submit a site plan, accompanied by appropriate site plan fees, indicating the location of proposed noise or dust sensitive uses (as defined in DCC Title 18), the location and dimensions of any mitigating berms or vegetation and data addressing the standards of DCC 18.56, with respect to allowed noise or dust sensitive uses.***

STAFF COMMENT: The required information is addressed under the applicable approval criteria of 18.56, Surface Mining Impact Area Combining Zone. To the extent that they are met, this criterion is also met.

2. 17.22.020, Requirements for Approval

- A. ***No application for partition shall be approved unless the following requirements are met:***

1. ***Proposal is in compliance with ORS 92, the applicable comprehensive plan and applicable zoning ordinance. A proposed partition is not in compliance with the zoning ordinance if it would conflict with the terms of a previously issued approval for a land use on the property or would otherwise create a nonconforming use on any of the newly described parcels with respect to an existing structure or use;***

STAFF COMMENT: The Deschutes County Comprehensive Plan has been reviewed by the Department of Land Conservation and Development and found to be in compliance with State land use statutes, including ORS 92. The County Comprehensive Plan and Zoning designate the surface mining site as SM, Surface Mining, and the remainder of the site as F-1, Forest Use, with a .78 acre portion zoned RR-10. Conformance with the applicable zoning requirements is discussed further in this Staff Report. To the extent that those criteria are met, this criterion is also met.

2. ***Proposal does not conflict with existing public access easements within or adjacent to the partition;***

STAFF COMMENT: Bull Springs Road, Sisters Mainline Road, and a Forest Service easement connecting Sisters Mainline Road to proposed Parcel 3 are within and abut the site. No modification of access is proposed.

3. ***The partition is accessed either by roads dedicated to the public or by way of United States Forest Service or Bureau of Land Management roads where applicant has submitted a written agreement with the appropriate land management agency providing for permanent legal access to the parcels and any required maintenance. This provision shall not be subject to variance;***

STAFF COMMENT: Parcel 1 abuts and has direct access from Bull Springs Road, Sisters Mainline Road, and the Forest Service easement connecting Parcel 3 to Sisters Mainline Road. Parcel 2 abuts and has direct access to Sisters Mainline Road. Parcel 3 abuts the south end of the Forest Service road and easement that connects to Sisters Mainline Road. A copy of the Forest Service easement is contained in Appendix C of the applicant's revised burden of proof statement, Forest Service Road Access.

4. ***An access permit can be obtained from either the Community Development Department, the City Public Works Department or the State Highway Division;***

STAFF COMMENT: Access to the site is presently from a paved private drive located at the intersection of Bull Springs Road and Sisters Mainline Road. No new uses are proposed. When future development is proposed additional access may be requested from the County and will be provided as required.

- 5 *Each parcel is suited for the use intended or offered, considering the size of the parcels, natural hazards, topography and access;***

STAFF COMMENT: There are no known natural hazards on the site. Topography on the site ranges from near-level to occasional ridges of volcanic rock. As previously noted, Parcel 3 is presently being mined. Because the site is in the WA Wildlife Area Combining Zone, minimum parcel size is 40 acres, which is the size of Parcel 3. Future use of the parcel will remain surface mining. No new uses are proposed for Parcels 1 and 2 with this land use review. However, parcel sizes of 242 acres and 248 acres respectively are considerably greater than the F1 Zone minimum and contain significant level forested land, so are suitable for most allowed uses.

- 6. *All required utilities, public services and facilities are available and adequate and are proposed to be provided by the petitioner;***

STAFF COMMENT: The applicant has indicated that electricity is now available at the site and serving existing uses and that sewage treatment is onsite and meets County requirements. Additionally, the applicant indicates that no new uses are proposed so there is no need for additional utilities of public services and facilities and that utilities will be provided at the time of development of any future uses.

- 7. *A water rights division plan, reviewed and approved by the appropriate irrigation district or the Watermaster's office, if water rights are associated with the subject property;***

STAFF COMMENT: In response to this criterion, the applicant's burden of proof statement provides the following:

There are two wells onsite that will provide water to all parcels. Since no new land uses are proposed no water rights apportionment is proposed at this time. Existing water rights will be apportioned to each parcel when future development is proposed. The required water rights information is found in Appendix D, Water Supply DESC 54048).

If approved, staff believes that a condition of approval should require the final plat to include a statement of water rights.

- 8. *For partitions or portions thereof within one-half mile of SM zones, the applicant shows that a noise or dust sensitive use, as defined in DCC Title 18, can be sited consistent with the requirements of DCC 18.56, as demonstrated by the site plan and accompanying information required to be submitted under DCC 17.28.010(C).***

STAFF COMMENT: In response to this criterion, the applicant's burden of proof statement provides the following:

- *With the exception of the 40-acre SM-zoned portion of the site (Parcel 3) there is no SM-zoned land within one-half mile of the site. Nevertheless, this criterion does not apply because the applicant is not proposing any new or expanded*

noise or dust sensitive uses. Noise and dust sensitive uses are defined in Section 18.04.030:

- *"Noise-sensitive use" means real property normally used for sleeping or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not "noise-sensitive" unless it meets the above criteria in more than an incidental manner. Accessory uses such as garages or workshops do not constitute noise-sensitive uses.*
- *"Dust-sensitive use" means real property normally used as a residence, school, church, hospital or similar use. Property used in industrial or agricultural activities is not "dust-sensitive" unless it meets the above criteria in more than an incidental manner. Accessory uses such as garages and workshops do not constitute dust-sensitive uses.*

No new uses are proposed with this land use review. Nevertheless, Parcel 1 could qualify for the siting of a large tract dwelling (Parcel 2 already has an approved large tract dwelling). As shown on the Tentative Partition Plan there is sufficient area on Parcel 1 to site a future dwelling outside of the SMIA. Any future development within the SMIA will be subject to the applicable requirements of Chapter 18.56, thereby ensuring that any noise or dust sensitive use can be sited consistent with those provisions.

A condition of approval should stipulate that new noise-sensitive or dust-sensitive uses, that do not already have a valid land use approval allowing such use, shall obtain approval for SMIA Site Plan Review.

B. If the Planning Director determines that the proposed partition constitutes series partitioning, or if series partitioning has occurred in the past, then the Planning Director may refer the application to the hearings officer for a determination as to whether the application should be subject to the requirements of DCC 17.36.300, Public Water Supply System, and DCC 17.48.160, Road Development Requirements for Subdivisions.

STAFF COMMENT: The applicant's burden of proof statement provides the following in response to this criterion:

The proposed partition was found to be a series partition in a prior land use decision (MP-5-31. CU-05-106, SMA-05-41, MA-06-1, MA-06-8). As of the date this Burden of Proof was submitted the Planning Director has not informed the applicant that the application should be referred to the Hearings Officer for a determination as to whether the application should be subject to the requirements of DCC 17.36.300, Public Water Supply System, and DCC 17.48.160, Road Development Requirements for Subdivisions. If a referral is made the applicant will respond to the applicable requirements. However, because no new uses are proposed with this land use review there will be no additional impacts on either the water supply or adjacent road system.

The proposed partition was found to be a series partition in a prior land use decision (Land Use File Nos. MP-05-31, CU-05-106, SMA-05-41, MA-06-1, MA-06-8). More specifically, in that decision, the Hearings Officer provided the following finding in response to this criterion:

FINDINGS: Section 17.08.030 includes the following definitions:

"Partition land" means to divide land into two or three parcels of land within a calendar year * * *.

"Series partitioned lands" and "series partition" mean a series of partitions of land resulting in the creation of four or more parcels over a period of more than one calendar year.

Under these definitions a "partition" creates two or three parcels *within the same calendar year*, and a "series partition" is one or more partitions that result in the creation of four or more parcels over a period of *more than one calendar year*.

As discussed in the Findings of Fact above, the subject property was part of a 3-lot partition approved in 2002. Landwatch submitted evidence of several other partitions approved since 1994 that included and/or abut the subject property. The applicant argues the proposed partition does not constitute a "series partition" as defined in Section 17.08.030 because the 2002 partition and the proposed partition have been separated in time by several years, and because the parcels created by these two partitions are very large. The Hearings Officer finds neither the passage of time nor the size of the proposed parcels has any bearing on whether the proposed partition falls within the definition of "series partition."¹¹ I find the proposed partition clearly constitutes a "series partition" considering the 2002 partition that created the subject property.

The remaining questions under this criterion are whether this partition has been referred to the Hearings Officer for consideration as a "series partition," and if so, whether the proposed partition should be subject to the public water system requirements in Section 17.36.300 and/or the road development standards for subdivisions. At the public hearing, planning staff stated that the Planning Director did not refer the proposed partition to me for consideration as a "series partition." Therefore, I find I need not determine whether the partition should be subject to the water system and subdivision road standards.

DCC 17.36.300 is provided below:

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 agency. A community water system shall be required where lot or parcel sizes are less than one acre or where potable water sources are at depths greater than 500 feet, excepting land partitions. Except as provided for in DCC 17.24.120 and 17.24.130, a required water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision or partition plat, prior to final approval.

Staff believes the proposed partition constitutes a series partition, however, does not believe 17.36.300 applies to this request as a public water system has not been required by any public agency. A community water system is not required as each proposed parcel exceeds one acre.

- C. ***Protective covenants and homeowner's association agreements are irrelevant to any partition approval and will not be reviewed by the County. Any provision in such agreements not in conformance with the provisions of DCC Title 17 or applicable zoning ordinance are void as against the County.***

STAFF COMMENT: No covenants or homeowner's association agreements are proposed.

3. 17.22.030, Improvement Requirements

In the approval of a land partition, the County shall consider the need for street and other improvements, and may require as a condition of approval any improvements that may be required for a subdivision under the provisions of DCC Title 17. All roads in partitions shall be dedicated to the public without reservation or restriction, except where private roads are allowed by the applicable zoning regulations, such as in planned or cluster developments.

STAFF COMMENT: The County Road Department has indicated that no road improvements are necessary to accommodate the partition. The limitation for development in the F1 Zone will ensure minimal additional impact on the road system. Existing access roads on the property are adequate for the proposed partition.

B. Chapter 17.36, Design standards

1. Section 17.36.010, Compliance Required

Except as otherwise set forth in a zoning ordinance, all land divisions shall be in compliance with the design standards set forth in DCC 17.36 and in DCC 17.48.

STAFF COMMENT: The standards under DCC 17.36 and 17.48 are addressed below.

2. 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 the 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.***

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. Planned developments shall include public streets where necessary to accommodate present and future through traffic.

C. Streets in partitions shall be dedicated to the public.

...

STAFF COMMENT: The proposed partition will not require any road improvements. There are no new streets proposed within the partition.

3. 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 or 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.

STAFF COMMENT: The County Road Department has indicated that no road improvements are necessary to accommodate the partition.

4. 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.

STAFF COMMENT: No new streets are proposed as part of the partition. The parcels are to be accessed from existing US Forest Service roads.

5. 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 DCC 17.48. Where DCC refers to street standards found in a zoning ordinance, the standards in the zoning ordinance shall prevail.

STAFF COMMENT: As indicated in a foregoing finding, no additional right of way or road improvements are necessary or required for the partition.

6. 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.

STAFF COMMENT: This criterion is applicable because the applicant proposes to create parcels that are more than one acre in size. The tentative plat proposes 3 parcels. If any additional partitioning is proposed, Staff believes the existing roads could potentially provide the necessary access.

7. 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.

STAFF COMMENT: This criterion is not applicable since the subject property is not adjacent to land that may be dividable in the future. The adjacent property is all US Forest Service land.

8. 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.

STAFF COMMENT: The subject property does not abut any public roads. The proposed partition will not require a frontage road.

9. 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.

STAFF COMMENT: The subject property is not adjacent to a railroad, freeway or parkway. This criterion is not applicable to the proposed partition.

10. 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 of the County.

STAFF COMMENT: This criterion is not applicable since the applicant is not proposing to create any new streets.

11. 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.*

B. *Drainage. If such 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.*

STAFF COMMENT: In response to (A) and (B) above, the applicant's revised burden of proof statement provides the following:

No new uses are proposed, so additional utilities extended to or through the site are unnecessary at this time. The existing roadways within and abutting the site will provide for placement of any utilities necessary to serve each parcel if future development is proposed.

No response was received from the utility companies indicating that additional easements are necessary. All existing easements must be shown on the final plat. It does not appear that water courses traverse the property and none were referenced on the tentative partition plan.

12. 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 for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of DCC Titles 18 through 21, 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 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.

- B. Where property is zoned and planned for business or industrial use, other widths and areas may be permitted by the Hearings Body. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for off-street service and parking facilities required by the type of use and development contemplated.***

STAFF COMMENT: In response to (A) and (B) above, the applicant's supplemental burden of proof statement provides the following:

- *Parcel 1 is 242 acres in size, of which 0.78 acres is zoned RR-10 and the remaining 241.22 acres is zoned F1. Although the RR-10 zoning is an obvious graphics error as it is significantly smaller than the minimum lot size allowed in the RR-10 zone, an earlier land use review for partitioning of the site (MP-05-31, CU-05-106, SMA-05-41, MA-06-1, MA-06-8) concluded that the zone boundary was adopted by the County and is shown on the Official Zoning Maps. As a result, Parcel 1 (242 acres) has split zoning with 0.78 acres in RR-10 and 241.22 acres in F-1.*

The 0.78 acres of RR-10 Rural Residential zoned land in the northeast corner of the site appears to be within 100 feet of the property boundary, so is eligible for exemption under Section 18.12.040.C to the requirements of Chapter 18.60 Rural Residential Zone. Location, size, and configuration of the RR-10 Zone is found in Appendix F, Zoning and Large Tract Dwelling Location.

Also found in this previous land use decision is a discussion of split zoning on the same parcel. The Hearings Officer concluded that, for a proposed parcel with split zoning to be approved, the area within one zone must meet the dimensional and area standards of that zone. As presently proposed, Parcel 1 is 242 acres in size, of which 241.22 acres is zoned F-1, meeting the minimum requirements for that zone. Although the 0.78-acre RR-10 zoned portion of Parcel 1 is below the minimum lot size for that zone, the RR-10 portion of the site is not affected by the proposed partition and will remain within and be part of proposed Parcel 1.

Parcel 1 has north-south dimensions over 550 feet and an east-west dimension over 4900 feet. These dimensions, along with the 242-acre size, exceed the requirements of the F1 zone and will allow continuation of the existing forest use as well as most other allowed uses the property owner might wish for the site in the future.

Direct access to Parcel 1 is from Johnson Road on the east parcel boundary, Bull Springs Road that passes through the eastern 2650+ foot eastern portion of the site, Sisters Mainline Road that bisects the site in a north-south direction and abuts the western portion of the site, and a Forest Service road on the west parcel boundary.

The portion of Parcel 1 east of Sisters Mainline Road is outside of the SIMA Surface Mining Impact Area, so any future uses allowed in the underlying zones would not be subject to SIMA requirements.

- *Parcel 2 is 246 acres in size with north-south dimensions ranging from over 1850 feet to over 2500 feet, and an east-west dimension of over 5400 feet. It is also managed as forest as well as farm use. These uses, and a large tract dwelling also approved, will continue. As discussed in this Burden of Proof under the the F1 requirements, setbacks from the proposed lot lines for the approved dwelling and existing buildings will be met. No new uses are proposed.*

Direct access to Parcel 2 is from Sisters Mainline Road which abuts the east parcel boundary.

Although the parcel is in the SIMA Zone, the forest, farm and large tract dwelling reviews for existing uses have been completed. No further development or uses are proposed.

- *Parcel 3 is 40 acres in size, encompassing the existing mining operations and the entire SM-zoned portion of the site. The minimum parcel size is 40 acres as required by the WA Wildlife Area Combining Zone. Access to Parcel 3 is from a Forest Service road that once served as the Sisters Mainline Road, and abuts the north parcel boundary for 66 feet at its southern terminus.*

In summary, all parcels meet or exceed lot size and dimensional requirements and have sufficient access. Since no new uses or expansion of existing uses are proposed, additional services, utilities, or access improvements are unnecessary.

The applicant indicates that proposed Parcel 1 will accommodate the existing forest use; proposed Parcel 2 will accommodate the forest and farm uses, as well as the large tract dwelling and that proposed Parcel 3 will accommodate the existing surface mining operations. The parcels are in conformance with the minimum parcel size provisions of DCC Title 18, as stated in a foregoing finding.

The size, width and orientation of lots or parcels will be appropriate for the location of the land division and for the type of development and use contemplated. Subsection (A) above can be met through County Environmental Soils Division requirements for future uses. Subsection (B) does not apply.

13. 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 not be less than 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.***

STAFF COMMENT: As previously addressed above, Parcels 1 and 2 abut existing roadways for over several thousand feet each and Parcel 3 abuts a Forest Service easement for 66 feet complying with this criterion. The proposed lot lines abutting roadways (terminus of the Forest Service easement at Parcel 3 and the lot line between Parcels 1 and 2 at Sisters Mainline Road) abut at near-right angles complying with this criterion.

14. 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.

STAFF COMMENT: Staff believes this section is intended to help avoid the creation of lots or parcels having frontage along two non-intersecting streets. The proposed parcels would not have double frontage, thus this criterion is not applicable to the partition.

15. 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 lots 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 least 10 feet above the southern building line, required by this***

performance standard is not feasible, supporting information must be filed with the application.

STAFF COMMENT: The substantial size of the proposed parcels (approximately 242, 246, and 40 acres), coupled with the dimensions of the parcels (in excess of 550 feet in a north-south direction) ensure adequate solar access for any future development. Therefore, these standards can be met for any future use.

16. 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.

STAFF COMMENT: Access to the site is from Johnson Market Road to the east and Sisters Mainline Road to the north and south providing the two points of access to the partition as suggested by the this standard.

17. 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.

STAFF COMMENT: No water and sewer lines are proposed as part of the partition, and are not required by the code for partitions.

18. 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.

STAFF COMMENT: As previously discussed, there is a well onsite. The well log for it and a second nearby well are contained in Appendix D of the applicant's revised burden of proof statement, demonstrating compliance with this criterion.

C. Chapter 17.44, Park Development.

1. 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 a parks district with a permanent tax rate.**

2. 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 would 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 parks district with a permanent tax rate.**

STAFF COMMENT: These sections require a dedication of land for park use or a fee to be paid in lieu of dedication for partitions and subdivisions. Subdivisions and partitions are exempt from these provisions if they are located within a parks district with a permanent tax rate. In this case, the subject property is not located within a park district and there is no land suitable for a park on the property. Therefore, the approval would be subject to a parks fee of \$350.00 calculated as follows: \$350 per additional dwelling unit. For the purposes of this review, Parcels 1 and 2 are subject to parks fees, as Parcel 2 has a valid land use approval for a dwelling and Parcel 1 is of a size that may qualify it for a Large Tract Dwelling. As a condition of approval, the applicant should be required to pay a parks fee of \$700.00 prior to final plat approval.

D. Chapter 17.48, Design and Construction Specifications

1. Section 17.48.050, Road Design

The design of roads covered by DCC Title 17 is to be prepared by a registered professional engineer and shall at a minimum conform to the design standards for new or existing roads set forth in Table A of DCC Title 17 (or in the design standards set forth for a particular zone in a zoning ordinance) and shall otherwise conform with AASHTO standards. Base and pavement dimensions set forth in Table A (or in specifications set forth for a particular zone) may be increased by the Road Department Director if necessitated by anticipated traffic volumes.

STAFF COMMENT: As indicated in a foregoing finding, no road or right of way improvements are required for the subject partition. This criterion is not applicable to the proposed partition.

2. Section 17.48.100, Minimum Right-of-way Width

The minimum right-of-way width is 60 feet unless specified otherwise in Table A (or in any right-of-way specifications set forth for a particular zone in a zoning ordinance). (See Table A set out at the end of DCC Title 17.)

STAFF COMMENT: No additional right of way is required for the partition, as the property is accessed from existing US Forest Service roads.

3. Section 17.48.120, Partial Width Roads

Partial width roads or half streets shall not be allowed.

STAFF COMMENT: No new roads are proposed or required for this partition.

4. Section 17.48.130, Road Names

All roads shall be named in conformance with the provisions of the Deschutes County uniform road naming system set forth in DCC Title 16.

STAFF COMMENT: No new roads are proposed and thus no new road names are necessary.

5. Section 17.48.170, Road Development Requirements - Partitions

Roadway improvements within a partition and to a road maintained by a public agency shall be constructed prior to final approval of the partition, depending on the maximum parcel size as follows:

- A. For a parcel size of 10 acres or larger, the minimum road improvement standard shall be 20 feet wide with five inches of aggregate surfacing (cinders are acceptable), the centerline of which coincides with the centerline of the right-of-way.***

- B. For a parcel size of less than 10 acres, the road standards used shall be the same as for a subdivision.**

STAFF COMMENT: As indicated in a foregoing finding, no road improvements to the US Forest Service roads are required.

6. Section 17.48.210, Access

- A. Permit Required. Access onto public right-of-way or change in type of access shall require a permit. Permits are applied for at offices of the Community Development Department.**
- B. Access Restrictions and Limitations. The creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel. In any event, residential access onto arterials and collectors shall not be permitted within 100 feet of an intersection or the maximum distance obtainable on the parcel, whichever is less.**
- C. Commercial and Industrial Access. Requirements for commercial and industrial access will be determined by the Road Department Director in accordance with DCC 17.48.090. Safety improvements, including left turn lanes and traffic signals, may be required.**
- D. Sight Distance. Access shall be denied at locations that do not meet AASHTO sight distance standards.**

STAFF COMMENT: Direct access to Parcel 1 is from Johnson Road on its east boundary. Bull Springs Road traverses the approximate 2,650 foot eastern portion of the site. Sisters Mainline Road bisects the site in a north-south direction and abuts the western portion of the site. A Forest Service road is on the west parcel boundary and the access road to Parcel 3 is an existing Forest Service Easement that extends from the Forest Service road (Sisters Mainline). The applicant has included the required documents with their application (See Appendix C, Forest Service Road Access). Access onto a public right of way is not proposed and permits are not required for US Forest Service roads.

Title 18 County Zoning

A. Chapter 18.12, Establishment of Zones

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1. 18.12.040, Zone Boundaries

Unless otherwise specified, zone boundaries are section lines, subdivision lines, lot lines, center lines of street or railroad rights of way, water courses, ridges or rimrocks, other readily recognizable or identifiable natural features, or the extension of such lines. In case of any dispute regarding the zoning classification of property subject to the County code, the original ordinance with map exhibit contained in the official county records will control. Whenever uncertainty exists as to the boundary of a

zone as shown on the zoning map or amendment thereto, the following rules shall apply:

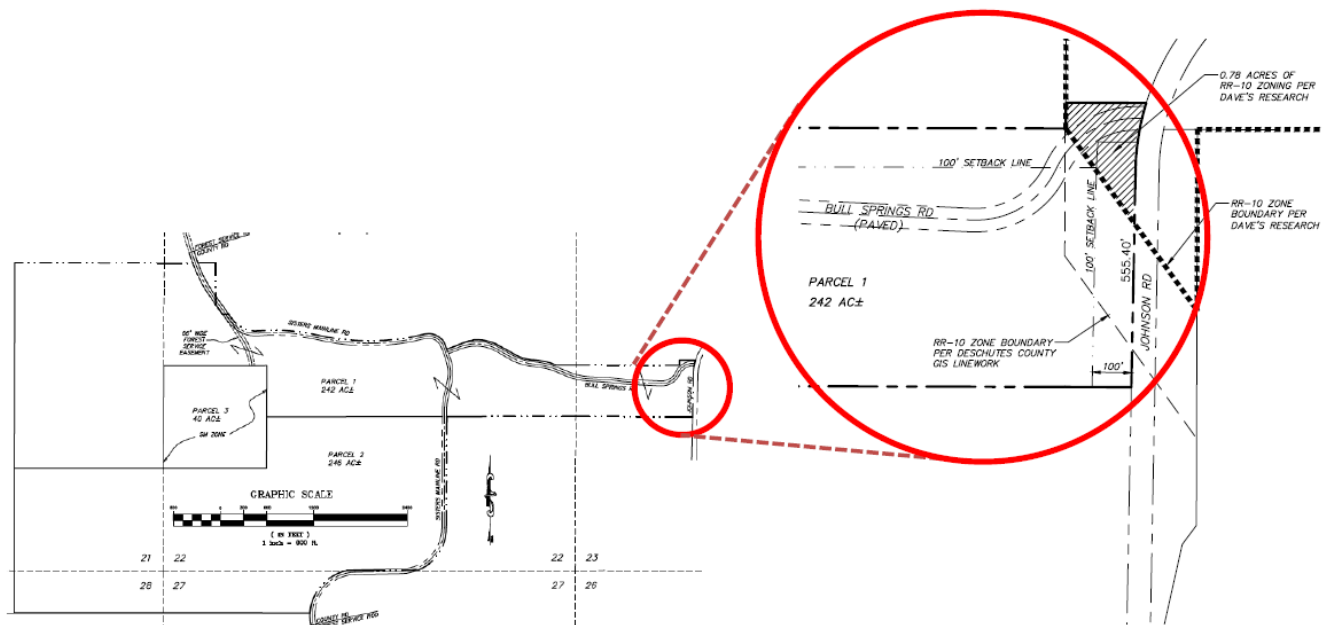
...

- C. If a zone boundary as shown on the zoning map divides a lot or parcel between two zones, the entire lot or parcel shall be deemed to be in the zone in which the greater area of the lot or parcel lies, provided that this adjustment involves a distance not exceeding 100 feet from the mapped zone boundary. DCC Title 18 does not apply to areas zoned flood plain.**

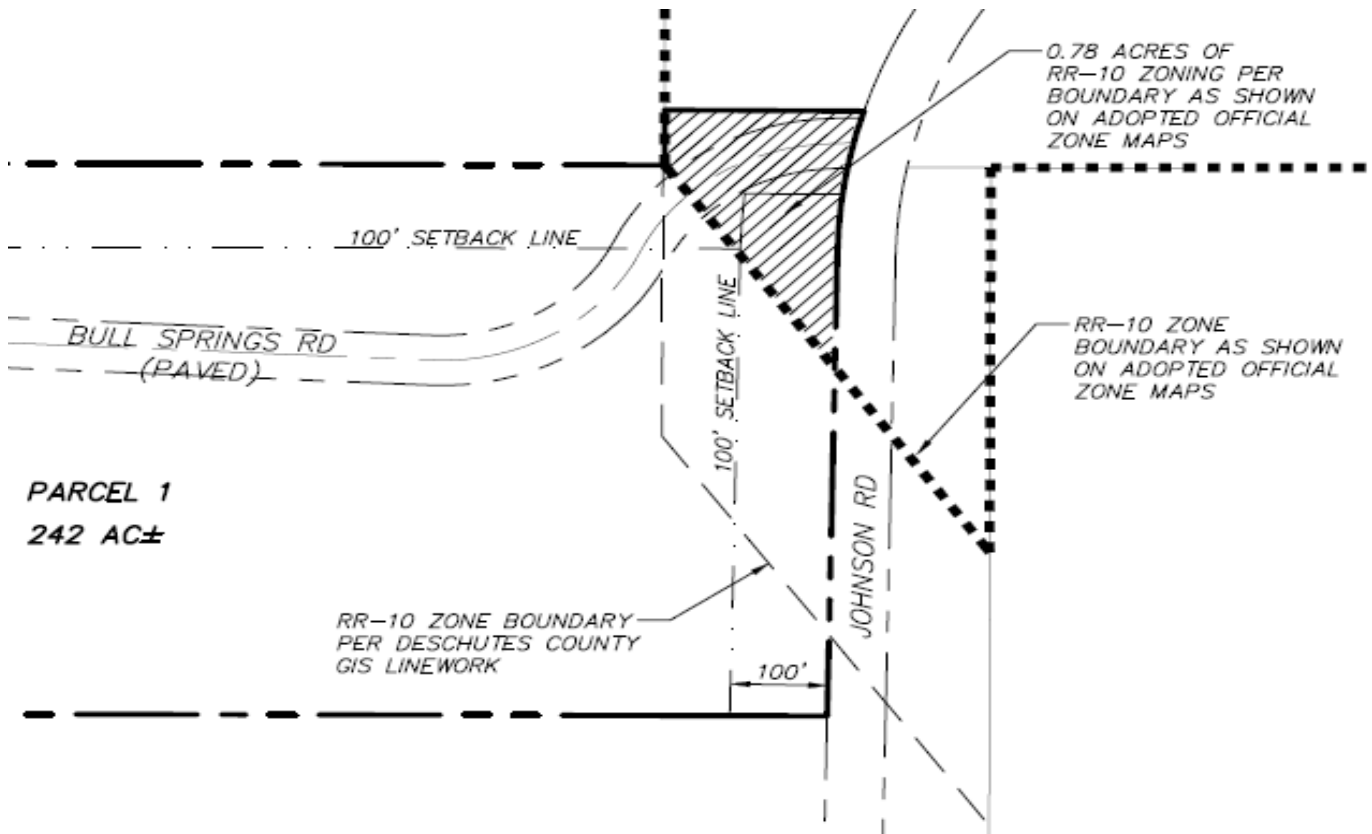
STAFF COMMENT: The applicant's revised burden of proof statement provides the following:

A 0.78-acre portion of the site located in the northeast corner of Parcel 1 is zoned RR-10 Rural Residential. The size, location, and configuration was determined in the most recent land use review, MP-5-31. CU-05-106, SMA-05-41, MA-06-1, MA-06-8. The diagram showing the zone boundaries in Figure 7 below and Appendix F, Zoning and Large Tract Dwelling Location, was prepared by Hickman Williams & Associates Inc., an engineering, surveying, and planning firm that determined the boundaries from the official zoning maps adopted by the County. It appears that the zone line is within the 100-foot setback from the north and east property lines, allowing Parcel 1 to be considered entirely zoned F1 Forest Use for purposes of considering zoning requirements. However, if it is determined through this land use review that the RR-10 zoned portion of the site does not meet the requirements for exemption under this section, this Burden of Proof also includes an analysis of compliance with the requirements of the RR-10 zone.

Figure 7. Location of the RR-10 Rural Residential Zone



Source: Image from applicant's revised burden of proof statement



Source: Excerpted image from applicant's revised burden of proof statement (Appendix F)

Staff concurs with the applicant's findings above and, based on Section 18.12.040 (C) above, believes that the RR-10 zoning does not apply to proposed Parcel 1.

B. Chapter 18.52, Surface Mining Zone – SM

1. 18.52.040, Uses Permitted Outright Subject to Site Plan Review

The following uses are permitted outright subject to site plan review as provided in DCC 18.52.040:

- A. **Extraction of minerals.**
- B. **Stockpiling and storage of minerals.**
- C. **Screening, washing and sizing of minerals.**
- D. **Sale of minerals and mineral products extracted and produced on the parcel or contiguous parcels in the same ownership.**
- E. **Buildings, structures, apparatus, equipment and appurtenances necessary for the above uses to be carried on.**

...

STAFF COMMENT: The applicant indicates an approved surface mining operation is present on proposed parcel 3, which is the only proposed parcel containing SM zoning and that no new uses or activities are proposed with this land use review.

2. 18.52.060, Dimensional Standards

In the SM Zone, no existing parcel shall be reduced in size and no additional parcels shall be created by partition, subdivision or otherwise.

STAFF COMMENT: Proposed Parcel 3 contains the full 40 acres of SM-zoned land that exists on the subject property. No portion of the SM-zoned land will be separated or further divided as a result of this partition. Staff believes that proposed parcel 3 complies with this criterion as new parcels within the SM zone are not being created, rather one parcel entirely zoned SM. Parcel 2 is zoned F1 and Parcel 1 is zoned RR-10 and F1, therefore this criterion is not applicable to those proposed parcels.

3. 18.52.090, Minimum Use Setbacks

- A. *Except as otherwise provided in DCC 18.52.090, all surface mining activities and uses, including structures, shall be located and conducted at least 250 feet from a noise-sensitive or dust-sensitive use or structure. Exceptions to this standard shall be allowed for the following:***
- 1. *Access roads approved as part of site plan review.***
 - 2. *Dwellings located on the parcel on which the surface mining is to occur, including replacements or expansions thereof.***
 - 3. *Pursuant to a written agreement for a lesser setback made between the owner of the noise-sensitive or dust-sensitive use or structure located within 250 feet of the proposed surface mining activity and the owner or operator of the proposed surface mine. Such agreement shall be notarized and recorded in the Deschutes County Book of Records and shall run with the land. Such agreement shall be submitted and considered at the time of site plan review or site plan modification.***
- B. *Storage and processing of mineral and aggregate material, and storage of operational equipment which creates noise and dust, shall not be allowed closer than one-quarter mile from any noise or dust sensitive use or structure existing on the effective date of Ordinance No. 90-014, unless the applicant demonstrates that:***
- 1. *Due to the parcel size, topography, existing vegetation or location of conflicting uses or resources, there is no on-site location for the storage and processing of material or storage of equipment which will have less noise or dust impact; and***
 - 2. *All noise control and air quality standards of DCC 18 can be met by the proposed use for which the exception is requested.***
- C. *Additional setbacks may be determined as part of the site reclamation review process. Additional setbacks also may be required by DOGAMI.***
- D. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

...

STAFF COMMENT: DCC 18.040.030 defines dust-sensitive and noise-sensitive uses as follows:

"Dust-sensitive use" means real property normally used as a residence, school, church, hospital or similar use. Property used in industrial or agricultural activities is not "dust-sensitive" unless it meets the above criteria in more than an incidental manner. Accessory uses such as garages and workshops do not constitute dust-sensitive uses.

"Noise-sensitive use" means real property normally used for sleeping or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not "noise-sensitive" unless it meets the above criteria in more than an incidental manner. Accessory uses such as garages or workshops do not constitute noise-sensitive uses.

Existing surface mining activities and uses on proposed parcel 3, zoned SM, including structures, located and conducted beyond 250 feet from a noise-sensitive or dust-sensitive use or structure. No new noise noise-sensitive or dust-sensitive uses or structures are required to obtain SMIA Site Plan approval and must be 250 feet or farther from the SM zone boundary unless a written consent via an agreement is obtained from the surface mine operator and recorded with the Deschutes Clerk. No new uses or expansion of existing uses are proposed with this land use review.

C Chapter 18.36, Forest Use Zone - F-1

1. 18.36.010, Purpose

The purpose of the Forest Use Zone is to conserve forest lands.

2. 18.36.020, Uses Permitted Outright

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria set forth in DCC 18.36 and any other applicable provisions of DCC Title 18.

A. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4.

...

E. Farm use as defined in ORS 215.203.

...

STAFF COMMENT: The applicant indicates farm operation (horse stable, pasture, and meadow) is located on Parcel 2 and the remainder of the site zoned F1 is forested. No new uses or development are proposed as part of this land use proposal.

3. 18.36.030, Conditional Uses Permitted

The following uses and their accessory uses may be allowed in the Forest Use Zone, subject to applicable provisions of the Comprehensive Plan, DCC 18.36.040 and other applicable sections of DCC Title 18.

...
Y. Single-family dwellings or manufactured homes as specified in DCC 18.116.070, as pursuant to DCC 18.36.050.

...
18.36.050. Standards for Single-Family Dwellings.

A. General provisions.

...
C. Large Tract Dwelling. A dwelling not allowed pursuant to DCC 18.36.050(B) may be allowed if the subject property consists of at least 240 contiguous acres or 320 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use and does not include an existing dwelling.

...

STAFF COMMENT: No new uses are proposed with this application, therefore a conditional use permit is not required at this time. The applicant's burden of proof statement provides the following in response to this criterion:

As described previously a portion of the site labeled as "Pt Parcel 1" of PP2002-90 was the subject of a previous land use review that sought to create two parcels (MP-5-31, CU-05-106, SMA-05-41, MA-06-1, MA-06-8). The partition was denied, but a conditional use for a large tract dwelling was approved. Through renewal of the approval and a recent declaratory ruling (247-15-000632-DR) the approval continues. Proposed Parcel 2 is 246 acres in size, which meets the minimum size requirement. No other large tract dwelling requirements will be affected by the partition. Location of the approved dwelling envelope and measured setbacks from proposed parcel boundaries are illustrated in Appendix F.

Of particular note is that neither planned nor cluster development is an allowed or conditional use. This is important when discussing application of the WA requirements within the RR-10 zoned portion of Parcel 1 if an exemption under Section 18.12.040.C is not granted.

4. 18.36.090, Dimensional Standards

In an F-1 Zone, the following dimensional standards shall apply:

A. The minimum lot size is 80 acres; or

...

STAFF COMMENT: This standard is met as the proposed F-1 zoned parcels exceed the 80 acre minimum lot size. Proposed Parcels 1 and 2 are approximately 242 and 246 acres respectively. Parcel 1 has split zoning, with approximately 0.78 acres in the RR-10 Zone and 241.22 acres in the F1 Zone.

5. 18.36.100, Yards and Setbacks

- A. *The front yard setback shall be 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector and 100 feet from a property line fronting on an arterial.*
- B. *Each side yard setback shall be a minimum of 25 feet, except a parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.*
- C. *Rear yards shall be a minimum of 25 feet, except parcels or lots with rear yards adjacent to zoned forest land shall have a minimum rear yard of 100 feet.*

STAFF COMMENT: No new buildings or structures are proposed as part of this application. Based on the submitted plans, all existing structures exceed the yard and setbacks of this section. The applicant's revised burden of proof statement provides the following in response to this criterion:

The existing barn on Parcel 2 is 200 feet from proposed Parcel 3 and 600 feet from the proposed south lot line of Parcel 1. The approved site for the large tract dwelling is 304 feet from proposed Parcel 3 and 215 feet from the proposed south line of Parcel 1. No new structures are proposed with this review.

- D. *The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.*

STAFF COMMENT: As addressed above under DCC 17.36.210, Solar Access Performance, the substantial size of the proposed parcels, coupled with the dimensions of the parcels (in excess of 550 feet in a north-south direction) ensure adequate solar access for any future development. Therefore, these standards can be met for any future use. No new structures or uses are proposed with this land use review.

- E. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.*

STAFF COMMENT: No new uses are proposed as part of this land use review. Compliance with this criterion can be addressed through land use or building permit review for any future building or structure or expansion of an existing building or structure.

6. 18.36.110, Stream Setbacks

STAFF COMMENT: There are no streams on the site, therefore this standards does not apply.

D. **Chapter 18.56, Surface Mining Impact Area Combining Zone - SMIA**

1. 18.56.010, Purpose

The purpose of the SMIA zone is to protect the surface mining resources of Deschutes County from new development which conflicts with the removal and processing of a mineral and aggregate resource while allowing owners of property near a surface mining site reasonable use of their property.

18.56.020. Location. *The SMIA zone shall apply to all property located within one-half mile of the boundary of a surface mining zone. However, the SMIA zone shall not apply to any property located within an urban growth boundary, city or other county. The extent and location of the SMIA Zone shall be designated at the time the adjacent surface mining zone is designated.*

STAFF COMMENT: Parcel 3 is zoned SM, so all land within one-half mile of its boundaries are impacted by the SMIA Combining Zone. This includes all of Parcel 2 and the portion of Parcel 1 that is west of Sisters Mainline Road.

2. 18.56.040, Uses Permitted Outright

...

STAFF COMMENT: No new uses are proposed as part of this land use review. This and other development-related criteria will be addressed when a new use or expansion of an existing use is proposed. A condition of approval should stipulate that new noise-sensitive or dust-sensitive uses, that do not already have a valid land use approval allowing such use, shall obtain approval for SMIA Site Plan Review.

3. 18.56.060, Dimensional Standards

In the SMIA Zone, the lot size shall be that prescribed in the underlying zone.

STAFF COMMENT: As previously addressed, each of the proposed parcels comply with the minimum lot size for each zone applied to the property.

4. 18.56.070, Setbacks

The setbacks shall be the same as those prescribed in the underlying zone, except as follows:

...

STAFF COMMENT: No new uses are proposed as part of this land use proposal. Setbacks for future structures, or additions, will be required to comply with setback requirements for the applicable zone.

E. Chapter 18.60, Rural Residential Zone - RR-10

1. 18.60.010, Purposes

The purposes of the Rural Residential Zone are to provide rural residential living environments; to provide standards for rural land use and development consistent with desired rural character and the capability of the land and natural resources; to manage the extension of public services; to provide for public review of nonresidential uses; and to balance the public's interest in the management of community growth with the protection of individual property rights through review procedures and 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.

STAFF COMMENT: As previously addressed, because the RR-10 zoned portion of the property appears to comply with 18.12.040 (C), and the entire parcel is considered to be zoned F-1, Staff believes that DCC 18.60 need not be addressed. However, below is the applicant's response to subsection the minimum lot size under (C) above:

Approximately .78 acres of the extreme northeast corner of proposed Parcel 1, abutting Johnson Road, is zoned RR-10 (Rural Residential with a minimum lot size of ten acres). It appears that this is a graphics (mapping) error as it is significantly smaller than the minimum lot size allowed in the RR-10 zone. An earlier land use review for partitioning of the site (MP-05-31, CU-05-106, SMA-05-41, MA-06-1, MA-06-8) concluded that the zone boundary was adopted by the County and is shown on the Official Zoning Maps. As a result, Parcel 1 (242 acres) has split zoning with the entire 0.78 acres of RR-10 and 241.22 acres of F-1.

Also found in this previous land use decision is a discussion of split zoning on the same parcel. The Hearings Officer concluded that, for a proposed parcel to be approved that has split zoning, the area within one zone must meet the dimensional and area standards of that zone. As presently proposed, Parcel 1 is 242 acres in size, of which 241.22 acres is zoned F-1, meeting the minimum requirements for that zone. Although the 0.78-acre RR-10 zoned portion of Parcel 1 is below the minimum lot size for that zone, the RR-10 portion of the site is not affected by the proposed partition. The full 0.78 acres will remain within and be part of proposed Parcel 1.

Proposed Parcel 1 is 242 acres in size. No development is proposed, so the density requirement does not apply. Even if it did apply, neither the minimum lot size of five acres (being within one mile of an urban growth boundary) or the maximum density requirement of one dwelling per 7.5 acres (allowing 0.104 dwelling units) would allow a dwelling unit on the RR-10 zoned portion of the site.

In summary, the RR-10 zoned portion of the site does not meet the minimum lot size and cannot meet the density requirements for even a single dwelling. It will not be affected in any manner by the proposed partition as it will remain fully within Parcel 1, which meets the requirements of the F1 zone.

F. Chapter 18.88, Wildlife Area Combining Zone – WA

1. 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, the minimum lot size for new parcels shall be 40 acres except as provided in DCC 18.88.050(D).

STAFF COMMENT: The property is within the Tumalo Deer Winter Range. The proposal meets these criteria because it proposes to create parcels that exceed 40 acres in size.

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:

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

...

STAFF COMMENT: Staff believes that these standards do not apply to the proposed partition as a residential land division is not proposed and, based on previous findings addressing DCC 18.12.040 (C), proposed Parcel 1 is considered to be entirely zoned F1. Additionally, in response to these standards, the applicant's burden of proof statement provides the following:

This criterion does not apply for the following reasons:

- *The RR-10 zoned portion of the site is not being divided. It will remain entirely within the 242-acre Parcel 1.*
- *No residential development is proposed, so the proposed partition is not a residential land division.*
- *The F1 portion of the site is actively managed as forest use. The RR-10 portion of the site is vacant and will remain so. No change of use is proposed.*
- *The maximum density for a cluster or planned development is one dwelling unit per 7.5 acres, or a maximum of 0.104 dwelling units (slightly over one-tenth of a dwelling). Cluster or planned developments are not allowed in the F1 zone, so are confined to the 0.78 acres of RR-10. Therefore, no residential dwellings could be built on the RR-10 zoned portion of Parcel 1. If no residential dwellings could be built, the proposed partition is not a residential land division.*

Staff believes the applicant's reasons as to why the dimensional standards do not apply to the RR-10 zoned portion of the property are reasonable and concurs.

IV. RECOMMENDATION:

Based upon the above Findings, Staff believes that the proposed partition application can meet the requirements of Titles 17 and 18 of the Deschutes County Code and recommends approval.

V. RECOMMENDED CONDITIONS OF APPROVAL:

AT ALL TIMES

1. Approval is based upon the submitted plan, the applicant's burden of proof and supplemental materials, and the applicant's written and oral testimony. Any substantial change to the approved plan will require a new application.

PRIOR TO FINAL PLAT APPROVAL

2. All easements of record or existing rights-of-ways shall be noted on the final mylar.
3. The applicant shall have a licensed land surveyor prepare a partition plat which conforms to Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code. The plat shall include the exact sizes for each parcel.
4. All ad valorem taxes, fees and other charges that have become a lien upon the entire parcel shall be paid. The final plat shall be signed by the County Assessor and County Treasurer.
5. All easements of record shall be shown on the final plat.
6. A current Title Report shall be submitted with the final plat application.
7. The applicant shall contact the Property Address Coordinator for new addresses.
8. The applicant shall provide documentation of approved access permits for all proposed parcels.
9. New noise-sensitive or dust-sensitive uses, that do not already have a valid land use approval allowing such use, shall obtain approval for SMIA Site Plan Review.
10. The applicant shall pay a parks fee of \$700.00 prior to final plat approval.
11. The final plat shall contain a statement of water rights for each parcel.

Dated this 17th day of May, 2016

Mailed this 18th day of May, 2016