Summary

**MP-99-24 and CU-99-169** – in this minor partition the **Hearings Officer** did not make findings on the floodplain acreage, apparently treating the property as if it were not split zoned. The application was denied on other grounds.

**TP-01-919 and CU-01-5** – in this subdivision, **Staff** did not make findings regarding the minimum acreage in the FP zone. The approximately 1 acre of FP zoned lands was split between five lots, with each lot relying on FP zoned lands to meet the 5-acre minimum lot size in the TuR5 zone.

**TP-07-996, CU-07-22, and V-07-3** – in this Cluster Subdivision decision, the **Hearings Officer** did not make findings on the minimum lot size in the FP zone. **Staff** notes that the FP zoned land was platted in a single, split-zoned lot. However, that lot contained only approximately 2 acres of floodplain zoned lands. General floodplain findings specified:

> The record indicates the only part of the subject property within the Deschutes River flood plain is located well below the upper plateau where the residential lots would be located. The revised tentative plan shows that part of the property will be within the designated common open space.

For purposes of cluster density calculation, the entire property, including the FP and MUA10 (Multiple Use Agricultural Zones) was counted.

**TP-08-1008 and CU-08-64** – in this 4-lot subdivision decision, **Staff**, found that Lot 1, which contained all the FP zoned lands met applicable acreage requirements, as the lot as a whole was over 10 acres, even though it was split zoned and only contained approximately 4 acres of FP zoned lands.

**MP-00-20 and CU-00-82** – in this minor partition decision, **Staff**, no findings were made with regard to the flood plain zoned acreage. The approximately 15 FP zoned acres were split between two lots and counted towards the 10-acre minimum requirement in the RR10 zone.

**MP-11-7, CU-11-21, and CU-11-22, CU-11-21, CU-11-22 and MP-11-7, CU-11-30, CU-11-31, and MP-11-10, CU-11-34, CU-11-35 and MP-11-12** – in these minor partition decisions, **Staff** found the proposal did not include development on FP zoned lands and, thus, that the standards in the FP zone did not apply.

**MP-13-2, CU-13-19, and CU-13-20** – in this minor partition decision, **Staff**, found the proposal would not further divide FP zoned lands and, thus, that the acreage standards in the FP zone did not apply.
MP-13-8 and V-13-10 – in this minor partition decision, Staff, found the proposal would not further divide FP zoned lands and, thus, that the acreage standards in the FP zone did not apply.

247-15-000194-CU, 247-15-000195-TP – In this PUD decision, the Hearings Officer definitively clarified that, “that the minimum lot size required for a new lot or parcel in the pertinent zone must be met entirely within that zone.” This was appealed to the BOCC but withdrawn by the applicant before the BOCC issued a decision.

The staff report questions whether in order to comply with the 10-acre minimum lot size in this paragraph, Tracts C and E must each have at least 10 total acres or at least 10 FP-zoned acres. Neither the tentative plan nor the applicant’s burden of proof states how many FP-zoned acres are in each tract. However, based on the Hearings Officer’s comparison of the tentative plan and the large-scale aerial photo/zoning map submitted into the record by staff, I find approximately 30 acres of the land in Tracts C and E – i.e., approximately 16 acres in Tract C and approximately 14 acres in Tract E – are zoned FP. Therefore, because Tract C and Tract E each include at least 10 acres of FP-zoned land, I find I need not address staff’s question.10

10 In this Hearings Officer’s decision in Tree Farm 4 (247-14-000248-CU, 247-14-000249-TP), I adhered to my previous holding in Taylor (MP-05-31, CU-05-106, SMA-05-41, MA-06-1, MA-0608) that the minimum lot size required for a new lot or parcel in the pertinent zone must be met entirely within that zone.
FINDINGS AND DECISION

FILE NUMBERS: MP-11-7, CU-11-21, CU-11-22

APPLICANT/OWNER: Canyons Land & Cattle Company, LLC
10400 N.E. Canyons Ranch Drive
Terrebonne, OR  97760

AGENT: Renee France, Attorney at Law
Ball Janik LLP
101 S.W. Main Street; Suite 1100
Portland, OR 97204

REQUEST: 
CU-11-21:  A conditional use permit for a nonfarm dwelling on Parcel 2, a 3.9-acre parcel in the EFU-TE zone.

CU-11-22: A conditional use permit for a nonfarm dwelling on Parcel 3, a 2.22-acre parcel in the EFU-TE zone.

MP-11-7:  Minor Partition to divide an 80.87-acre parcel into three parcels.

STAFF CONTACT: Kevin Harrison, Principal Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, County Zoning
Chapter 18.16, Exclusive Farm Use (EFU) Zones
  18.16.030, Conditional uses permitted – High value and nonhigh value farmland
  18.16.050, Standards for dwellings in the EFU zones
  18.16.055, Land divisions
  18.16.060, Dimensional standards
  18.16.070, Yards
  18.16.080, Stream setbacks
  18.16.090, Rimrock setback
Chapter 18.84, Landscape Management (LM) Combining Zone
Chapter 18.88, Wildlife Area (WA) Combining Zone
Chapter 18.96, Floodplain (FP) Zone

Attachment 4: Split Zone, Flood Plain Decisions

Quality Services Performed with Pride
Title 17 of the Deschutes County Code, Partitions.
Chapter 17.22, Approval of Tentative Plans for Partitions
Chapter 17.36, Design Standards
Chapter 17.48, Design and Construction Specifications

Oregon Revised Statutes 215.417

BASIC FINDINGS:

A. LOCATION: The subject property has an assigned address of 11375 N.E. 13th Street, Terrebonne. It is identified on Deschutes County Assessor's Map 14-13-3, as tax lot 700.

B. LOT OF RECORD: The subject property is a legal lot of record because, according to Assessor's records, it was lawfully developed with a house in 1934. The history of the property is discussed in detail below.

C. ZONING: The property is zoned Exclusive Farm Use – Terrebonne subzone (EFU-TE) and Floodplain (FP). It is also within the Landscape Management (LM) and Wildlife Area (WA) Combining Zones. It is designated agriculture on the Deschutes County Comprehensive Plan.

D. PROPOSAL: The applicant is proposing to divide an 80.87-acre parcel into three parcels. Parcel 1 would be 73.88 acres with 47.79 acres of water rights and contain the replacement dwelling authorized under LM-11-27. Parcel 2 would be 3.9 acres with no water rights and a nonfarm dwelling reviewed under CU-11-21. Parcel 3 would be 2.22 acres and no water rights and a nonfarm dwelling reviewed under CU-11-22. The partition is considered an irrigated land division for purposes of review.

E. SITE DESCRIPTION: According to the applicant, the property contains approximately 80 acres with 47.79 acres of water rights. The property is irregular in shape, with a mixture of grassland, juniper woodland and irrigated meadows. Farm use, in the form of pasture/hay and livestock grazing occurs on portions of the property. The property contains several irrigation ponds, outbuildings and the 1934 dwelling mentioned previously. The property lies generally west of the Crooked River on a high plateau, approximately 120 feet above the river terrace, except for a small portion of the property located on the first terrace along the river, below the rimrock that forms the canyon containing Crooked River. A small portion of this property spans the river, within the canyon. According to the Flood Insurance Rate Map (FIRM) for Deschutes County, a small section of the subject property within the canyon is located in the 100-year flood plain. The National Wetlands Inventory, “Opal City” Map (1995) indicates the subject property contains wetlands, primarily located along the river and associated with the irrigation ponds. No development is proposed in or near a mapped wetland.

The proposed home sites are located on sites 21 (Parcel 2) and 25 (Parcel 3), as identified within the Ranch at the Canyons. Parcel 2 is located at the northern end of the property, on a rocky terrace overlooking the Crooked River canyon. It has scattered junipers, sagebrush and grasses, along with abundant surface rocks. It is located at the eastern terminus of Canyons Ranch Drive, as extended through these applications.

Attachment 4: Split Zone, Flood Plain Decisions
Parcel 3 is located immediately south of the current terminus of Canyons Ranch Drive and is shaped as a flag lot with the pole section of the property running directly south of Canyons Ranch Drive, along a rock outcropping. The flag portion of the property is approximately 300 feet south of the road and is comprised of a rocky outcropping covered by juniper, sagebrush and grasses. To the east and west are pasture for cattle grazing and two ponds.

**F. SURROUNDING LAND USES:** The property is located within, and is surrounded by, the Ranch at the Canyons development, which contains juniper woodland, pasture and hay operations and scattered residences. To the east is the Crooked River located in a deep canyon; to the southeast is Smith Rock State Park.

The attributes of the adjoining and nearby EFU properties are summarized in the following table.

<table>
<thead>
<tr>
<th>Owner</th>
<th>Tax Lots</th>
<th>TL Acre/ Irr. Ac.</th>
<th>Farm Tax</th>
<th>DU</th>
<th>Soil Mapping Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jackson LLC West</td>
<td>14-13-3; 200</td>
<td>247/119</td>
<td>Y</td>
<td>N</td>
<td>101E; 106E; 106D; 32A; 142B</td>
</tr>
<tr>
<td>Canyons LLC East</td>
<td>14-13-3; 701; 702; 703</td>
<td>35/0</td>
<td>Y</td>
<td>N</td>
<td>2007</td>
</tr>
<tr>
<td>Jackson LLC</td>
<td>14-13-10; 506; 500</td>
<td>10/9</td>
<td>Y</td>
<td>Y</td>
<td>142B; 32A</td>
</tr>
<tr>
<td>Canyons Burgess South</td>
<td>14-13-3; 300; 400</td>
<td>63/25</td>
<td>Y</td>
<td>N</td>
<td>32A; 142B; 81F; 49A</td>
</tr>
<tr>
<td>Canyons Belden North</td>
<td>14-13-3; 400; 500; 600</td>
<td>105/0; 12/0; 14/0</td>
<td>Y</td>
<td>N</td>
<td>32A; 142B; 49A; 81F; 110E; 80D</td>
</tr>
</tbody>
</table>

**G. SOILS:** According to NRCS soil mapping for this area, the subject property contains the following soil types:

32A: Deschutes Sandy loam, dry, 0 to 3% slopes. This soil is typically composed of 85 percent Deschutes soil and similar inclusions and 15 percent contrasting inclusions. It is found on lava plains between 2,500 and 4,000 feet in elevation with native vegetation of western juniper, mountain big sagebrush and grasses. This soil is well drained with a moderately rapid permeability and a water capacity of about 4 inches. Major uses include irrigated cropland and livestock grazing and the soil has a soil capability of 6S when not irrigated and 3S when irrigated. This is a high-value soil when irrigated.
142B: Stukel-Rock Outcrop-Deschutes complex, dry, 0 to 8% slopes. This complex is typically composed of 35 percent Stukel soil and similar inclusions, 30 percent rock outcrop, 20 percent Deschutes soil and similar inclusions and 15 percent contrasting inclusions. This complex is found on lava plains between 2,500 and 3,500 feet in elevation with native vegetation of western juniper, mountain big sagebrush and grasses. These soils are well drained, with moderately rapid permeability and a water capacity of about 4 inches. Major uses include livestock grazing with the Stukel part of the complex having a soil capability of 6E when not irrigated and 4E when irrigated. The rock outcrop part has a soil capability of 8S. The Deschutes part has a soil capability of 6E when not irrigated and 3E when irrigated.

49A: Fluvents, 0 to 1% slopes. This soil is typically composed of 90 percent Fluvents and 10 percent contrasting inclusions. It is found on flood plains at elevations between 1,200 and 1,500 feet. Native vegetation is willow, rabbitbrush, big sagebrush and reeds. This soil is somewhat excessively to excessively drained with a moderately rapid to very rapid permeability and a water capacity of about 5 inches. Major uses include wildlife habitat with the Fluvents part of the soil having a soil capability of 6S when not irrigated.

81F: Lickskillet-Rock Outcrop complex, very gravelly, 45 to 80% south slopes. This complex is typically composed of 60 percent Lickskillet soil and similar inclusions, 35 percent rock outcrop and 5 percent contrasting inclusions. This complex is found on canyon sideslopes between 2,000 and 4,500 feet in elevation with native vegetation of western juniper, Wyoming big sagebrush, antelope bitterbrush and grasses. These soils are well drained, with rapid permeability and a water capacity of about 1 inch. Major uses include livestock grazing with the Lickskillet part of the complex having a soil capability of 7E and the rock outcrop part having a soil capability of 8S.

Additionally, the applicant has included a site-specific soils report by Wert & Associates as Exhibit B to the burden of proof, which is incorporated herein by reference. This report provides detailed soils analyses for the proposed nonfarm parcels.

In his investigation of the site, Mr. Wert dug 52 soil pits within Parcel 2, concluding that Parcel 2 is composed of 54% Class 7 soils. Based on 12 soil pits on Parcel 3, Mr. Wert concluded that Parcel 3 is composed of 66.7% Class 7 soils.

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

1. Deschutes County Road Department: The Road Department submitted the following comments:

   Background information:

   • A portion of Canyons Ranch Drive is a public right-of-way that was dedicated and improved per MP-09-5.
   • The applicant is proposing to extend Canyons Ranch Drive to Parcel 2. The extension will have to meet minimum design standards listed in DCC Title 17, Table A for a partition. This includes a right-of-way dedication of 60 feet in width and the road improved to a width of 20 feet with 5 inches of aggregate surfacing.
The applicant is to meet the following conditions if this land use application is approved:

1. All easements of record or existing rights-of-way shall be noted on the final mylar.
2. Applicant shall dedicate 60 feet of right-of-way for the extension of Canyons Ranch Drive.
3. The applicant shall construct Canyons Ranch Drive to the standards listed in DCC 17.48.170(A). This includes building the roadway to a width of 20 feet with 5 inch depth aggregate surfacing.
4. The applicant shall build an emergency services vehicle turnaround at the end of Canyons Ranch Drive that meets the standards of the applicable fire district. This turnaround shall be constructed to the standards for a partition which includes a 5” depth aggregate surfacing meeting the dimensions required by the fire department.

2. County Transportation Planner: “I have reviewed the transmittal for two non-farm dwellings for a 3-lot partition at Ranch of the Canyons at 11375 NE 13th Street, Terrebonne (14-13-3, TL 700). The 8th edition of the ITE Manual indicates a single-family home generates 9.57 trips per day. These two homes will produce 19.14 trips (9.57 x 2) weekday trips. As this application will generate less than 50 new weekday trips, under DCC 17.16.115(C)(4) no traffic analysis is required.

Deschutes County has developed a countywide transportation system development charge (SDC). BOCC Resolution 2008-059 sets the SDC for a single-family home. Beginning July 1 and until June 30, 2012, the SDC is $3,528 per peak hour trip. The SDC therefore would be $7,056 ($3,528 x 2).”

3. Deschutes County Building Safety Division: No comment received.

4. County Assessor: No comment received.

5. Deschutes County Environmental Soils: “A complete and approved site evaluation for an onsite wastewater system is required on each new parcel to serve each proposed dwelling.”

6. Property Address Coordinator: “New addresses will need to be assigned at the time of development on them.”

7. Redmond Fire and Rescue: The fire department submitted comments which are attached to this decision and incorporated herein by reference. Most relevant to these applications are the following comments:

1. Fire apparatus access roads shall extend to within 150 feet of all portions of the building as measured by an approved route around the exterior of the building.
2. Fire apparatus access roads shall have an unobstructed width of not less that 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches.

Attachment 4: Split Zone, Flood Plain Decisions
3. Fire apparatus roads shall be designed and maintained to support the imposed loads of 70,000 lbs. and shall be surfaced so as to provide all-weather driving capabilities.

4. The required turning radius of a fire apparatus access road shall be 30 feet inside and 50 feet outside.

5. The grade of the fire apparatus access roads shall be within the limits established by the fire code official (10%).

6. Length of dead end greater than 500 feet shall meet the turnaround requirements and the width of the road shall be a minimum of 26 feet clear for apparatus.

8. Central Oregon Irrigation District: No comment received.

9. Central Electric Co-op: No comment received.

I. PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use and partition applications to all property owners within 750 feet of the subject property. No comments were submitted in response to that notice.

J. REVIEW PERIOD: These applications were submitted on June 9, 2011. They were accepted as complete on July, 8, 2011. The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit for the applications dated June 24, 2011 that indicates that the applicant posted notice of the land use action on June 24, 2011.

K. LAND USE HISTORY: As detailed in County file no. LM-95-172, the property was originally identified on Assessor’s map 14-13 as tax lot 600. Subsequently, the property was reconfigured through a series of property line adjustments including the following:

   LL-00-99 (11/21/00; CS 14269)
   LL-00-112 (1/21/00; CS 14339)
   LL-01-4 (2/21/01; CS 14383)

After LL-01-4, the County Assessor created a new map and tax lot number for this property so that it is now identified on map 14-13-3 as tax lot 700.

   LL-01-73 (9/24/01; CS 14629)
   LL-07-6 (3/8/07; no survey filed with Surveyor)
   LL-07-75 (2/22/08; no survey filed with Surveyor)
   LL-08-108 (12/19/08; no survey filed with Surveyor)

Finally, the property was approved for a replacement dwelling in File No. LM-11-27.

III. CONCLUSIONARY FINDINGS:

TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

A. CHAPTER 18.16, EXCLUSIVE FARM USE ZONES.

1. Section 18.16.030, Conditional uses permitted - High value and non-high value farmland.
The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of Title 18.

A. Nonfarm dwelling

FINDING: The applicant is proposing to establish a nonfarm dwelling on each of two nonfarm parcels created by this partition. DCC sections 18.16.040 and 18.16.050 are addressed below.

2. Section 18.16.050, Standards for Dwellings in the EFU Zones

Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

G. Nonfarm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

   a. The Planning Director or Hearings Body shall make findings that:

      i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

FINDING: The applicant will be required to sign and record the waiver listed above as a condition of final plat approval. There are no forest zoned properties or properties devoted to forest use on nearby lands.

The area surrounding the proposed parcels is a mix of farm uses, rural residential uses and recreational uses (Smith Rock State Park). Typical farming practices in the area include hay production, pasture and livestock grazing (horses and cattle).

Based on data compiled from the Oregon State University (OSU) Extension Service, it is generally accepted that farming practices in the surrounding area can generate the following types of impacts. Maintaining irrigated pasture can generate dust form re-seeding, drifting of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing and possible water run-off from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape. Growing grass hay
can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from baling hay, manure odor from spreading manure for fertilizer and possible water run-off from irrigation. Based upon this information, it is necessary to determine whether the impacts from the farm uses occurring on nearby lands devoted to farm use are likely to create conflicts with the nonfarm dwellings that will force a significant change in, or significantly increase the cost of, accepted farming practices.

To address this criterion, the applicant physically inspected the farm uses in the surrounding area and reviewed Assessor’s data for adjacent parcels. In addition, the applicant reviewed County GIS maps for the surrounding area. These maps show all EFU-zoned properties within a one-mile radius of the subject property. The majority of the EFU-zoned property within this radius is owned and managed by the Ranch at the Canyons.

The County GIS maps and land use records show 63 EFU-zoned tax lots within a one-mile radius of the subject property, including land within both Deschutes and Jefferson Counties. There are also 27 existing dwellings within this area. Of the 63 EFU-zoned tax lots within the study area, 2 are publicly-owned (USA). The public properties are not receiving farm tax deferral, and 19 of the privately-owned tax lots are not receiving farm tax deferral. Thus, the majority of the privately-owned EFU-zoned properties are in farm tax deferral and are being used for both residential and agricultural purposes. The farm use closest to the proposed nonfarm dwellings occurs on the remainder parcel, Parcel 1, created as part of this partition. Additional pasture and hay production fields are located on Ranch lands to the west and south of the proposed parcels and on Ranch lands below the canyon rim (on the west side of the Crooked River). The lands east of the Crooked River are part of an approximately 550-acre tract protected as open space and agricultural use in perpetuity under a conservation easement that the Ranch has executed with the Deschutes Basin Land Trust. The Ranch has in place a management program to promote and maintain agricultural use along with residential use that ensures that residential development will not affect the farm use within the Ranch.

Parcel 2 is located on the rocky rim of the canyon overlooking the Crooked River and is geographically separated from farming activities. Parcel 3 is located along a rocky lava intrusion, placing it higher than the farmland surrounding it. Neither parcel shows signs of past farm use; both parcels have sufficient area to provide 100-foot setbacks from all property lines. Finally, the farm uses occurring nearby include extensive livestock grazing and hay production, which are low intensity farm uses. Based on the information provided by the applicant and observed by staff, staff finds that the proposed dwellings, and the activities associated with the dwellings, will not force a significant change in, or significantly increase the cost of, accepted farming practices on nearby lands devoted to farm use.

**Finding:** The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

**Finding:** On June 1, 1998, the Land Conservation and Development Commission adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter
660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The rules continue to apply the three-step “stability” analysis first articulated in Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989). The rules are as follows:

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

1. Cumulative Impacts Analysis Area. The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property’s boundaries and including approximately 2,000 acres (hereafter called
“study area”). Staff finds this area of analysis is suitable to provide a comprehensive analysis of the character of the area surrounding the subject property because of its size and the number of properties located within it. As indicated in a foregoing finding, the study area is primarily zoned EFU-TE, and a portion of the study area is located in Jefferson County.

As discussed above, there are 63 EFU-zoned tax lots in the study area (excluding the subject property), 61 of which are privately owned. The properties in the study area range in size from .46 to 280 acres. Twenty-five of the tax lots in the study area are 20 acres or less in size, 16 tax lots are between 20+ and 40 acres in size, 11 tax lots are between 40 and 80 acres in size, and 9 tax lots are larger than 80 acres.

2. **Types of Farm Uses.** The EFU zoned land in the study area involves farming primarily in the form of hay production and livestock grazing on irrigated pasture and dry land. Forty-two of the tax lots in the study area are receiving farm tax deferral, and most of them appear to have some kind of farm use occurring. The amount of water rights on these farm deferred properties ranges from 0 to 119 acres. Based upon the amount of irrigation and the size of the parcels in the study area, staff estimates a total of 918 acres (acreage that is possibly being irrigated) are engaged in farm use and approximately 1,908 acres are not engaged in farm use. As discussed above, the predominant farm practices include hay production and livestock grazing.

The record indicates that the study area is located within the Central Oregon Irrigation District. It includes soil type(s) that are high value (32A and 104A), and nonhigh value (35B, 49A, 80D, 80E, 81F, 101D, 101E, 106D, 106E, 110D, 110E, 117C and 142B). Although there is a swath of high value soils (32A and 104A) that runs through the study area in a north-south direction, the majority of those soils located south of N.E. Eby Avenue and west of N.E. 9th Street are either zoned MUA-10 or are located within the Terrebonne UUC.

3. **Existing Dwellings.** The record indicates that 27 of the 61 tax lots in the study area have dwellings. These dwellings were built in the following years: 11 dwellings prior to 1979, 4 dwellings from 1979 to 1992, and 12 dwellings from 1993 to present.

Staff finds that the dwellings developed prior to 1979 predated the County’s EFU zone and therefore were not subject to EFU zoning requirements. According to the applicant, the County has approved 12 replacement dwellings within the study area to replace houses that were built prior to 1978. These data show that a majority of the dwellings within the study area were constructed prior to EFU zoning and that residential and farm uses have co-existed in this area for over 20 years.

4. **Dwelling Development Trends Since 1993.** As discussed above, most of the dwellings constructed in 1993 or after were either nonfarm dwellings or replacement dwellings.

5. **Potential Nonfarm Parcels.** Thirty-four of the privately owned tax lots in the study area are vacant, 3 of which are located in Jefferson County. Of the existing vacant tax lots in Deschutes County, 14 of them have land use permits for houses which, staff assumes, will be built in the future. That leaves 17 vacant tax lots which could
potentially accommodate a new nonfarm dwelling. There are four tax lots with enough irrigation water to qualify for an irrigated land division, where a small, dry unproductive portion of a farm property is partitioned off from a larger farm parcel that qualifies under sections 18.16.055 and 18.16.065 of Title 18. These properties have a maximum potential of 5 new nonfarm parcels.

It is not clear whether each of the above parcels could qualify for a partition, since each parcel would have to have enough dry area with poor soils to accommodate a dwelling (with 100-foot setbacks from new property lines) septic system, and meet the road frontage standard.

It appears that 2 of the tax lots could qualify for a non-irrigated land division where a dry 40-80-acre parcel could be divided into two parcels, or a parcel larger than 80 acres could be divided into dry parcels, leaving at least an 80-acre parent parcel. The maximum potential here would be an additional 2 new nonfarm parcels.

6. Potential Nonfarm Dwellings. Theoretically, if all of the existing and potential properties identified above were approved for nonfarm dwellings there could be an additional 24 such dwellings (17 vacant parcels, and additional dwellings on each of the parcels potentially capable of a land division). Staff notes that this figure may be overstated as some of these properties have land use approvals that, apparently, have not yet been put to use and which would reduce the potentials stated above.

It is not clear whether a nonfarm dwelling can be approved on each parcel, since they are reviewed on a case by case basis. The dwellings have to be reviewed for their effect on the stability of the land use pattern, whether they are on land generally unsuitable land for the production of crops or livestock, and whether they will cause a significant change in or significantly increase the cost of accepted farming practices on adjacent land.

Staff will assume for purposes of review that up to 24 new nonfarm dwellings could be developed, based on the 17 vacant parcels, and the 7 tax lots potentially eligible for a partition.

7. Potential Lot of Record Dwellings. Under Section 18.16.050(E) and OAR 660-033-130(3), a lot of record dwelling may be sited on an EFU-zoned parcel on nonhigh value farmland if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F) and OAR 660-033-130(3)(c), a lot of record dwelling may be sited on high value farmland if it meets the criteria for a lot of record dwelling on nonhigh value farmland and the Planning Division finds the parcel cannot practically be managed for farm use “due to extraordinary circumstances inherent in the land or its physical setting,” such as “very steep slopes, deep ravines … or other similar natural or physical barriers.”

The Planning Division has previously determined that lot of record dwellings can be difficult to obtain, given the requirement for ownership prior to 1985 and the land cannot be suitable for farming based on the above factors. Some parcels may qualify for a lot of record dwelling, but without a specific analysis of each and every
8. **Stability and Character of the Land Use Pattern of the Area.** Based upon the above findings, staff finds the land use pattern and character of the study area is predominately one of mixed residential and farm use on the west side of the Crooked River, with recreational (Smith Rock State Park) and open space east of the river. Most of the residential development within the area occurred prior to 1993, and the acreage in agricultural use has not experienced any noticeable change.

While there has been residential development within the Ranch at the Canyons, a lot of it can be attributed to replacement dwellings and careful siting of new homes to preserve on-going agricultural activities within the Ranch. Moreover, staff is aware that the Ranch has increased agricultural use within it’s boundaries over what occurred historically. For these reasons, staff finds that the approval of the proposed nonfarm dwellings will not materially alter the stability of the overall land use pattern of the area.

9. **Effect on Stability from Proposed Non-irrigated Partition and Nonfarm Dwellings.**

   iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

2. **For the purposes of DCC 18.16.050(G) only, “unsuitability” shall be determined with reference to the following:**

   a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

   b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.
c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

FINDING: As demonstrated by the Wert Report, the proposed nonfarm parcels are unirrigated and composed predominantly of Class 7 soils. Therefore, they are not presumed to be suitable for farm use. As further noted in the Wert Report, the majority of the test pits revealed shallow depth, high percentages of coarse fragments and low water holding capacity. Staff finds that the Wert Report demonstrate that the soils within the nonfarm parcels are too rocky and do not hold adequate water to be suitable for the production of forage, and the soils cannot be cultivated for crops due to the low water holding capacity and high coarse fragment content. The subject property is not under forest assessment and, thus, (c) is not applicable. Ultimately, staff finds that the proposed nonfarm parcels are generally unsuitable for the production of farm crops and livestock because of adverse soil conditions, terrain and vegetation.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot or sales yard, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

FINDING: The applicant asserts, and staff agrees, that the nonfarm dwellings are not within one-quarter mile of a dairy farm, feed lot or sales yard.

Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.

FINDING: The applicant submitted the following information to demonstrate that public services and utilities are adequate:

1. Electricity. Central Electric Co-op
2. Road access. Canyons Ranch Drive, a dedicated public road.
3. Telephone. Qwest.
5. Fire protection. Redmond Fire & Rescue

Based on these findings and the applicant’s ability to conform to the conditions of approval specified above, staff finds the proposal can meet this criterion.

v. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).

FINDING: The nonfarm dwellings will be located on nonfarm parcels being created under the standards in DCC 18.16.055(B).

3. Loss of tax deferral. Except as provided in DCC 18.16.050(I)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor’s Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

FINDING: According to Assessor records, the property is receiving special assessment for farm use. As a condition of final plat approval, the applicant will be required to disqualify the nonfarm parcels (Parcels 2 and 3) from special assessment as specified and pay any additional tax or penalty imposed by the County Assessor. The applicant will be required to provide documentation of such disqualification prior to final plat approval.

3. Section 18.16.070. Yards

A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.

FINDING: In the applicant’s Exhibit B, the soil survey prepared by Wert and Associates, Inc., there are scaled drawings showing building envelopes for Parcels 2 and 3. The building envelope on Parcel 2 is set back 40 feet from the front property line; the building envelope for Parcel 3 is set back 400 feet from the front property line. Since Canyons Ranch Drive is a local street, both nonfarm dwellings will meet the front yard requirement.

B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.

FINDING: Again, on Exhibit B, the building envelope on Parcel 2 is at least 100 feet from all side property lines. The building envelope on Parcel 3 is at least 100 feet from all property lines. Since
both dwellings are nonfarm dwellings and since the property adjacent to both nonfarm parcels is currently employed in farm use, the 100 foot setback is required and can be met.

C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.

FINDING: Again, on Exhibit B, the building envelope on Parcel 2 is at least 100 feet from the rear property line as is the building envelope on Parcel 3. Since both dwellings are nonfarm dwellings and since the property adjacent to both nonfarm parcels is currently employed in farm use, the 100 setback is required and can be met.

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.

FINDING: Staff is not aware of any greater setback required by the State of Oregon or Title 15.

4. Section 18.16.055, Land Divisions

A. General. A division of land in the exclusive farm use zone shall be identified on the land division application as either an irrigated land division, nonirrigated land division, or a division of land for a use permitted by DCC 18.16.030 other than a dwelling. An irrigated land division is subject to subsection B below; a nonirrigated land division is subject to subsection C below; and a division for a use other than a dwelling is subject to subsection E below.

B. Irrigated land division.

1. An irrigated land division shall be subject to the minimum lot or parcel size requirements of DCC 18.16.065, Subzones, and all applicable requirements of DCC Title 17.

2. Partitions establishing parcels less than the EFU minimum parcel size established under DCC 18.16.065, may be permitted to create new parcels for nonfarm dwellings as follows:

b. If the parent parcel is equal to or greater than the minimum lot size established under 18.16.065, and is greater than or equal to 80 acres in size, two new nonfarm parcels may be created subject to the following:

i. Parent parcel was lawfully created prior to July 1, 2001;

FINDING: According to the applicant, the property contains 47.79 acres of irrigated land and, thus, the proposed partition is an irrigated land division. The parent parcel contains 80.87 acres and, as described previously, was lawfully developed with a house in 1934 and reconfigured through a
series of property line adjustments. Since a property line adjustment serves to relocate an existing property line and does not create a new property, staff, therefore, finds that the property was lawfully created prior to July 1, 2001. Additionally, the property is eligible for up to two new nonfarm parcels and that is what has been proposed.

ii. Remainder parcel shall meet the minimum lot size established under 18.16.065;

FINDING: The remainder parcel in this partition is Parcel 1, which will contain 73.88 acres with 47.79 acres of water rights. The minimum lot size in DCC 18.16.065(C) is 35 acres of irrigated land. Staff finds that the remainder parcel meets this criterion.

iii. All standards established under 18.16.050(G) for the dwellings shall be met;

FINDING: The standards established under DCC 18.16.050(G) have been addressed in previous findings and are incorporated herein by reference.

iv. No minimum lot size shall be required for the nonfarm parcel;

FINDING: Even though there is no minimum lot size for the nonfarm parcels the parcels need to be large enough to accommodate all proposed improvements and their setbacks. Based on the findings made previously, both nonfarm parcels are large enough at 2.2 and 3.9 acres to accommodate development.

v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

FINDING: Staff has previously found that the parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops, livestock and merchantable tree species due to adverse soil conditions, terrain and vegetation.

5. Section 18.16.060, Dimensional Standards

The minimum parcel size for irrigated land divisions created subject to DCC Title 17 shall be as specified under DCC 18.16.065, “Subzones.”

FINDING: The minimum parcel size for irrigated land divisions in the Terrebonne subzone is 35 irrigated acres. (See: DCC 18.16.065(C)) The parent parcel in this application has 47.79 irrigated acres.

C. Each parcel shall have a minimum street frontage of 50 feet.
FINDING: Parcel 2 has approximately 135 feet of frontage on Canyons Ranch Drive and Parcel 3 has approximately 50 feet of frontage on Canyons Ranch Drive. Parcel 1 has much more than the minimum required street frontage and, thus, the proposal meets this criterion.

D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

FINDING: Building heights will be checked at the time a building permit has been submitted.

6. Section 18.16.080, Stream Setbacks

To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:

A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.

B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

FINDING: This criterion is applicable to Parcel 2. The proposed dwelling location on Parcel 2 is located approximately 300 feet from the ordinary high water mark of the Crooked River.

7. Section 18.16.090, Rimrock Setback

Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.

FINDING: This criterion applies only to Parcel 2. According to the plot plan contained in applicant’s Exhibit B, the building envelope on Parcel 2 is located at least 50 from the rimrock associated with the Crooked River canyon. This setback meets DCC 18.116.160.

C. CHAPTER 18.84. LANDSCAPE MANAGEMENT COMBINING ZONE


The provisions of this chapter shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of this chapter shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified a landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified

Attachment 4: Split Zone, Flood Plain Decisions
above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitation in this section shall not unduly restrict accepted agricultural practices.

FINDING: The Crooked River is identified on the County Zoning Map as the landscape management feature. Only proposed Parcel 2 falls within the landscape management combining zone. Therefore, the provisions of this chapter are applicable only to the nonfarm dwelling (CU-11-21) on Parcel 2. Since the applicant has not addressed the requirements of this Chapter staff will include a condition of approval requiring landscape management site plan review prior to issuance of any building permit on Parcel 2.

2. **Section 18.84.030. Uses Permitted Outright.**

*Uses permitted in the underlying zone with which the LM Zone is combined shall be permitted in the LM Zone, subject to the provisions in DCC 18.84.*

FINDING: As detailed above, the nonfarm dwelling on Parcel 2 is a conditional use in the underlying zone.

3. **Section 18.84.040. Uses Permitted Conditionally.**

*Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.*

FINDING: As detailed above, the nonfarm dwelling on Parcel 2 is a conditional use in the underlying zone, subject to the provisions of DCC 18.84.

4. **Section 18.84.050. Use Limitations.**

**A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.**

FINDING: The proposed house on Parcel 2 is a new structure which requires a building permit and, thus, is subject to site plan review under this Chapter. Therefore, as a condition of approval, the applicant will be required to obtain landscape management site plan approval prior to the issuance of any building permit on Parcel 2.

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

1. **Section 18.88.030. Uses Permitted Outright.**

*In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.*

FINDING: The WA zone only applies to that portion of the property located north and east of the Crooked River. Since no portion of any building site is located in the WA zone, this section is not

Attachment 4: Split Zone, Flood Plain Decisions
3. Section 18.88.050. Dimensional Standards.

**FINDING:** This section does not apply because no land division is proposed within the WA zone.


**C.** The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992...

**FINDING:** This section is not applicable as no dwelling is proposed in the WA zone.


**A.** New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:

1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
2. The height of the fence shall not exceed 48 inches above ground level.
3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

**B.** Exemptions:

1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
2. Corrals used for working livestock.

**FINDING:** The applicant has not proposed a fence in the WA zone thus, this section is not applicable.

**B. CHAPTER 18.96. FLOOD PLAIN ZONE**

1. **Section 18.96.010. Purposes.**

*The purposes of the Flood Plain Zone are: To implement the Comprehensive Plan Flooding Section; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of the fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.*

2. **Section 18.96.020. Designated Areas.**

*The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas” revised*
September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department. The Flood Plain Zone shall include all areas designated as “Special Flood Hazard Areas” by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

FINDING: The Deschutes County Flood Plain zone includes all areas designated as “Special Flood Hazard Areas” on the Federal Flood Insurance Rate Maps (FIRM). Special Flood Hazards Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE). The flood map for this property is FIRM No. 41017C0150E, Effective Date: September 28, 2007. The Crooked River is adjacent to the property boundary but is located in the canyon below the home sites. Based on this information, all proposed development will be located completely outside of the 100-year flood plain. Therefore, the provisions of this chapter are not applicable.

TITLE 17 OF THE DESCHUTES COUNTY CODE.

A. Chapter 17.22, Approval of Tentative Plans for Partitions

1. 17.22.020 Requirements for Approval

No application for partition shall be approved unless the following requirements are met:

1. Proposal is in compliance with Oregon Revised Statutes Chapter 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 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;

FINDING: The proposed partition will be in compliance with ORS Chapter 92 if it is in conformance with Titles 17 and 18 of the County Code. The comprehensive plan and implementing zoning ordinance allow the subject property to be divided into the proposed parcels as prescribed under the applicable sections of DCC Chapter 18.16 listed above. The partition will not conflict with the terms of any previously issued land use approval or create a nonconforming use. The property contains a dwelling that was constructed in 1934 and is being replaced on the larger remainder parcel (Parcel 1) via LM-11-27.

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

FINDING: The applicant has submitted a title report in conjunction with this application. The title report identifies several easements appurtenant to the property but they are not shown on the preliminary partition plan. Based on a site visit, staff is aware of a road connection between Vineyard Way in the southeast portion of the property and Canyons Ranch Drive to the north, but it is not
shown on the preliminary partition plan. The applicant asserts that the proposal does not conflict with any public access easements but, in order to ensure that this is the case, the applicant will be required to submit an updated title report prior to final plat approval and include all easements on the final plat.

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.

FINDING: Parcels 2 and 3 will be accessed from Canyons Ranch Drive, a dedicated public road. Additional right-of-way to serve Parcels 2 and 3 will be dedicated and improved to county standards as part of this proposal. Parcel 1 is accessed from Vineyard Way, a dedicated public road built to county standards.

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

FINDING: The applicant will be required to obtain access permits for new access onto the extension of Canyons Ranch Drive in order to provide access to Parcels 2 and 3. Based on the comments received from the County Road Department, staff finds that it is possible to obtain those permits. As a condition of approval, the applicant will be required to obtain access permits for new access onto Canyons Ranch Drive prior to issuance of building permits for Parcels 2 or 3.

Parcel 1 has existing access onto Vineyard Way; no new access is required.

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

FINDING: As discussed above, Parcel 1 meets the minimum lot size for an irrigated land division in the Terrebonne Subzone and will contain the replacement dwelling authorized under LM-11-27. Therefore, it is suitable for continued farm and residential use.

Parcels 2 and 3 are proposed for nonfarm dwelling use and, as discussed above, meet all requirements for nonfarm dwellings on nonfarm parcels. Therefore, staff finds that this criterion is satisfied.

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

FINDING: Utilities, public services and facilities necessary to serve the partition are discussed above. As discussed utilities, public services and facilities are adequate for the proposed use and, in the case of road access, will be provided by the applicant.

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.

FINDING: Water rights for the property are depicted on applicant’s Exhibit H. Parcel 1 will have 47.79 acres of water rights, and there will be no water rights on Parcels 2 and 3. As a condition of approval,
the final plat shall contain a statement of water rights and be signed by the authorized representative of Central Oregon Irrigation District.

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 Title 18 of the Deschutes County Code, can be sited consistent with the requirements of Chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under Section 17.28.010 (C) of this chapter.**

**FINDING:** There is no SM zone within one-half mile of the subject property; therefore this section is not applicable.

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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.**

**FINDING:** The land use history of the property was discussed previously. The property has not been partitioned in the past so this partition does not constitute series partitioning.

2. **Section 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.*

**FINDING:** As described by the County Engineer, Canyons Ranch Drive is a public right-of-way that was dedicated and improved under MP-09-5. In order to serve this partition, the applicant is proposing to extend Canyons Ranch Drive to provide public access and frontage for Parcels 2 and 3. As a condition of approval, the applicant will be required to dedicate 60 feet of right-of-way for the extension of Canyons Ranch Drive and improve the travel surface to the standards listed in DCC 17.48.170(A). This means a minimum travel surface width of 20 feet with 5 inches of aggregate (cinder or gravel) surfacing.

**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.*

**FINDING:** The standards under DCC 17.36 and 17.48 are addressed below.

**Section 17.36.010, 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.

FINDING: The proposed partition requires the extension of Canyons Ranch Drive, which will be dedicated to the public and constructed to county standards.

2. 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.

FINDING: Except for the extension of Canyons Ranch Drive, discussed above, all other streets providing access to the partition are adequate for the increase in traffic expected from the partition.

3. 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.

FINDING: The applicant is proposing to extend Canyons Ranch Drive to provide necessary access to Parcels 2 and 3. This extension must align with the existing section of the road.

4. 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.

**FINDING:** Canyons Ranch Drive is classified as a rural local road. DCC 17.48, Table A, lists the standards for such roads as 60 feet of right-of-way and a 20-foot wide aggregate surface, with a base depth of 5 inches. These standards will be included as conditions of approval.

5. **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.*

**FINDING:** Pursuant to DCC 18.16.055, these properties will not be eligible for any future division.

6. **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.*

**FINDING:** It is not necessary to extend either Canyons Ranch Drive or Vineyard Way to permit a satisfactory future division of adjoining land. All adjoining properties have access.

7. **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.*

**FINDING:** The division does not abut or contain an existing or proposed collector or arterial street. Therefore, this section is not applicable.

8. **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.*

Attachment 4: Split Zone, Flood Plain Decisions
FINDING: The subject property does not adjoin or contain a railroad, freeway or parkway. Therefore, this section is not applicable.

9. 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.

FINDING: The applicant is proposing to extend Canyons Ranch Drive, an existing street.

10. 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.

FINDING: No response was received from the utility companies indicating that additional easements are necessary. However, as a condition of approval, all existing easements must be shown on the final plat.

There are no natural drainage ways that traverse the tract, except for the Crooked River, located in a deep canyon below the proposed development.

11. 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.

FINDING: As discussed above, the parcels are appropriate for the proposed uses and are consistent with the parcel size provisions of Title 18.

12. 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.

FINDING: According to the preliminary plan, Parcel 1 will have over 1,000 feet of frontage on Vineyard Way, Parcel 2 will have approximately 135 feet of frontage on Canyons Ranch Drive and Parcel 3 will have approximately 50 feet of frontage on Canyons Ranch Drive. Side parcel lines are generally at right angles to street lines. Staff finds that these criteria are met.

13. 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.

FINDING: There are no proposed parcels with double frontage.

14. 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.

FINDING: Given the sizes of the proposed parcels, solar access is available and feasible.

15. 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.

FINDING: It is possible to access the partition from Vineyard Way or Canyons Ranch Drive, meeting this criterion.

16. 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.

FINDING: Water will be provided by individual wells and sewage disposal will be by on-site systems. The installation of water and sewer lines is not required for this partition.

17. 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.

FINDING: The applicant provided copies of 4 well logs as Exhibit F to the application. The well logs generally show 20-50 gallons per minute flow at depths ranging from 210-250 feet.

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 the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDING: The property is located outside an urban growth boundary and is not within an area planned for parks. The property is not suitable for a public park and is not within the boundaries of any park district.

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 the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDING: Since there is no suitable park site within the partition, the applicant will be required to pay a fee in lieu of dedication of land. The amount of the fee is equal to $350 per new dwelling unit, or $700. Payment of this fee will be a condition of 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.

FINDING: As discussed previously, the extension of Canyons Ranch Drive shall meet the standards for a rural local road including a 60-foot right-of-way, and a 20-foot wide travel surface consisting of 5 inches of aggregate. Additionally the applicant shall construct a turnaround at the end of Canyons Ranch Drive with a minimum 5 inches of aggregate or otherwise meet the requirements of the Redmond Fire Department. The fire department requires a turning radius of 30 feet inside radius and 50 feet outside radius, capable of supporting 70, 000 lbs.

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.)

FINDING: As described above, the minimum right-of-way for Canyons Ranch Drive is 60 feet.

3. **Section 17.48.120, Partial Width Roads**

   Partial width roads or half streets shall not be allowed.

FINDING: No partial width roads are proposed.

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.

FINDING: The proposed road will be extension of Canyons Ranch Road; no new roads or road names are proposed.

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

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

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

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

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

C. **Primary Access Roads.** The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A. The applicable standard shall be determined with reference to the road’s classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

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

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

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

G. **Frontage Roads.** Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.

**FINDING:** Applicable road standards are addressed above and below.

6. **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.

**FINDING:** The County acknowledges that the average parcel size is greater than 10 acres and, thus, (A) is applicable. These road standards will be imposed as conditions of approval.

7. **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.

**FINDING:** As a condition of approval, the applicant will be required to obtain access permits for access onto the extension of Canyons Ranch Road prior to obtaining a building permit on Parcels 2 or 3.

**IV. CONCLUSIONS:**

The proposed conditional use and partition applications can meet the requirements of Titles 17 and 18 of the Deschutes County Code. The following conditions apply.

**V. DECISION:**

APPROVAL.

**VI. CONDITIONS OF APPROVAL:**

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application. An updated title report shall be required as part of final plat review.

2. A septic site evaluation for each nonfarm parcel shall be obtained, prior to final approval of the plat.

3. The applicant shall have a licensed land surveyor prepare a partition plat which conforms with Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code.

4. The final plat shall contain a statement of water rights and be signed by the authorized representative of Central Oregon Irrigation District. No water rights shall be associated with the nonfarm parcels (Parcels 2 and 3); the remainder parcel (Parcel 1) shall have at least 35 acres of water rights.
5. 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 Tax Collector.

6. All easements of record shall be shown on the final plat.

7. The applicant shall disqualify the nonfarm parcels from farm tax deferral and all other penalties or fees imposed by the County Assessor as a result of disqualification shall be paid. Evidence that all taxes due have been paid shall be submitted to the Planning Division prior to final plat approval.

8. An access permit for any new access to Canyons Ranch Drive shall be applied for and approved by the County prior to obtaining a building permit for either Parcels 2 or 3.

9. Prior to final plat approval, the applicant/owner shall sign and record with the County Clerk a document binding the landowner, and the landowner’s successors in interest, prohibiting 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 under ORS 30.936 to 90.937.

10. The applicant shall pay a parks fee of $700.00 prior to final plat approval.

11. The applicant shall meet all applicable requirements of the Redmond Fire Department.

12. Prior to final plat approval, the property owner shall sign and notarize a “Conservation Easement” and return the document to the Planning Division.

13. Prior to issuance of a building permit on Parcel 2, the applicant shall obtain approval of a landscape management site plan.

14. All easements of record or existing rights-of-way shall be noted on the final mylar.

15. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in the relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily need to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standard.

16. Prior to final plat approval, the applicant shall dedicate 60 feet of right-of-way for the extension of Canyons Ranch Drive and construct the road to the standards listed in DCC 17.18.170(A). This includes building the roadway to a width of 20 feet with 5 inches of aggregate surfacing.

17. Prior to final plat approval, the applicant shall construct an emergency services turnaround at the end of Canyons Ranch Drive that meets the standards of the Redmond Fire Department. This turnaround shall have a travel surface consisting of at least 5 inches of aggregate surfacing with an inside radius of 30 feet and an outside radius of 50 feet. The
travel surface shall be constructed and maintained to support the imposed loads of 70,000 lbs.

VII. **DURATION OF APPROVAL:**

All conditions of tentative approval and submission of an application for final plat review for the partition must occur within two (2) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

The applicant shall also apply for building permits for the proposed nonfarm dwellings within four (4) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

**DESHUTES COUNTY PLANNING DIVISION**

Written and Reviewed by: Kevin Harrison, Principal Planner

Dated this 8th day of July, 2011 Mailed this 8th day of July, 2011
FINDINGS AND DECISION

This decision has been revised as of August 15, 2013 to correct Condition of Approval #6.


APPLICANT/OWNER: Rob and Trisa Lindsay
8484 SW 82nd Street
Redmond, OR 97756

AGENT: Liz Fancher
644 NW Broadway Street
Bend, OR 97701

REQUEST:
CU-13-19: A conditional use permit for a nonfarm dwelling on proposed Parcel 2, a 5.74-acre parcel in the EFU-SC zone.

CU-13-20: A conditional use permit for a nonfarm dwelling on proposed Parcel 3, a 5.51-acre parcel in the EFU-SC zone.

MP-11-12: Minor Partition to split a 110.60 acre parcel into an approximately 99.35 acre nonfarm parcel, a 5.51 acre nonfarm parcel, and a 5.74 acre nonfarm parcel.

STAFF CONTACT: Will Groves, Senior Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, County Zoning.
   Chapter 18.16, Exclusive Farm Use (EFU) Zones
Title 17 of the Deschutes County Code, Subdivision/Partition Ordinance:
   Chapter 17.22, Approval of Tentative Plans for Partitions:
   Chapter 17.36, Design Standards:
   Chapter 17.44, Park Development:
   Section 17.48.170, Road development requirements – Partitions.
Title 22 of the Deschutes County Code, the County Uniform Land Use Procedures Ordinance.

Oregon Administrative Rules.
   OAR 660-033-0010 through 660-033-0130

Attachment 4: Split Zone, Flood Plain Decisions

Quality Services Performed with Pride
Oregon Revised Statutes
ORS 215.263, Land Divisions in exclusive farm zones; criteria for approval.

**BASIC FINDINGS:**

A. **LOCATION:** The subject property is identified on Deschutes County Assessor’s Map 15-11-33D as most of Tax Lot 200. The property excludes that part of Tax Lot 200 that was recognized as a legal lot of record in LR-12-12, as it will be configured when adjusted as approved in LL-13-9.

B. **LOT OF RECORD:** The property is a legal lot of record pursuant to County Files LR-12-12, as reconfigured under LL-13-9.

C. **ZONING:** The subject property is zoned Exclusive Farm Use – Sisters/ Cloverdale subzone (EFU-SC) and approximately 3 acres located in proposed Parcel 1 is zoned FP, Flood Plain. The entire property is designated agriculture on the Deschutes County Comprehensive Plan.

D. **PROPOSAL:** The applicant is proposing to partition the subject property to create a 99.35-acre nonfarm parcel, a 5.51 acre nonfarm parcel and a 5.74 acre nonfarm parcel as shown on the submitted Tentative Plan. The applicants also have requested conditional use permits to place non-farm dwellings on proposed Parcel 2 (CU-13-19), a 5.74-acre parcel, and on proposed Parcel 3 (CU-13-20) a 5.51 acre parcel.

E. **SITE DESCRIPTION:** The subject property is approximately 110.60 acres in size and is not irrigated. Plainview Road adjoins half of the southern boundary of Tax Lot 200. Fryrear Road adjoins half of the western boundary of Tax Lot 200. The area zoned FP is a small area located in the northwest section of Tax Lot 200 that was once an irrigation pond. This area is identified on the National Wetlands Inventory Maps as the County as “PUSC.” This designation is used to describe areas that are “pond beds, unvegetated depressions, [and] alkali flats.” The irrigation pond is no longer in use because the Plainview Irrigation Ditch that once served the subject property has not been used for the delivery of water for a period of approximately 30 years. When active, this ditch provided water to the subject property; however, since its discontinuation, the water rights have been considered to have been abandoned by the State of Oregon and have since been cancelled as shown by the Final Order from the Water Resources Department of the State of Oregon.

Prior to filing this application, the applicants obtained a conditional use approval in CU-13-1 to place a home near the abandoned pond. The proposed 5.51-acre parcel will be located in the northwest corner of the subject property along Fryrear Road, and the proposed 5.74 acre parcel will be located in the southwest corner of the subject property along Plainview Road.

F. **SURROUNDING LAND USES:** The area surrounding the subject property consists of farm-zoned and rural residential-zoned properties. One adjacent parcel to the north and the property to its north, Tax Lot 100, Map 15-11-33D and Tax Lot 900, Map 15-11-33A, are zoned EFU-SC. Other properties to the north of the subject property are zoned MUA-10 and have been developed as the Fryrear Ranch Subdivision.
Tax Lot 300, Assessor’s Map 15-11-33D, located to the south and west of the subject property, is also zoned EFU-SC and recently received County approval of a nonfarm dwelling in CU-12-16. Other properties across Fryrear Road to the west of the subject property are zoned MUA-10 and have been developed as the Duke Subdivision.

The properties to the south of the subject property across Plainview Road are small EFU-TRB zoned hobby farm properties ranging in size from 3.07 acres to 7.38 acres. The State of Oregon owns a 224-acre parcel to the southeast of the subject property. The U.S. Bureau of Land Management manages over 6,000 acres to the east, north and south of the subject property. These properties are over 2,200 feet from the subject property.

G. **SOILS:** According to Natural Resources Conservation Service (NRCS) maps of the area and the soil map included in the County packet, there are seven (7) soil units mapped on the subject property:

**Unit 34C, Deschutes-Stukel complex, 0 to 15 percent slopes.** This soil complex is composed of 50 percent Deschutes soil and similar inclusions, 35 percent Stukel soil and similar inclusions and 15 percent contrasting inclusions. The soil consists of ash with bedrock at a depth of 10 to 40 inches. The soil has a low available water capacity of about 4 inches. The major use of this soil type is irrigated cropland and livestock grazing. Mapping Unit 34C has a land capability classification of 6e when not irrigated and the Stukel Part is 4e when irrigated. The subject property currently has no active water rights. This soil comprises approximately .5% of the subject property.

**Unit 63C, Holmzie-Searles complex, 0 to 15 percent slopes.** This soil complex is composed of 50 percent Holmzie and similar soils and 35 percent Searles and similar soils. The soil consists of volcanic ash over residuum weathered from tuff at a depth of 29 to 39 inches. The soil has a low available water capacity of about 4.4 inches. The major use of this soil type is livestock grazing. The land capability classification for 63C soil is 6e when not irrigated. The subject property currently has no active water rights. Approximately 7.8% of the subject property contains this type of soil.

**Unit 81F, Lickskillet-Rock outcrop complex, 45 to 80 percent slopes.** This soil complex is composed of 60 percent Lickskillet and similar soils and 35 percent rock outcrop. The soil consists of Colluvium derived from volcanic rock with lithic bedrock at a depth of 12 to 20 inches. The soil has a very low water capacity of about 1 inch. The major use of this soil type is livestock grazing. The capability classifications for Lickskillet and similar soils and Rock Outcrop are 7e and 8, respectively, when not irrigated. The subject property currently has no active water rights. Approximately 1% of the subject property contains this type of soil.

**Unit 98A, Plainview sandy loam, 0 to 3 percent slopes.** This soil complex is composed of 85 percent Plainview soil and similar inclusions and 15 percent contrasting inclusions. The Plainview soil consists of volcanic ash over glacial outwash and is underlain by duripan at a depth of 50 to 65 inches. The soil has a low available water capacity of about 5.9 inches. The major uses of this soil type are irrigated cropland and livestock grazing. The land capability classification for 98A soil is 3s when irrigated and 6s when not irrigated. The subject property currently has no active water rights. Approximately 39.3% of the subject property contains this type of soil.
Unit 106E, Redslide-Lickskillet complex, 30 to 50 percent north slopes. This soil complex is composed of 50 percent Redslide, north and similar soils and 35 percent Lickskillet, north and similar soils. This soil type consists of volcanic ash over colluvium derived from volcanic ash and contains lithic bedrock at a depth of 12 to 40 inches. The soil has a very low available water capacity of about 1 to 2.4 inches. The major use of this soil type is livestock grazing. The land capability classification for the Redslide north part of this soil unit 7e when irrigated and 6e when not irrigated according to the Web Soil Survey. The Lickskillet north part of this soil is 7e when irrigated or not irrigated. This soil unit is not a high value farm soil when irrigated. Approximately 10.4% of the subject property contains this type of soil.

Unit 141C, Stukel-Deschutes-Rock outcrop complex, 0 to 15 percent slopes. This soil complex is composed of 40 percent Stukel and similar soils, 25 percent Deschutes and similar soils, and 20 percent Rock outcrop. The soil consists of volcanic ash over basalt (lithic bedrock) at a depth of 10 to 40 inches. The soil has a very low available water capacity of about 2.2 to 3.7 inches. The major use of this soil type is livestock grazing. The soil is not rated high value when irrigated. The land capability classification for the Stukel and Deschutes soils is 6e when irrigated and when not irrigated and found in Soils Unit 141C. The fact that no soils rated for irrigated land is provided reflects the fact that Unit 141C is not typically irrigated. Rock outcrop is Class 8 when not irrigated. The subject property currently has no active water rights. Approximately 37.9% of the subject property contains this type of soil.

Unit 152A, Tumalo sandy loam, 0 to 3 percent slopes. This soil complex is composed of 85 percent Tumalo soil and similar inclusions and 15 percent contrasting inclusions. This soil type consists of ash over glacial outwash with duripan at a depth of 20 to 40 inches and bedrock at a depth of 60 inches. The soil has an available water capacity of about 4 inches. The major use of this soil type is irrigated cropland and livestock grazing. The land capability classification for this type of soil is 3s when irrigated and 6s when not irrigated. Approximately 3.1% of the subject property contains this type of soil.

The applicants hired Roger Borine to obtain accurate soils information for the subject property. A copy of his analysis was submitted as Exhibit F. His findings and analysis are discussed in more detail below.

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

1. Deschutes County Road Department: Fryrear Road is a County road (rural collector classification) with an ADT of approx. 762 (2009 count). Right-of-way width is 60 feet.
   - Plainview Road which was established in 1907 as the A.J. Harter Road with a right-of-way width of 60 feet. The road is maintained by Deschutes County and is a gravel surface roadway.
   - No road improvements or right-of-way dedications will be required on this application.

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.

2. All access onto Fryrear Road and Plainview Road will be required to meet AASHTO sight distance standards.

3. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standards.

2. **County Transportation Planner:** I have reviewed the transmittal materials for MP-13-2 to partition a 110.6-acre parcel on the northeast corner of Fryrear and Plainview into three parcels, one 99.35 acres and two roughly five acres each in the Exclusive Farm Use (EFU) zone at 15-11-33D, Tax Lot 200. CU-13-19 and CU-13-20 would then establish two non-farm dwelling units on the two five-acre parcels. No traffic study is required, but the applicant will need to pay a transportation system development charge (SDC).

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 17.16.115(C)(4)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips; the two new homes will only generate 20 trips.

Board Resolution 2013-020 sets an SDC rate of $3,758 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 $3,044 ($3,758 X 0.81) for each five-acre parcel.

3. **Deschutes County Environmental Soils:** Each new parcel will require an individual complete approved site evaluation for the proposed onsite wastewater treatment system.

4. **Deschutes County Address Coordinator:** Addresses will be assigned after the final plat is recorded and the Assessor’s Office creates the new tax accounts.

5. No response or a response of “no comment” was received from Deschutes County Building Division, Cloverdale Fire Department, and Deschutes County Assessor.
I. PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use and partition applications to all property owners within 750 feet of the subject property. No comments were submitted in response to the notice.

J. REVIEW PERIOD: These applications were submitted on June 25, 2013. The applications were accepted as complete on July 25, 2013. The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit for the applications dated July 4, 2013 that indicates that the applicant posted notice of the land use action on that same date.

K. LAND USE HISTORY: The property is a legal lot of record pursuant to County Files LR-12-12, as reconfigured under LL-13-9. A non-farm dwelling was approved in the subject property under CU-13-1. The CU-13-1 non-farm dwelling will be located on proposed Parcel 1 of the present application.

III. CONCLUSIONARY FINDINGS:

TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

A. CHAPTER 18.16, EXCLUSIVE FARM USE ZONES.

1. Section 18.16.030, Conditional uses permitted - High value and non-high value farmland.

   The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of Title 18.

   A. Nonfarm dwelling

   FINDING: The applicant is proposing to establish a nonfarm dwelling on each of two nonfarm parcels created by this partition. DCC section 18.16.050 is addressed below.

2. Section 18.16.050, Standards for Dwellings in the EFU Zones

   Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

   FINDING: The applicant will be required to sign and record the waiver listed above as a condition of final plat approval. There are no forest zoned properties or properties devoted to forest use on nearby lands.
G. Nonfarm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

   a. The Planning Director or Hearings Body shall make findings that:

       i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

FINDING: The area surrounding the property is a mix of mainly rural residential uses, some hobby farming, and much dry land. Typical farming practices in the area include pasture and livestock grazing (horses and cattle), and grass hay.

Based on data compiled from the Oregon State University (OSU) Extension Service, it is generally accepted that farming practices in the surrounding area can generate the following types of impacts. Maintaining irrigated pasture can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing and possible water run-off from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape. Growing grass hay can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from baling hay, manure odor from spreading manure for fertilizer and possible water run-off from irrigation. Based upon this information, it is necessary to determine whether the impacts from the farm uses occurring on nearby lands devoted to farm use are likely to create conflicts with the nonfarm dwellings that will force a significant change in, or significantly increase the cost of, accepted farming practices.

The maps and Assessor's data provided in the EFU Analysis Report, EXHIBIT E, show the study area includes 53 (excluding the subject property) EFU-zoned tracts or parcels at least partially located within the study area. Forty-five (45) of these EFU parcels are privately owned and eight (8) of the parcels are publicly owned. One of the parcels is either a road or driveway. The parcels in the study area range in size from .02 acres to a 5600-acre parcel owned by the USA. Fifteen (15) of the privately owned parcels are 20 acres or smaller in size. Seventeen (17) parcels are 20.01 to 40 acres in size and twenty-one (21) are larger than 40.01 acres. Thirty-one (31) of the forty-five (45) privately owned parcels have existing dwellings.

The study area also includes lands zoned Forest Use (F-1 and F-2). There are four (4) tax lots that are zoned for forest use that are located partially or entirely within the study area. These four (4) parcels are located at the southern edge of the study area and across Highway 20. Three of the parcels are publicly owned while the fourth is held in private ownership. Due to the significant distance between these parcels and the subject property, and the fact that the proposed dwellings are located in an area that has only juniper trees which have no commercial timber value, the proposed nonfarm dwellings will have no impact on any forest uses in the area.
The proposed nonfarm dwellings will not cause adverse impacts on nearby farm uses and will not cause a significant change in or significantly increase the cost of accepted farming practices on nearby lands for the following reasons:

- As shown on the Tentative Plan, EXHIBIT C, the southernmost nonfarm parcel will be located a significant distance from any lands devoted to farm use and agricultural uses on the Olsen lot (Tax Lot 900, Map 15-11-33A) north of the northernmost lot will be buffered from the nonfarm dwelling on the northernmost lot by a vacant strip of land and by an existing home.
- A minimum setback of 100’ applies to the nonfarm dwellings where the adjacent parcel is in farm use. That setback is designed to protect farm practices from the impacts of nonfarm dwellings.
- The applicants will be required to record a Farm and Forest Management Easement that will prohibit the applicant and future landowners from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.396 or 30.397.
- There are many mature juniper trees between the proposed southern home site and area farm uses to screen the nonfarm dwellings from the impacts of farm practices such as noise, herbicide drift, dust and other possible impacts. There are some such trees on the northernmost nonfarm parcel as well.

Based on the information provided by the applicant and observed by staff, staff finds that the proposed dwelling, and the activities associated with the dwelling, will not force a significant change in, or significantly increase the cost of, accepted farming practices on nearby lands devoted to farm use.

**li.** The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

**FINDING:** On June 1, 1998, the Land Conservation and Development Commission adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter 660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The rules continue to apply the three-step “stability” analysis first articulated in Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989). The rules are as follows:

**(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the County shall:**

**(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than**
1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

1. **Cumulative Impacts Analysis Area.** The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property’s boundaries and including approximately 2,000 acres (hereafter called “study area”). Staff finds this area of analysis is suitable to provide a comprehensive analysis of the character of the area surrounding the subject property because of its size and the number of properties located within it. The study area is primarily zoned Exclusive Farm Use (EFU-TRB and EFU-SC), and approximately one-third of the study area is zoned Multiple Use Agricultural (MUA-10) or Forest Use (F-1).

The maps and Assessor’s data provided in the EFU Analysis Report, EXHIBIT E, show the study area includes 53 (excluding the subject property) EFU-zoned tracts or parcels at least partially located within the study area. Forty-five (45) of these EFU parcels are privately owned and eight (8) of the parcels are publicly
owned. One of the parcels is either a road or driveway. The parcels in the study area range in size from .02 acres to a 5600-acre parcel owned by the USA. Fifteen (15) of the privately owned parcels are 20 acres or smaller in size. Seventeen (17) parcels are 20.01 to 40 acres in size and twenty-one (21) are larger than 40.01 acres. Thirty-one (31) of the forty-five (45) privately owned parcels have existing dwellings.

2. Types of Farm Uses. The types of farm use occurring in the study area are irrigated pasture/hay production and livestock grazing. Approximately 45% of the area within one mile of the subject property includes lands not zoned Exclusive Farm Use or Forest Use (F-1 or F-2). Seventeen (17) of the 45 privately-owned tax lots are receiving farm tax deferral with seven (7) of those tax lots being shown as having irrigation water rights. Approximately 180.21 acres within the study area currently have irrigation water rights. Staff estimates that a maximum of 496.43 acres (acreage currently being irrigated and/or receiving farm tax deferral and located within the study area) may be engaged in some level of farm use. The area consists of two EFU subzones: EFU-SC and EFU-TRB.

3. Existing Dwellings. Thirty-one (31) of the tax lots in the study area have dwellings. In addition, three (3) properties have unexpired conditional use approvals that allow them to be developed with three (3) dwellings. These valid approvals are for Assessor’s Map 15-11-33D, Tax Lot 300 (CU-12-16), Assessor’s Map 16-11-05, Tax Lot 500 (CU-12-11), and Assessor’s Map 15-11-33D, Tax Lot 200 (CU-13-12 – 10.02 legal lot of record). The subject property (Tax Lot 200 – the 110.6 legal lot of record) has received approval for a nonfarm dwelling in CU-13-1; however, the subject property and that approval are not being counted within this analysis. The existing dwellings were built in the following years: Two (2) prior to 1978, five (5) from 1979 to 1992 and twenty-four (24) from 1993 to present.

4. Dwelling Development Trends Since 1993. As discussed above, twenty-four (24) of the existing thirty-one (31) dwellings in the study area were built in 1993 or later. In addition, three of the vacant tax lots excluding the subject property currently have valid land use approvals for the construction of three additional nonfarm homes.

5. Potential Nonfarm Parcels. Fourteen (14) of the privately-owned tax lots are not developed with dwellings. To determine the number of potential new dwellings that might be built in the study area, it is necessary to consider whether the tax lots are also legal lots of record. The applicant has performed a detailed analysis of these properties in the submitted application materials. This analysis is incorporated herein by reference. The applicant concludes and Staff concurs that four of these undeveloped lots do not appear to be separate legal lots of record that are eligible for development. When lots that do not appear to be legal lots of record are removed as potential sites for nonfarm dwellings, the total number of lots available for approval of nonfarm dwellings is reduced to a maximum of 10 lots.

Three of the ten vacant tax lots have nonfarm dwelling approvals that are still valid. They include: 15-11-33D, Tax Lot 200 (the 10.02 acre legal lot of record);
15-11-33D, Tax Lot 300 and 16-11-05, Tax Lot 500. This means that 7 lots in the study area remain eligible for new nonfarm dwelling approvals.

The applicant concludes and Staff concurs that four of the undeveloped lots are farm parcels created by an irrigated land division that are likely ineligible for the future approval of nonfarm dwellings. Thus, the maximum number of potential new nonfarm dwellings that can be approved in the study area on existing parcels is reduced from 7 to 4 dwellings.

a. Irrigated Land Divisions.

Under the provisions for an irrigated land division, an applicant may create from a parent parcel created prior to July 1, 2001 that is under 80 acres in size: a) one parcel of any size for a nonfarm dwelling and a remainder farm parcel that meets the minimum lot size in the EFU-SC subzone of at least 63 irrigated acres. If the parent parcel created prior to July 1, 2001 is larger than 80 acres in size and has at least 63 irrigated acres in the EFU-SC zone or 23 irrigated acres in the EFU-TRB subzone, an applicant may create up to two nonfarm parcels of any size with a remainder farm parcel that has at least 23 or 63 irrigated acres depending on the subzone. The nonfarm parcels also must be generally unsuitable for the production of farm crops and livestock.

None of the irrigated parcels in the EFU-SC zone have 63 acres of irrigation water rights, the minimum amount of water rights required to create an irrigated farm parcel in the EFU-SC zone. Two parcels in the EFU-TRB subzone have enough water rights to qualify for an irrigated land division. If divided, however, neither new nonfarm dwelling lot would qualify for a home due to restrictions created on the property under the Replat of Snow Creek Ranch as modified by MC-97-2.

b. Non-Irrigated Land Divisions.

Under the law that applies to non-irrigated land divisions, an applicant may create one nonfarm parcel five acres in size and one remainder farm parcel from a parent parcel that is between 40 and 80 acres in size and has no irrigation water rights if the parcel was created before July 1, 2001. If the parent parcel is larger than 80 acres in size, the applicant may create up to two nonfarm parcels each five acres in size as long as the parent parcel is at least 80 acres in size. The nonfarm parcels must be generally unsuitable for the production of farm crops and livestock. There are twelve (12) privately owned remaining parcels in the study area that are large enough to qualify for a nonirrigated land division.

The applicant has performed a detailed analysis of these properties in the submitted application materials. This analysis is incorporated herein by reference. The applicant concludes and Staff concurs that, of the twelve (12) privately owned parcels in the study area that are large enough to qualify for a nonirrigated land division, eleven of the parcels would likely be precluded from land division due to existing water rights, parcel creation date, frontage requirements, and highway access restrictions.
Only one of the twelve (12) properties (Map 15-11-00, TL 5902) would likely qualify for a land division creating two (2) additional nonfarm parcels. The applicant notes that it is possible that Tax Lot 400, Assessor’s Maps 15-11-34C may also qualify for approval of an additional nonfarm dwelling despite the fact it is shown to be less than 40 acres in size. It would likely be viewed as being forty acres in size under an exception to lot size. If so, one additional nonfarm dwelling could be created by the division of this lot for a total of three (3) additional nonfarm parcels due to non-irrigated land divisions.

6. Potential Nonfarm Dwellings. Theoretically, if all of the existing and potential properties identified above were approved for nonfarm dwellings there could be an additional 7 such dwellings.

It is not clear whether a nonfarm dwelling can be approved on each parcel, since they are reviewed on a case by case basis. The dwellings have to be reviewed for their effect on the stability of the land use pattern, whether they are on land generally unsuitable land for the production of crops or livestock, and whether they will cause a significant change in or significantly increase the cost of accepted farming practices on adjacent land.

Staff will assume for purposes of review that up to 7 new nonfarm dwellings could be developed, based on the 4 existing vacant parcels and 3 possible new non-farm parcels that would potentially be considered available for development.

7. Potential Lot of Record Dwellings. Under Section 18.16.050(E) and OAR 660-033-130(3), a lot of record dwelling may be sited on an EFU-zoned parcel on nonhigh value farmland if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F) and OAR 660-033-130(3)(c), a lot of record dwelling may be sited on high value farmland if it meets the criteria for a lot of record dwelling on nonhigh value farmland and the Planning Division finds the parcel cannot practically be managed for farm use “due to extraordinary circumstances inherent in the land or its physical setting,” such as “very steep slopes, deep ravines … or other similar natural or physical barriers.”

The Planning Division has previously determined that lot of record dwellings can be difficult to obtain, given the requirement for ownership prior to 1985 and the land cannot be suitable for farming based on the above factors. Some parcels may qualify for a lot of record dwelling, but without a specific analysis of each and every parcel, this determination cannot be made. Staff notes that no parcels in the study area have been approved for a lot of record dwelling to date.

8. Stability and Character of the Land Use Pattern of the Area. The record reveals that the area one-mile around the subject property can be characterized as follows: The northwest section of the study area and an area north of the subject property consists of residential properties zoned MUA-10. These areas consist of three different subdivisions including the Fryrear Ranch, Sun Mountain Ranches and Duke Subdivision. The majority of the EFU properties within the
study area also contain dwellings. The predominant character of the rest of the study area is one of rural residential and hobby farm use. Most of the study area is nonirrigated.


Thirty-one (31) of the tax lots in the study area have dwellings. In addition, three (3) properties have unexpired conditional use approvals that allow them to be developed with three (3) dwellings. Staff finds the cumulative effect of adding two additional nonfarm dwellings will not “materially alter the stability of the land use pattern in the area” by making it more difficult for the existing farms to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or by diminishing the number of tracts or acreage in farm use. The farm use in the area, according to a comparison of the 1985 and 2006 air photos in the record, has remained stable for a number of years. Staff finds that adding these dwellings will not tip the balance from resource to non-resource use, and will not impact the existing farming that occurs in the area.

The approval of the proposed nonfarm dwellings will not set a precedent for the wholesale approval of nonfarm dwellings to the detriment of surrounding farming. This request is for a nonirrigated land division to allow two new unirrigated, unproductive parcels to be created from a larger parent parcel.

Staff believes that all of the parcels currently in farm use will remain relatively stable and that there will be little or no expansion of farm use in the area, given the soil types, topography and availability of water rights. The property that is capable of being farmed appears to already be farmed. Staff finds that the approval of the proposed dwellings will not affect the amount of farming or the type of farming.

For the foregoing reasons, staff finds approval of the proposed nonfarm dwellings will not destabilize the agricultural character of the surrounding area.

iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

2. For the purposes of DCC 18.16.050(G) only, “unsuitability” shall be determined with reference to the following:

a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules,
considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

FINDING: The subject property has no irrigation water rights. The NRCS mapped soil classifications on the property are reviewed in detail above and incorporated herein by reference. The applicants hired Roger Borine, who, took soil samples and prepared an analysis, a copy of which was submitted as EXHIBIT F. The analysis shows that Parcel 3 (the proposed 5.51 acre parcel) contains 47% of soils that are rated LCC 6 with 53% of the soils rated LCC 7. Parcel 2 (the proposed 5.74 acre parcel) contains 42% of soils rated LCC 6 with 58% rated LCC 7. In addition, photographs taken of both proposed lots and included in the report show the land to be undisturbed and covered with sagebrush, rocks and Junipers. Mr. Borine determined from his soils tests and examination that both lots were generally unsuited for the production of farm crops and livestock grazing considering the terrain, adverse soil or land conditions, vegetation, location and size of the tract. These soils are among the least suitable for the production of farm crops or livestock of the soils found on the subject property. For this reason, Staff finds that the proposed non-farm parcels are unsuitable for the production of farm crops and livestock. The typical tree species in this area is juniper, which is not a merchandisable tree species.

The subject property is not under forest assessment and, thus, (c) above is not applicable. Ultimately, Staff finds that the proposed non-farm parcels are generally unsuitable for the production of farm crops and livestock because of adverse soil conditions, terrain, and vegetation.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot or sales yard, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The
establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

**FINDING:** The nonfarm dwellings are not within one-quarter mile of a dairy farm, feed lot or sales yard.

Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.

**FINDING:** Road access, fire and police services and utility systems in the area are adequate for the use proposed. Fire, police and utility services already serve existing residences along Plainview Road and Fryrear Road. The subject property is located in the Cloverdale Fire Protection District and a verification form indicating fire protection was submitted as EXHIBIT T. A submitted letter of intent to serve from Central Electric Cooperative was submitted as EXHIBIT U, and the well logs submitted as EXHIBIT V, W and X. The water source for the two proposed nonfarm dwellings will be private wells on each of the approximately 5 acre parcels.

v. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).

**FINDING:** The nonfarm dwellings will be located on nonfarm parcels being created under the standards in DCC 18.16.055(B)(2)(b).

3. **Loss of tax deferral.** Except as provided in DCC 18.16.050(l)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

**FINDING:** This property is currently receiving special assessment. ORS 215.263(13) requires

(13) The governing body of a county may not approve a division of land for nonfarm use under subsection (3), (4), (5), (9), (10), (11) or (12) of this section unless any additional tax imposed for the change in use has been paid.

As a condition of final plat approval, the applicant shall disqualify the two non-farm parcels created by this partition from farm tax deferral and all other penalties or fees imposed by the County Assessor as a result of disqualification shall be paid. Evidence that all taxes due have been paid shall be submitted to the Planning Division prior to final plat approval.
Section 18.16.055, Land Divisions

A. General. A division of land in the exclusive farm use zone shall be identified on the land division application as either an irrigated land division, nonirrigated land division, or a division of land for a use permitted by DCC 18.16.030 other than a dwelling. An irrigated land division is subject to subsection B below; a nonirrigated land division is subject to subsection C below; and a land division for a use other than a dwelling is subject to subsection E below.

C. Nonirrigated land division.
1. The minimum lot or parcel size for a nonirrigated land division is 80 acres.
2. Notwithstanding 1 above, land divisions creating nonfarm parcels less than the minimum lot size may be allowed as follows:
   a. If the parent parcel is greater than 80 acres in size, up to two new nonfarm parcels may be allowed subject to the following:
      i. Parent parcel was lawfully created prior to July 1, 2001;
      ii. Remainder parcel shall be at least 80 acres in size;
      iii. All standards established under 18.16.050(G) for the dwellings shall be met;
      iv. The minimum size for the nonfarm parcels is 5 acres.
      FINDING: The applicant has proposed a 5.51-acre nonfarm parcel (Parcel 3) and a 5.74-acre nonfarm parcel (Parcel 2).
   v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

FINDING: The parent parcel was found in LR-12-12 to have been created in 1918.

FINDING: The remainder parcel will be approximately 99.35 acres (Parcel 1).

FINDING: All standards established under 18.16.050(G) for the dwellings have been met, as described above.
FINDING: Staff has found above (under DCC 18.116.050(G)(2)(b)) and incorporates by reference herein that the proposed nonfarm parcels are generally unsuitable for the production of farm crops and livestock because of adverse soil conditions, terrain, and vegetation. The parcel has not been considered unsuitable based solely on size or location.

vi. Be located outside of the Horse Ridge East subzone.

FINDING: The subject property is not located within the Horse Ridge East subzone.

3. Section 18.16.060, Dimensional Standards
   C. Each parcel shall have a minimum street frontage of 50 feet.

FINDING: The proposed parcels include a 5.51-acre nonfarm parcel, a 5.74-acre nonfarm parcel and an approximately 99.35-acre remainder parcel. The 5.51-acre parcel will have over 50 feet of frontage on Fryrear Road. The 5.74-acre parcel will have over 50 feet of frontage on Plainview Road. The 99.35-acre parcel will have over 50 feet of frontage on Plainview Road and Fryrear Road.

D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

FINDING: Building heights will be checked at the time a building permit is submitted.

3. Section 18.16.070, Yards
   A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.

FINDING: The applicant has not specified home sites within proposed Parcels 2 and 3. This section of the County Code requires a minimum yard of 60 feet from a property line fronting on a collector street (Fryrear Road) and 25 feet from a local street (Plainview Road). Staff finds that there is adequate space on proposed Parcel 3 for a homesite given a 60-foot front required setback and, likewise, there is adequate space on proposed Parcel 2 for a homesite given a 25-foot required front setback.

B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.

FINDING: Staff finds that the parent parcel is presently receiving special assessment for farm use. Proposed Parcel 3 would have a 25-foot side setback on the south side and a 25-foot side setback on the north side. Proposed Parcel 2 would have a 25-foot side setback on the east side.
and a 100-foot side setback on the west side (151133D000300 is receiving special assessment for farm use).

C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.

FINDING: Proposed Parcel 3 would have a 25-foot rear setback (east). Proposed Parcel 2 would have a 25-foot rear setback (north).

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.

FINDING: Staff is not aware of any greater setback required by the State of Oregon or Title 15. The applicant would be notified of any setbacks required by applicable building or structural codes by the Deschutes County Building Division at the time of building permit application.

6. Section 18.16.080, Stream Setbacks

To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:

A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.

B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

FINDING: There are no streams or lakes in the vicinity of the subject property.

7. Section 18.16.090, Rimrock Setback

Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.

FINDING: There is no rimrock in the vicinity of the subject property.

B. CHAPTER 18.96. FLOOD PLAIN ZONE
1. Section 18.96.010. Purposes.

The purposes of the Flood Plain Zone are: To implement the Comprehensive Plan Flooding Section; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of the fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.

2. Section 18.96.020. Designated Areas.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.

The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

FINDING: The Deschutes County Flood Plain zone includes all areas designated as “Special Flood Hazard Areas” on the Federal Flood Insurance Rate Maps (FIRM). Special Flood Hazards Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE). The flood map for this property is FIRM No. 41017C0450E, Effective Date: September 28, 2007. The mapped floodplain is a long-abandoned irrigation pond located on proposed Parcel 1. No land division will occur within the floodplain zone. Based on this information, all proposed development will be located completely outside of the 100-year flood plain. Therefore, the provisions of this chapter are not applicable.

TITLE 17 OF THE DESCHUTES COUNTY CODE.

A. Chapter 17.22, Approval of Tentative Plans for Partitions

1. Section 17.22.020 Requirements for Approval

No application for partition shall be approved unless the following requirements are met:

1. Proposal is in compliance with Oregon Revised Statutes Chapter 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 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;

FINDING: The proposed partition will be in compliance with ORS Chapter 92 if it is in conformance with Titles 17 and 18 of the County Code. The comprehensive plan and implementing zoning ordinance allow the subject property to be divided into the proposed parcels as prescribed under the applicable sections of DCC Chapter 18.16 listed above. The partition will not conflict with the terms of any previously issued land use approval or create a nonconforming use. The approval will not create a nonconforming use on any of the newly described parcels. Staff notes that the proposed partition does not adversely impact the previously approved non-farm dwelling’s (approved under CU-13-1, on proposed Parcel 1) ability to meet setbacks or comply with other applicable criteria under that approval.

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

FINDING: The applicant has submitted a title report in conjunction with this application. There are no public access easements within or adjacent to the partition.

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.

FINDING: The proposed 5.74-acre parcel adjoins Plainview Road, the proposed 5.51-acre parcel adjoins Fryrear Road and the 99.35-acre parcel abuts Plainview and Fryrear Road. These roads are public roads.

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

FINDING: The applicant will be required to obtain access permits for new access onto the extension of Plainview Road and Fryrear Roads in order to provide access to the parcels. Based on the comments received from the County Road Department, staff finds that it is possible to obtain those permits. As a condition of approval, the applicant will be required to obtain access permits for new access onto Plainview Road and Fryrear Roads prior to issuance of any building permits for all three parcels.

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

FINDING: The three parcels are intended for residential use. Two of the three parcels will be approximately five acres in size and the third parcel will be approximately 99.35 acres in size. No irrigation water rights exist on the subject property. None of the parcels have any known natural hazards. The topography of the two new nonfarm parcels is suited for development for the nonfarm dwellings. Access to each of the parcels is adequate. The size of the lots will allow sufficient room to build homes to meet all applicable County setbacks, as discussed above.
6. **All required utilities, public services and facilities are available and adequate and are proposed to be provided by the petitioner.**

**FINDING:** Road access, fire and police services and utility systems in the area are adequate for the use proposed. This is confirmed by the many residences along Fryrear Road and Plainview Road. Central Electric Cooperative has provided a will-serve letter which is submitted as EXHIBIT U and the well reports submitted as EXHIBITS V, W and X provide evidence a well is an appropriate source of water for the new parcels. In addition, the subject property is located in the Cloverdale Fire Protection District as evidenced by EXHIBIT T and Deschutes County Sheriff services already exist for the area.

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.**

**FINDING:** The irrigation pond is no longer in use because the Plainview Irrigation Ditch that once served the subject property has not been used for the delivery of water for a period of approximately 30 years. When active, this ditch provided water to the subject property; however, since its discontinuation, the water rights have been considered to have been abandoned by the State of Oregon and have since been cancelled as shown by the Final Order from the Water Resources Department of the State of Oregon (see submitted EXHIBIT D).

The proposed nonfarm parcels do not have any irrigation water rights. No division plan, therefore, is required.

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 Title 18 of the Deschutes County Code, can be sited consistent with the requirements of Chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under Section 17.28.010 (C) of this chapter.**

**FINDING:** There is no SM zone within one-half mile of the subject property; therefore this section is not applicable.

**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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.

**FINDING:** The subject property has never been partitioned by a partition plat or plan. This criterion, therefore, does not apply.

2. **Section 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.

FINDING: Comments provided by the Deschutes County Road Department and Deschutes County Transportation Planner do not identify any required street improvements. Staff finds that no street improvements or dedication of right-of-way is required.

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.

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

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.

FINDING: The subject property is adjoined on two sides by County roads, Fryrear Road and Plainview Road. No new roads are needed to serve the proposed partition. There is no principal street in an adjoining area that requires continuation onto or through the subject property.

2. 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.

**FINDING:** The existing streets adjacent to the subject property are Fryrear Road and Plainview Road. Both are of adequate width to accommodate the slight increase in traffic expected from the partition. No new road improvements are needed for either adjacent street.

3. **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.

**FINDING:** No subdivision or partition streets are proposed. This criterion is not applicable.

4. **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.

**FINDING:** The existing roads are in conformance with County standards.

5. **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.

**FINDING:** Pursuant to DCC 18.16.055, these properties will not be eligible for any future division.

6. **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.

**FINDING:** It is not necessary to extend either Fryrear Road or Plainview Road to permit a satisfactory future division of adjoining land. All adjoining properties have access.

7. **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.

FINDING: Fryrear Road is a rural collector street. Comments from the Deschutes County Road Department did not identify the need for any road improvements. Staff finds that a frontage road is not needed given the relatively low volume of traffic on Fryrear Road.

8. 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.

FINDING: The subject property does not adjoin or contain a railroad, freeway or parkway. Therefore, this section is not applicable.

9. 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.

FINDING: This criterion is not applicable since the applicant is not proposing to create a new street.

10. 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 guylines 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.

FINDING: Utility easements are not proposed and are not needed in order to serve the lots in this partition. There are no natural drainage ways that traverse the tract.

11. 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.

FINDING: As discussed above, the parcels are appropriate for the proposed uses and are consistent with the parcel size provisions of Title 18.

12. 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.
FINDING: The proposed new parcels will each have over 50 feet of road frontage. The 5.51-acre parcel will front Fryrear Road. The 5.74-acre parcel will front Plainview Road. The remainder parcel will front Fryrear Road and Plainview Road. The side lot lines are at right angles to street lines.

13. 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.

FINDING: There are no proposed parcels with double frontage.

14. 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.

FINDING: Given the sizes of the proposed parcels, staff finds that solar access is available and feasible.

15. 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.
FINDING: It is possible to access the partition from Fryrear Road or Plainview Road, meeting this criterion.

16. 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.

FINDING: Water will be provided by individual wells and sewage disposal will be by on-site systems. The installation of water and sewer lines is not required for this partition.

17. 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.

FINDING: The applicant provided copies of 3 well logs as part of the application. The well logs generally show 15 to 20 gallons per minute flow at depths ranging from 243 to 268 feet.

C. Chapter 17.44, Park Development.

1. Section 17.44.010, Dedication of Land

A. For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.

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.
FINDING: The property is located within the Sisters Park and Recreation District. It is thus not subject to the dedication of land for parks or in lieu fees.

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.

FINDING: The proposed partition will not require the construction or improvement of any roads. This criterion is not applicable.

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.)

FINDING: The proposed partition will not require the construction or improvement of any roads. This criterion is not applicable.

3. Section 17.48.120, Partial Width Roads

Partial width roads or half streets shall not be allowed.

FINDING: The proposed partition will not require the construction or improvement of any roads. This criterion is not applicable.

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.

FINDING: No road names are required or necessary for the proposed partition. This criterion is not applicable.

5. Section 17.48.160, Road Development Requirements – Standards

A. Subdivision Standards. All roads in new subdivisions shall either be constructed to a standard acceptable for inclusion in the County maintained system or the subdivision shall be part of a special road district or homeowners association in a planned unit development.
FINDING: The proposed partition is not a subdivision. This criterion does not apply.

B. Improvements of Public Rights of Way.

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

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

FINDING: As discussed previously, comments provided by the Deschutes County Road Department and Deschutes County Transportation Planner do not identify any required street improvements. Staff finds that no street improvements or dedication of right-of-way is required.

C. Primary Access Roads. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A. The applicable standard shall be determined with reference to the road’s classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: No new road is proposed as a part of this application.

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

FINDING: This code section does not apply as no cul-de-sac is proposed.

G. Frontage Roads. Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.

FINDING: No frontage roads are proposed or required.

Attachment 4: Split Zone, Flood Plain Decisions
6. **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.

   **FINDING:** No new roads within the partition are proposed. Access roads meet current standards. These criteria are not applicable.

7. **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.

   **FINDING:** As a condition of approval, the applicant will be required to obtain access permits for access onto Fryrear Road or Plainview Road prior to obtaining a building permit.

**IV. CONCLUSIONS:**

The proposed conditional use and partition applications can meet the requirements of Titles 17 and 18 of the Deschutes County Code. The following conditions apply.
V. DECISION:

APPROVAL.

VI. CONDITIONS OF APPROVAL:

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application. An updated title report shall be required as part of final plat review.

2. A septic site evaluation for each nonfarm parcel shall be obtained, prior to final approval of the plat.

3. The applicant shall have a licensed land surveyor prepare a partition plat which conforms with Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code. The plat shall include a statement of water rights. No water rights shall be associated with any parcel of the partition.

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 Tax Collector.

5. All easements of record and rights-of-way shall be shown on the final plat.

6. The applicant shall disqualify the two non-farm parcels created by this partition from farm tax deferral and all other penalties or fees imposed by the County Assessor as a result of disqualification shall be paid. Evidence that all taxes due have been paid shall be submitted to the Planning Division prior to final plat approval.

7. An access permit for any new access to Fryrear Road or Plainview Road shall be applied for and approved by the County prior to obtaining a building permit. All access onto Fryrear Road and Plainview Road will be required to meet AASHTO sight distance standards.

8. Prior to final plat approval, the applicant/owner shall sign and record with the County Clerk a document binding the landowner, and the landowner’s successors in interest, prohibiting 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 under ORS 30.936 to 90.937.

9. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standards.
VII. **DURATION OF APPROVAL:**

All conditions of tentative approval and submission of an application for final plat review for the partition must occur within two (2) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

The applicant shall also apply for building permits for the proposed nonfarm dwellings within four (4) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

**DESHUTES COUNTY PLANNING DIVISION**

Written by: Will Groves, Senior Planner

Reviewed by: Kevin M. Harrison, Principal Planner

Dated this 8\textsuperscript{th} day of August, 2013 Mailed this 8\textsuperscript{th} day of August, 2013
FILE NUMBER: MP-13-8 and V-13-10

APPLICANT: Deschutes County Property and Facilities Department  
P.O. Box 6005  
Bend, OR 97708

OWNERS: Bureau of Land Management  
Prineville District Office  
3050 N.E. 3rd Street  
Prineville, OR 97754

PROPOSAL: An application for a partition to divide a parcel into an approximately 800 acre parcel and an approximately 26,000 acre parcel as well as a variance to the surveying requirements of DCC Title 17.

LOCATION: The subject property is identified on Deschutes County Assessor’s Map 22-10 as Tax Lot 100 and Map 22-11 as Tax Lot 100.

STAFF CONTACT: William Groves, Senior Planner

STANDARDS AND APPLICABLE CRITERIA

Title 17 of the Deschutes County Code, Subdivision/Partition Ordinance:  
Chapter 17.22, Approval of Tentative Plans for Partitions  
Chapter 17.24, Final Plat  
Chapter 17.36, Design Standards  
Chapter 17.44, Park Development  
Chapter 17.48, Design and Construction Specification  
Chapter 17.56, Variances

Title 18 of the Deschutes County Code, County Zoning Ordinance:  
Chapter 18.16, Exclusive Farm Use (EFU-LA)  
Chapter 18.40, Forest Use (F2)  
Chapter 18.48, Open Space and Conservation (OS&C)  
Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)  
Chapter 18.61, Urban Unincorporated Community Zone – La Pine  
Chapter 18.88, Wildlife Area Combining Zone (WA)  
Chapter 18.96, Flood Plain Zone (FP)

Title 22 of the Deschutes County Code, the County Uniform Land Use Procedures Ordinance.

Attachment 4: Split Zone, Flood Plain Decisions

Quality Services Performed with Pride
II. **BASIC FINDINGS**

A. **Location.** The subject property is identified on County Assessor’s Tax Map #22-10 as Tax Lot 100 and 22-11 as Tax Lot 100.

B. **Lot of Record.** In LR-13-9, the County found the legal lot of record consists of all of tax lot 100 as depicted on the April 2013 effective Assessor’s map for Township 22, Range 11, along with all of tax lot 100 as depicted on the April 2013 effective Assessor’s map for Township 22, Range 10 and tax lot 200 as depicted on the April 2013 effective Assessor’s Map for 22-10-27.

C. **Zoning.** The subject property is zoned Forest Use (F2), Exclusive Farm Use (EFU-LA), Open Space and Conservation (OS&C), Urban Unincorporated Community Zone – La Pine (LPST), and Flood Plain Zone (FP) as well as Wildlife Area Combing (WA) Zone and Surface Mining Impact Area Combining Zone. Proposed Parcel 1 is located wholly within the City of La Pine.

D. **Site Description.** The subject property contains approximately 22,484 acres. The property is generally level and vegetated with lodgepole and ponderosa pine trees. The parcel is traversed by a number of BLM easements and the BNSF railroad right-of-way.

E. **Surrounding Land Uses.** The subject property is predominantly surrounded by other forested, federally-owned lands, zoned Forest Use (F1 and F2). The subject property abuts industrial and sewage treatment zoned lands in the City of La Pine to the west. Rural Residential (RR-10) zone lands abut the property in areas to the southwest and to the north.

F. **Proposal.** The applicant is requesting partition approval to divide an approximately 28,225-acre parcel into a 27,325-acre parcel (Parcel 1) and an 800-acre parcel (Parcel 2). The applicant has requested a variance to the surveying requirements of Title 17 for Parcel 1. The purpose of this partition is to create a legal lot of the property conveyed under the LA Pine Land Conveyance Act.

G. **Public Agency Comments.** The Planning Division received the responses detailed below.

**Deschutes County Senior Transportation Planner:** I have reviewed the transmittal materials for MP-13-8 to a partition a parcel into an 800-acre parcel and an approximately 26,000-acre parcel at 52300 Highway 97 in La Pine near the NE corner of US 97/Reed, aka 22-10, Tax Lot 100, and 22-11, Tax Lot 100. No traffic study is required, but transportation system development charges (SDC) will apply when the parcels develop.

Deschutes County Code (DCC) at 17.16.115(C)(4)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. The partition will not generate any traffic and thus no traffic analysis is required.

Board Resolution 2013-020 sets an SDC rate of $3,758 per p.m. peak hour trip. The SDCs will be triggered when the land develops; there are no SDCs for the partition.

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Attachment 4: Split Zone, Flood Plain Decisions
Deschutes County Road Department: Reed Road is a City collector road maintained by Deschutes County. There will be no road improvements required on Reed Road for this application. The applicant will be required to dedicate to the public the portion of Reed Road located within the application. The burden of proof states that all other roads are under the jurisdiction of the City of La Pine but they are still under the jurisdiction of Deschutes County as there has not been a transfer of road jurisdiction within the City of La Pine.

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

1. Reed Road, located within the plat boundaries will be dedicated to the public.

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

3. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standards.

Deschutes County Road Department: (Second Comment) Reed Road is classified as a City Collector with the County being the owner up to the east boundary of the La Pine Industrial Site Phase II subdivision. It is a paved road to this point with a width of 24 feet. From this point on out to the Cemetery, it is a 21 foot wide gravel surfaced road. It shows up on our data base as a City of La Pine road. Reed Road in this area is an easement granted to the County from the BLM, therefore we wanted this portion to be dedicated to the public through the land use process. There is an issue where part of the road goes outside the boundary of the Parcel 1 therefore that portion will not be dedicated to the public and will remain an easement on BLM property. The portion that is within the plat will need to be dedicated to the public with 30 feet dedicated either side of the existing centerline of the road.

The following agencies either had no comments or did not respond in writing: La Pine Fire Department, Deschutes County Assessor, Deschutes County Surveyor, Deschutes County Address Coordinator, La Pine Public Works, City of La Pine, BLM.

I. Public Comments. The Planning Division mailed notice of this application to all properties within 750 feet of the subject property. No public comments were submitted in response to the mailed or posted notices.

J. Review Period. File MP-13-8 was submitted on October 29, 2013. The application was deemed complete by the Planning Division on November 29, 2013.
III. CONCLUSIONARY FINDINGS

TITLE 18 OF THE DESCHUTES COUNTY CODE

A. Chapter 18.16, Exclusive Farm Use Zones

1. Section 18.16.060, Dimensional Standards.
   A. *The minimum parcel size for irrigated land divisions created subject to DCC Title 17 shall be as specified under DCC 18.16.065, "Subzones."*
   B. *The minimum parcel size for nonirrigated land divisions created subject to DCC Title 17 is as specified under DCC 18.16.055(C).*
   C. *The minimum parcel size for all other uses permitted by DCC 18.16.030 shall be no greater than the minimum size necessary for the use.*
   D. *Each parcel shall have a minimum street frontage of 50 feet.*
   E. *Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.*

FINDING: Parcel 2 will include lands from the parent parcel zoned Exclusive Farm Use, La Pine subzone. This partition will not divide lands zoned EFU and, thus, is not subject to these dimensional standards.

B. Chapter 18.48, Open Space And Conservation Zone - OS&C

1. Section 18.48.040, Dimensional Standards.
   In an OS&C Zone, the following dimensional standards shall apply:
   A. *The minimum lot size is 80 acres.*
   B. *Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.*

FINDING: Parcel 2 will include lands from the parent parcel zoned Open Space and Conservation Zone. This partition will not divide lands zoned OS&C and, thus, is not subject to these dimensional standards.

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

1. Section 18.56.060, Dimensional Standards
   In the SMIA Zone, the lot size shall be that prescribed in the underlying zone.

FINDING: Parcel 2 will include lands from the parent parcel zoned Surface Mining Impact Area Combining Zone. This partition will not divide lands zoned SMIA and, thus, is not subject to these dimensional standards.
D. Chapter 18.61, Urban Unincorporated Community Zone - La Pine

1. Section 18.61.030, La Pine Planning Area.

E. La Pine Sewer Treatment District.

3. Dimensional Standards. The following dimensional standards shall apply:
   a. Lot Coverage. No requirements.
   b. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.

FINDING: Parcel 2 will include lands from the parent parcel zoned La Pine Sewer Treatment District. This partition will not divide lands zoned LPST and, thus, is not subject to these dimensional standards.

E. Chapter 18.96, Flood Plain Zone - FP

1. Section 18.96.110. Dimensional Standards.

   In an FP Zone, the following dimensional standards shall apply:
   A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.
   B. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
   C. Minimum lot size shall be 10 acres for all areas which have received an exception to the Statewide Planning Goals for resource uses. Areas which have not received an exception to the Statewide Planning Goals shall have a minimum lot size of 80 acres.

FINDING: Parcel 2 will include lands from the parent parcel zoned Flood Plain Zone. This partition will not divide lands zoned FP and, thus, is not subject to these dimensional standards.

F. Chapter 18.40, FOREST USE ZONE F 1

1. Section 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
   B. Land divisions creating parcels less than 80 acres in size may only be approved for uses listed in DCC 18.36.030(D) through (O), provided that those uses have been approved pursuant to DCC 18.36.040. Such division shall create a parcel that is the minimum size necessary for the use.
   C. Building Height. No nonagricultural building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.

FINDING: Both proposed Parcel 1 and Parcel 2 will contain over 80 acres of Forest Use Zone (F-1) lands. This requirement is met.
G. Chapter 18.40, Forest Use Zone - F2

1. Section 18.40.090, Dimensional Standards.

   In an F 2 Zone, the following dimensional standards shall apply:
   A. The minimum lot size is 80 acres; or
   B. Land divisions creating parcels less than 80 acres in size may only be approved for uses listed in DCC 18.40.030(D) through (P), provided that those uses have been approved pursuant to DCC 18.40.040. Such division shall create a parcel that is the minimum size necessary for the use.
   C. Building Height. No nonagricultural building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under DCC 18.120.040.

FINDING: Parcel 2 will include lands from the parent parcel zoned Forest Use (F2). This partition will not divide lands zoned F2 and, thus, is not subject to these dimensional standards.

G. Chapter 18.88, Wildlife Area Combining Zone - WA

1. Section 18.88.050, Dimensional Standards.

   In a WA Zone, the following dimensional standards shall apply:
   A. In the Tumalo, Metolius, North Paulina and Grizzly deer winter ranges designated in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 40 acres except as provided in DCC 18.88.050(D).

FINDING: Both proposed Parcel 1 and Parcel 2 will contain over 40 acres of Wildlife Area Combining Zone (WA) lands. This requirement is met.

TITLE 17 OF THE DESCHUTES COUNTY CODE.

A. Chapter 17.22, Approval of Tentative Plans for Partitions

1. Section 17.22.010, Filing Procedures and Requirements

   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.

FINDING: No uses are proposed for the parcels at this time. Proposed Parcel 1 is limited to public sewer use under the La Pine Conveyance Act. No noise or dust sensitive use is proposed on either parcel.
Section 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 Oregon Revised Statutes Chapter 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 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;

FINDING: The proposed partition would be in compliance with ORS Chapter 92 if it is in conformance with Titles 17 and 18 of the County Code. There are no previously approved land uses on the property with which the partition would conflict. No nonconforming uses would be created by the partition.

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

FINDING: The existing rights-of-way for the adjacent public roadways are depicted on the attached partition plat. The proposed partition will take access directly from Reed Road via existing road dedications, and will not conflict with any existing public access easements, as BLM public access easements, including Darleen Way, will be maintained.

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.

FINDING: Parcel 1 would be accessed from Reed Road, a publicly-dedicated road. Parcel 2 would be accessed from a segment of Reed Road that would become a publicly-dedicated road under this proposal.

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

FINDING: Deschutes County Road Department has confirmed with Staff that both parcels present ample road frontage for access points. Therefore, an access permit can be obtained for each parcel. No new uses are proposed at this time, so no new access permits are required prior to final plat approval.

5. Each parcel is suited for the use intended or offered, considering the size of the parcels, natural hazards, topography and access.
**FINDING:** No uses are proposed for the parcels at this time. The parcels are large and have access to Reed Road, making them suitable for any outright use available in the F2 zone. There are no apparent natural hazards on the property. The topography on-site is generally flat. Staff finds this criterion is met.

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

**FINDING:** Within in the City of La Pine, water and sewer service are available from the City of La Pine. Outside the City, these services can be provided by wells and septic systems, should future uses require water and sewer service. Fire protection is provided to Portions of Parcel 1 and 2 by the La Pine Rural Fire Protection District. However, no new structures or uses are proposed on the proposed parcels. The applicant has stated that solid waste, telephone, power, natural gas, and cable television are also available to the proposed parcels.

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.**

**FINDING:** There are no water rights on the subject parcel.

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 Title 18 of the Deschutes County Code, can be sited consistent with the requirements of Chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under Section 17.28.010 (C) of this chapter.**

**FINDING:** Both proposed parcels contain lands within one-half mile of SM zones. The requirements of Section 17.22.010(C)¹ are discussed above.

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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.**

**FINDING:** The parent parcel has been reduced over time as documented on County File Nos. LR-13-9 and LR-13-10, and incorporated herein by reference. The proposal would result in series partitioning² because the proposed partition would result in the creation of four or more parcels over a period of more than one calendar year. Staff finds that the application is not subject to the requirements of sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions. This is because the large, forested partition

¹ Section 17.28.010(C) does not exist. Staff believes this reference should point to Section 17.22.010(C).
² DCC 17.08 - "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.
parcels will not have high-density uses that require public water or subdivision standard streets. The Road Department comments do not indicate that any road improvements are required for this partition.

3. **Section 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.*

**FINDING:** The Road Department comments do not indicate that any road improvements are required for this partition.

**B. Chapter 17.24, Final Plat**

1. **Section 17.24.100, Technical Review.**

   **A. Review by Surveyor.**

   ...  

   2. *The surveyor shall not approve a partition unless he is satisfied that all required monuments on the exterior boundary and all required parcel corner monuments have been set.*

**FINDING:** The applicant has requested a variance to this requirement, as discussed below.

**C. 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.*

**FINDING:** The standards under DCC 17.36 and 17.48 are addressed below.

2. **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.*

Attachment 4: Split Zone, Flood Plain Decisions
**FINDING:** This partition includes the public dedication of Reed Road along the southern boundary of proposed Parcel 1, where the road is not already dedicated. Based on comments provided by the Deschutes County Road Department and Senior Transportation Planner, no road improvements will be required on Reed Road.

3. **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.*

**FINDING:** This partition includes the public dedication of Reed Road along the southern boundary of proposed Parcel 1, where the road is not already dedicated. The submitted tentative partition plan shows the proposed continuation of the Reed Road right-of-way aligned so that its centerline coincides with the existing Reed Road paved surface.

4. **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.*

**FINDING:** This partition includes the public dedication of Reed Road along the southern boundary of proposed Parcel 1, where the road is not already dedicated. Reed Road is classified as a City Collector with the County being the owner up to the east boundary of the La Pine Industrial Site Phase II subdivision. It is a paved road to this point with a width of 24 feet. Based on comments provided by the Deschutes County Road Department and Senior Transportation Planner, no road improvements will be required on Reed Road.

5. **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.*

**FINDING:** Given the required public dedication of Reed Road along the southern boundary of Proposed Parcel 1, both proposed Parcel 1 and 2 are arranged so as to permit future resubdivision in conformity to the street requirements contained in this title.

6. **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.*

**FINDING:** The applicant has proposed to extend Reed Road to the boundary of proposed Parcel 1. No further extension of streets or roads is necessary to give access to or permit a satisfactory future division of adjoining land.
7. **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.

**FINDING:** Reed Road is classified as a City Collector with the County being the owner up to the east boundary of the La Pine Industrial Site Phase II subdivision. Comments from the Deschutes County Road Department did not identify the need for any road improvements. Staff finds that a frontage road is not needed given the relatively low volume of traffic on relevant portion Reed Road.

8. **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.

**FINDING:** Proposed Parcels 1 and 2 are adjacent to the railroad. Comments from the Deschutes County Road Department did not identify the need for any new roads parallel to the railroad. Staff finds that such roads are not needed or required.

9. **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.

**FINDING:** The applicant has proposed extending Reed Road into the partition, where it will continue to be known as Reed Road.

10. **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.

FINDING: An existing utility easement existing along the north side of Reed Road that terminates in the southwest corner of Parcel 1.

11. 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.

FINDING: As discussed above, the parcels are appropriate for the forest uses and are consistent with the parcel size provisions of Title 18. No new uses are proposed. Any future uses of the 800+ acre partition parcels will find areas sufficient to permit adequate sewage disposal.

12. 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.

**FINDING:** The proposed new parcels will each have over 50 feet of road frontage on Reed Road. The side lot lines are at right angles to street lines.

13. **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.

**FINDING:** There are no proposed parcels with double frontage.

14. **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.

**FINDING:** Given the sizes of the proposed parcels, staff finds that solar access is available and feasible.
15. **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.*

**FINDING:** It is possible to access the partition from Reed Road or Darleen Way, meeting this criterion.

16. **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.*

**FINDING:** No development of the parcels is proposed at this time. No water or sewer lines are required.

17. **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.*

**FINDING:** No wells are proposed.

C. **Chapter 17.44, Park Development.**

1. **Section 17.44.010, Dedication of Land**

   A. **For subdivisions or partitions inside an urban growth boundary,** the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.

   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.

FINDING: Proposed Parcel 1 falls partially within the La Pine Park and Recreation Tax District. All of proposed Parcel 1 is limited to public sewer use under the La Pine Conveyance Act. No dwelling units are proposed on either proposed parcel as part of this partition. Staff finds that no dedication of land is required under these criteria.

1. 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 a parks district with a permanent tax rate.

FINDING: Proposed Parcel 1 falls partially within the La Pine Park and Recreation Tax District. No dwelling units are proposed on either proposed parcel as part of this partition. Staff finds that no fee in lieu of dedication is proposed.

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.

FINDING: Reed Road is classified as a City Collector with the County being the owner up to the east boundary of the La Pine Industrial Site Phase II subdivision. It is a paved road to this
point with a width of 24 feet. Comments from the Deschutes County Road Department did not identify the need for any road improvements.

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.)*

**FINDING:** The Deschutes County Road Department commented:

Reed Road in this area is an easement granted to the County from the BLM, therefore we wanted this portion to be dedicated to the public through the land use process. There is an issue where part of the road goes outside the boundary of the Parcel 1 therefore that portion will not be dedicated to the public and will remain an easement on BLM property. The portion that is within the plat will need to be dedicated to the public with 30 feet dedicated either side of the existing centerline of the road.

Sixty feet of right-or-way is required under Table A for a City Collector. Staff finds that the dedication of 30 feet of right-of-way from the centerline of Reed Road within Parcel 1 complies with this requirement.

3. **Section 17.48.120, Partial Width Roads**

   *Partial width roads or half streets shall not be allowed.*

**FINDING:** The proposed partition will not require the construction or improvement of any roads. This criterion is not applicable.

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.*

**FINDING:** No new road names are required or necessary for the proposed partition. This criterion is not applicable.

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

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

**FINDING:** The proposed partition is not a subdivision. This criterion does not apply.
B. Improvements of Public Rights of Way.

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

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

FINDING: As discussed previously, comments provided by the Deschutes County Road Department and Deschutes County Transportation Planner do not identify any required street improvements. Staff finds that no street improvements are required.

C. Primary Access Roads. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A. The applicable standard shall be determined with reference to the road’s classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: No new road improvement is proposed as a part of this application.

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

FINDING: This code section does not apply as no cul-de-sac is proposed.

G. Frontage Roads. Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.

FINDING: No frontage roads are proposed or required.
6. **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.*

**FINDING:** The proposed parcels are greater than 10 acres. Reed Road is classified as a City Collector with the County being the owner up to the east boundary of the La Pine Industrial Site Phase II subdivision. It is a paved road to this point with a width of 24 feet. From this point on out to the Cemetery, it is a 21 foot wide gravel surfaced road. As discussed previously, comments provided by the Deschutes County Road Department and Deschutes County Transportation Planner do not identify any required street improvements.

7. **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.*

**FINDING:** As a condition of approval, the applicant will be required to obtain access permits for access onto Reed Road prior to obtaining a building permit.
E. Chapter 17.56, Variances

1. Section 17.56.020, Variance Criteria.

A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body makes all of the following findings:

A. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit;

FINDING: The applicant has requested a variance to DCC 17.24.100(A) for Parcel 2. DCC 17.24.100(A) requires survey and documentation of all parcel corners prior to final plat approval. Staff finds that the survey and monumentation of the 27,325 acre Parcel 2 would create practical difficulties resulting in greater private expense than public benefit. Staff has confirmed this finding with the Deschutes County Surveyor.

B. That the condition creating the difficulty is not general throughout the surrounding area, but is unique to the applicant's site;

FINDING: The condition creating the difficulty is the very large size of Parcel 2. The condition creating the difficulty is not general throughout the surrounding area, but is unique to the applicant's site.

C. That the condition was not created by the applicant;

FINDING: The condition creating the difficulty is the very large size of Parcel 2. The applicant did not create the very large parcel size.

D. That the variance conforms to the comprehensive plan and the intent of the ordinance being varied.

FINDING: The comprehensive plan does not specifically address survey monumentation. Staff finds the intent of DCC 17.24.100(A) is to make clear the boundaries of parcels and provide a benefit to future surveyors with clear monumentation. In this case, Staff finds that massive task of monumenting the 27,325 acre Parcel 2 would create practical difficulties resulting in greater private expense than public benefit. Staff has confirmed this finding with the Deschutes County Surveyor.

IV. CONCLUSION

Staff finds that the proposed partition and variance would comply with the requirements of Titles 17 and 18 of the Deschutes County Code.

V. DECISION

APPROVAL of the partition, subject to the following conditions of approval.

1. Approval of the partition is based on the partition plan and burden of proof as submitted. Any substantial change to the proposal will require a new partition application.
2. The applicant shall have a licensed land surveyor prepare a partition plat which conforms to Oregon Revised Statues Chapter 92 and Title 17 of the Deschutes County Code. The plat shall include the exact sizes for each parcel.

3. All advalorem 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.

4. All easements of record or rights-of-way shall be shown on the final plat. An up to date Title Report or Subdivision Guarantee shall be submitted at the time of final plat approval.

5. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standards.

6. Reed Road, located within the Parcel 1 will be dedicated to the public.

VI. **DURATION OF APPROVAL**

All conditions of tentative approval and submission of an application for final plat review for the partition must occur within two (2) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

**DESHUTES COUNTY PLANNING DIVISION**

Written by: Will Groves, Senior Planner

Reviewed by: Kevin M. Harrison, Principal Planner

Dated this 12th day of December, 2013 Mailed this 12th day of December, 2013
FINDINGS AND DECISION

FILE NUMBERS: CU-11-30/CU-11-31/MP-11-10

LOCATION: The subject property has an assigned address of 11697 NE Canyons Ranch Drive, Terrebonne and is identified on County Assessor’s Maps 14-13-04 as tax lot 1400 and 14-13-03 as tax lot 300.

APPLICANT/OWNER: Canyons Land & Cattle Company, LLC
10400 N.E. Canyons Ranch Drive
Terrebonne, OR 97760

AGENT: Renee France, Attorney at Law
Ball Janik LLP
101 S.W. Main Street; Suite 1100
Portland, OR 97204

REQUEST: Conditional Use Permits for nonfarm dwellings on two parcels (CU-11-30 3.46 acres, CU-11-31 4.35 acres) to be created by an irrigated land division (MP-11-10) of a 120.33-acre parcel into three parcels in the Exclusive Farm Use zone (3.46, 4.35, and 110.35 acres).

STAFF CONTACT: Will Groves, Senior Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, County Zoning
    Chapter 18.16, Exclusive Farm Use (EFU) Zones
        18.16.030, Conditional uses permitted – High value and nonhigh value farmland
        18.16.050, Standards for dwellings in the EFU zones
        18.16.055, Land divisions
        18.16.060, Dimensional standards
        18.16.070, Yards
        18.16.080, Stream setbacks
        18.16.090, Rimrock setback
    Chapter 18.84, Landscape Management (LM) Combining Zone
    Chapter 18.88, Wildlife Area (WA) Combining Zone
    Chapter 18.96, Floodplain (FP) Zone

Attachment 4: Split Zone, Flood Plain Decisions
Title 17 of the Deschutes County Code, Partitions.
Chapter 17.22, Approval of Tentative Plans for Partitions
Chapter 17.36, Design Standards
Chapter 17.48, Design and Construction Specifications

Oregon Revised Statutes 215.417

BASIC FINDINGS:

A. LOCATION: The subject property has an assigned address of 11697 NE Canyons Ranch Drive, Terrebonne and is identified on County Assessor’s Maps 14-13-04 as tax lot 1400 and 14-13-03 as tax lot 300.

B. LOT OF RECORD: The County confirmed that the parent parcel is a lawfully created parcel through County File Nos. LL-00-100 and AD-00-22. The parent parcel reached its current configuration through County Lot Line adjustment files Nos. LL-11-28, LL-11-29, LL-11-30, LL-11-31, LL-11-32, LL-11-33, and LL-11-34.

C. ZONING: The property is zoned Exclusive Farm Use – Terrebonne subzone (EFU-TE) and Floodplain (FP). It is also within the Landscape Management (LM) and Wildlife Area (WA) Combining Zones. It is designated agriculture on the Deschutes County Comprehensive Plan.

D. PROPOSAL: The applicant is proposing to divide a 120.33-acre parcel into three parcels. Parcel 1 would be 110.35 acres with 56.26 acres of water. Parcel 2 would be 3.46 acres with no water rights and a nonfarm dwelling reviewed under CU-11-30. Parcel 3 would be 4.35 acres and no water rights and a nonfarm dwelling reviewed under CU-11-31. The partition is considered an irrigated land division for purposes of review. A 2.17 acre road dedication area will extend Coyote Butte Road to the north to provide access to future nonfarm dwelling sites.

E. SITE DESCRIPTION: According to the applicant, the subject property is 120.33 acres in size, with 56.26 acres of water rights. One dwelling is currently located on the subject property (Parcel 1) and the County approved a replacement dwelling on the subject property (Parcel 1), under AD-03-19, but it has not yet been built. A hay shed is also located on the western portion of the subject property. The remainder of the property is vacant and is used for farming.

The parent parcel is primarily located on the west side of the Crooked River and is a part of the working conservation ranch and residential landholding project known as the Ranch at the Canyons. The subject property and the surrounding Ranch property consist of open pasture land with concentrations of juniper trees, native grasses, and rock outcroppings. As illustrated by the photos in the Soil Survey Reports prepared by Mr. Steve Wert, C.P.S.S., of Wert & Associates (the “Wert Reports”), the portions of the parcel proposed for the nonfarm parcels and nonfarm dwellings are rocky, unirrigated, and uncultivated soils with intermittent junipers and sagebrush. Both Parcels are located in an area known as Coyote Butte that is west of Coyote Butte Road. Parcel 3 has a ridge of bedrock running through it and Parcel 2 has rocky outcrops and shallow rocky soils.
F. **SURROUNDING LAND USES:** The parent parcel is surrounded on all sides by land within the Ranch at the Canyons and zoned EFU-TE. The properties within the Ranch are dedicated to open space preservation, farm use (hay production, livestock grazing, vineyards), and residential use. Additional properties adjacent to the Ranch, to the west and north of the proposed partition, are also zoned EFU and are used for hay production, grazing, open space preservation, and rural residential use. The parcels to the west are within Deschutes County, and the parcels north of the Ranch are within Jefferson County.

G. **SOILS:** According to NRCS soil mapping for this area, the subject property contains the following soil types:

<table>
<thead>
<tr>
<th>Soil Type</th>
<th>Soil Description</th>
<th>% of Property</th>
<th>High Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>81F</td>
<td>Lickskillet-Rock outcrop complex, 45 to 80 percent slopes</td>
<td>11%</td>
<td></td>
</tr>
<tr>
<td>32A</td>
<td>Deschutes sandy loam, dry, 0 to 3 percent slopes</td>
<td>40%</td>
<td>High value farmland if irrigated</td>
</tr>
<tr>
<td>49A</td>
<td>Fluvents, 0 to 1 percent slopes</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>142B</td>
<td>Stukel-Rock outcrop-Deschutes complex, dry, 0 to 8 percent slopes</td>
<td>13%</td>
<td></td>
</tr>
<tr>
<td>81F</td>
<td>Lickskillet-Rock outcrop complex, 45 to 80 percent slopes</td>
<td>11%</td>
<td></td>
</tr>
<tr>
<td>106D</td>
<td>Redslide-Lickskillet complex, 15 to 30 percent north slopes</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>101D</td>
<td>Redcliff-Lickskillet-Rock outcrop complex, 15 to 30% south slopes</td>
<td>6%</td>
<td></td>
</tr>
<tr>
<td>106E</td>
<td>Redslide-Lickskillet complex, 30 to 50 percent north slopes</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>101E</td>
<td>Redcliff-Lickskillet-Rock outcrop complex, 30 to 50 percent south slopes</td>
<td>3%</td>
<td></td>
</tr>
</tbody>
</table>

Additionally, the applicant has included a site-specific soils report by Wert & Associates as Exhibit C to the burden of proof, which is incorporated herein by reference. This report provides detailed soils analyses for the proposed nonfarm parcels. As detailed in these reports, the NRCS map suggests that Parcel 3 is composed of the following mapping units:

- Unit 101D, Redcliff-Lickskillet-Rock outcrop complex, 15-30 % south slopes
- Unit 101E, Redcliff-Lickskillet Rock outcrop complex, 30-50% south slopes
- Unit 32A, Deschutes sandy loam, dry, 0-3% slopes

The NRCS map suggests that Parcel 2 is comprised of the following mapping units:

- Unit 101D, Redcliff-Lickskillet-Rock outcrop complex, 15-30 % south slopes
- Unit 101E, Redcliff-Lickskillet Rock outcrop complex, 30-50% south slopes
- Unit 106E, Redslide-Lickskillet complex, 30-50% north slopes
• Unit 32A, Deschutes sandy loam, dry, 0-3% slopes

However, the detailed Wert Reports provide data compiled from on-site soil tests illustrating that the parcels are actually composed of a different complex of soils than the NRCS maps suggest. The soil complex uncovered by Mr. Wert consists mostly of very shallow soils and soils with less than 2 inches of available water holding capacity (AWHC). Based upon the 20 soil pits dug within Parcel 3, Mr. Wert concluded that Parcel 3 is composed of 84% Class 7 and 8 soils.

### Parcel 3 Soil Types – Wert Analysis

<table>
<thead>
<tr>
<th>Soil Mapping units</th>
<th>Class</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clovcamp 10-20%</td>
<td>6</td>
<td>0.63</td>
</tr>
<tr>
<td>Houstake 0-10%</td>
<td>6</td>
<td>0.08</td>
</tr>
<tr>
<td>Lickskillet 20-35%</td>
<td>7</td>
<td>1.59</td>
</tr>
<tr>
<td>Redslide 15-30%</td>
<td>7</td>
<td>0.99</td>
</tr>
<tr>
<td>Rock outcrop-Lickskillet 30-100%</td>
<td>8 &amp; 9</td>
<td>1.06</td>
</tr>
</tbody>
</table>

Based upon the 15 soil pits dug within Parcel 2, Mr. Wert concluded that Parcel 2 is composed of 64% Class 7 and 8 soils.

### Parcel 2 Soil Types – Wert Analysis

<table>
<thead>
<tr>
<th>Soil Mapping units</th>
<th>Class</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clovcamp 10-20%</td>
<td>6</td>
<td>1.02</td>
</tr>
<tr>
<td>Houstake 0-10%</td>
<td>6</td>
<td>0.24</td>
</tr>
<tr>
<td>Lickskillet 20-35%</td>
<td>7</td>
<td>1.02</td>
</tr>
<tr>
<td>Redslide 15-30%</td>
<td>7</td>
<td>0.99</td>
</tr>
<tr>
<td>Rock outcrop-Lickskillet 30-100%</td>
<td>8 &amp; 9</td>
<td>1.18</td>
</tr>
</tbody>
</table>

The soil mapping units are described in Section 5.1 and Appendix B of each report. The photos attached to the Wert Reports provide a visual depiction of the rocky and shallow soil types and rock outcrops on each site. The qualities described in the Wert Reports (minimal depth, low AWHC, high gravel and cobble content) render the soils unsuitable for farm use, as discussed below.

Oregon Revised Statutes (ORS) 215.211 created a process for property owners and others who wish to challenge published soils information on agricultural land when applying for certain land use changes. Under ORS 215.211, such an application must be accompanied by more detailed soils data produced by a professional soil classifier. ORS 215.211 specifies a role for the Oregon Department of Land Conservation and Development in this process. Amendments to OAR 660-033-0030 adopted in December 2011 establish a process for assessing agricultural land capability under ORS 215.211.
The current application is not subject to the requirements of ORS 215.211 because, as specified in OAR 660-033-0030(5)(d), the soil survey in this application was completed and submitted prior to October 1, 2011 on September 30, 2011.

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

1. Deschutes County Road Department: In looking at the maps provided by the applicant, there must have been a lot line adjustment done on this lot as it does not match the lot layout shown on the current assessor’s map. The applicant is proposing to extend Coyote Butte Road to out to the end of Parcel 1. The extension will have to meet the minimum design standards listed in DCC Chapter 17, Table A for a partition. This includes a right-of-way dedication of 60 feet in width and the road improved to a width of 20 feet with 5 inches of aggregate surfacing. Staff visited the site and the road has been constructed to standard but the dedication will have to occur on this application.

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

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

B. Applicant shall dedicate 60 feet of right-of-way for the extension of Coyote Butte Road.

C. The applicant shall construct Coyote Butte Road to the standards listed in DCC 17.48.170(A). This includes building the roadway to a width of 20 feet with 5 inch depth aggregate surfacing.

D. The dedications and road improvements required on MP-11-7 (Conditions of Approval No. 16 and 17, Findings and Decision) will have to be finalized prior to the recording of this application.

E. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated

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1 OAR 660-033-0030(5)(d) This section and section (9) of this rule implement Oregon Laws 2010, chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.

2 Deschutes County Planning Staff notes that the applicant-submitted preliminary partition figure does not correspond to the Assessor’s map dated February 2, 2012. The difference is that the preliminary partition figure shows MP-11-7 as complete, despite the fact that a final plat has not been recorded for MP-11-7. However, the present application does not include lands partitioned under MP-11-7. Approval of this application is in no way contingent on the final platting of MP-11-7.
right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standard.

2. **County Transportation Planner:** I have reviewed the transmittal materials for two non-farm dwellings in conjunction with an irrigated land division at Ranch of the Canyons, 11697 NE Canyons Ranch Drive, Terrebonne, aka 14-13-04, TL 1400 and 14-13-03, TL 300. As the combined sites will generate less than 20 new daily trips based on the most recent ITE Manual and as DCC 17.16.115(C)(4) has a minimum threshold of 50 new weekday trips, no traffic analysis is required.

BOCC Resolution 2008-059 sets the Countywide transportation system development charge (SDC); as of July 1, 2011, the rate for a p.m. peak hour trip is $3,528. The p.m. peak hour rate for a single-family home is 1.01, according to the ITE. The SDC would be $3,563 for each home or a total of $7,126.

3. **Deschutes County Building Safety Division:** No comment received.

4. **County Assessor:** Under deferral.

5. **Deschutes County Environmental Soils:** No comment received.

6. **Redmond Fire and Rescue:** The fire department submitted comments dated April 2, 2012. These comments are incorporated herein by reference.

7. **Central Oregon Irrigation District:** No comment received.

8. **Central Electric Co-op:** No comment received.

I. **PUBLIC COMMENTS:** The Planning Division mailed notice of the conditional use and partition applications to all property owners within 750 feet of the subject property. No comments were submitted in response to that notice.

J. **REVIEW PERIOD:** These applications were submitted on September 30, 2011. An incomplete letter was mailed October 25, 2011. The applicant supplied the requested materials on March 15, 2012, and the applications were accepted as complete on March 15, 2012. The 150th day on which the county must take final action on this application is August 12, 2012.

K. **LAND USE HISTORY:** The subject property reached its current configuration through County Lot Line adjustment files Nos. LL-11-28, LL-11-29, LL-11-30, LL-11-31, LL-11-32, LL-11-33, and LL-11-34. Additionally, the property received approval for a replacement dwelling in File No. AD-03-19.

III. **CONCLUSIONARY FINDINGS:**

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

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

Attachment 4: Split Zone, Flood Plain Decisions
1. Section 18.16.030, Conditional uses permitted - High value and non-high value farmland.

   The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of Title 18.

   A. Nonfarm dwelling

   FINDING: The applicant is proposing to establish a nonfarm dwelling on each of two nonfarm parcels created by this partition. DCC sections 18.16.040 and 18.16.050 are addressed below.

2. Section 18.16.050, Standards for Dwellings in the EFU Zones

   Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

   G. Nonfarm Dwelling.

   1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

      a. The Planning Director or Hearings Body shall make findings that:

         i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

   FINDING: The applicant will be required to sign and record the waiver listed above as a condition of final plat approval. There are no forest zoned properties or properties devoted to forest use on nearby lands.

The area surrounding the proposed parcels is a mix of farm uses, rural residential uses and recreational uses (Smith Rock State Park). Typical farming practices in the area include hay production, pasture and livestock grazing (horses and cattle).

Based on data compiled from the Oregon State University (OSU) Extension Service, it is generally accepted that farming practices in the surrounding area can generate the following types of impacts. Maintaining irrigated pasture can generate dust form re-seeding, drifting of
herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing and possible water run-off from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape. Growing grass hay can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from baling hay, manure odor from spreading manure for fertilizer and possible water run-off from irrigation. Based upon this information, it is necessary to determine whether the impacts from the farm uses occurring on nearby lands devoted to farm use are likely to create conflicts with the nonfarm dwellings that will force a significant change in, or significantly increase the cost of, accepted farming practices.

To address this criterion, Staff physically inspected the farm uses in the surrounding area and reviewed Assessor’s data for adjacent parcels. In addition, Staff reviewed County GIS maps for the surrounding area. These maps show all EFU-zoned properties within a one-mile radius of the subject property. The majority of the EFU-zoned property within this radius is owned and managed by the Ranch at the Canyons.

The County GIS maps and land use records show 99 EFU-zoned parcels within the one-mile radius area, including both Deschutes and Jefferson County. There are a total of 51 existing parcels with dwellings. Of these dwellings, 17 were constructed prior to 1978, 9 were constructed between 1978 and 1992, and 25 were constructed after 1993.

Of the 99 EFU parcels within the study area, 3 are publicly-owned by the United States, State of Oregon, or Deschutes County. The public parcels are not receiving farm tax deferral, and 31 of the privately-owned parcels are not receiving farm tax deferral. Thus, a majority of the private EFU parcels are in farm deferral and are being used for both residential and agricultural purposes. The farm use in closest proximity to the nonfarm parcels is the irrigated pasture and hay production conducted by the Applicant within the proposed remainder parcel, Parcel 1. Additional pasture and hay production fields are located on Ranch lands to the east and south of the proposed parcels, and on Ranch lands below the canyon rim (on the west side of the Crooked River). The lands below the canyon rim are part of the 600-acre tract protected for open space and agricultural use in perpetuity pursuant to the conservation easement that the Ranch has executed with the Deschutes Basin Land Trust. In addition, the Ranch has adopted a Declaration of Covenants, Conditions, and Restrictions and a set of Rules and Regulations to ensure that all agricultural uses throughout the Ranch will continue in perpetuity, unaffected by homesite development.

There are 51 existing parcels with dwellings located on EFU parcels within the study area, 17 of which were constructed prior to 1978. Due to their low intensity, the identified farm uses have historically operated in harmony with these residential uses. Given the location of the proposed dwellings and the proximity of adjacent farm parcels, it is reasonable to conclude that this trend will continue. The GIS data demonstrates that the proposed dwellings will be consistent with the historic mixed agricultural and residential land use pattern and will not force a significant change in or significantly increase the cost of nearby agricultural operations.

li. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), and whether
creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

FINDING: On June 1, 1998, the Land Conservation and Development Commission adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter 660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The rules continue to apply the three-step “stability” analysis first articulated in Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989). The rules are as follows:

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in
farm use in a manner that will destabilize the overall character of the study area;

1. **Cumulative Impacts Analysis Area.** The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property’s boundaries and including over 3,000 acres (hereafter called “study area”). Staff finds this area of analysis is suitable to provide a comprehensive analysis of the character of the area surrounding the subject property because of its size and the number of properties located within it. As indicated in a foregoing finding, the study area is primarily zoned EFU-TE, and a portion of the study area is located in Jefferson County.

The study area encompasses all or a portion of 99 EFU-zoned parcels, 96 of which are privately-owned.

The properties in the study area range in size from 0.69 to 251 acres. Fifty-two percent are 20 acres or less in size, twenty-four percent are between 20+ and 40 acres in size, sixteen percent are between 40 and 80 acres in size, and eight percent are larger than 80 acres.

2. **Types of Farm Uses.** The EFU zoned land in the study area involves farming primarily in the form of hay production and livestock grazing on irrigated pasture and dry land. Sixty-five of the tax lots in the study area are receiving farm tax deferral, and most of them appear to have some kind of farm use occurring. The amount of water rights on these farm deferred properties ranges from 0 to 119 acres. Based upon the amount of irrigation and the size of the parcels in the study area, staff estimates a total of 1,367 acres (acreage that is possibly being irrigated) are engaged in farm use and approximately 1,821 acres are not engaged in farm use. As discussed above, the predominant farm practices include hay production and livestock grazing.

The record indicates that the study area is located within the Central Oregon Irrigation District. It includes a soil type that is high value (32A), and nonhigh value (81F, 32A, 49A, 142B, 81F, 106D, 101D, 106E, and 101E). Most of the properties in the area immediately surrounding the remainder parcel, Parcel 1, and the proposed nonfarm parcels are not composed of high value soils. Additionally, as stated in the Wert Reports, the soils within the proposed nonfarm parcels are predominantly Class 7 and 8 soils, and are therefore generally unsuitable for farm use.

3. **Existing Dwellings.** As detailed above, there are a total of 51 existing parcels with dwellings. Of these dwellings, 17 were constructed prior to 1978, 9 were constructed between 1978 and 1992, and 25 were constructed after 1993.

4. **Dwelling Development Trends Since 1993.** Most of the dwellings constructed in 1993 or after were either nonfarm dwellings or replacement dwellings.

5. **Potential Nonfarm Parcels.** Forty-eight of the privately owned tax lots in the study area are vacant. Of the existing vacant tax lots, 19 of them have land use permits for houses which, staff assumes, will be built in the future. That leaves 29 vacant tax lots which could potentially accommodate a new nonfarm dwelling. There is one
tax lot with enough irrigation water to qualify for an irrigated land division, where a small, dry unproductive portion of a farm property is partitioned off from a larger farm parcel that qualifies under sections 18.16.055 and 18.16.065 of Title 18. This property has a maximum potential of 1 new nonfarm parcel.

It is not clear whether the above parcel could qualify for a partition, since the parcel would have to have enough dry area with poor soils to accommodate a dwelling (with 100-foot setbacks from new property lines) septic system, and meet the road frontage standard.

It appears that 2 of the tax lots could qualify for a non-irrigated land division where a dry 40-80-acre parcel could be divided into two parcels, or a parcel larger than 80 acres could be divided into dry parcels, leaving at least an 80-acre parent parcel. The maximum potential here would be an additional 3 new nonfarm parcels.

6. **Potential Nonfarm Dwellings.** Theoretically, if all of the existing and potential properties identified above were approved for nonfarm dwellings there could be an additional 32 such dwellings (29 vacant parcels, and additional dwellings on each of the parcels potentially capable of a land division). Staff notes that this figure may be overstated as some of these properties have land use approvals that, apparently, have not yet been put to use and which would reduce the potentials stated above.

It is not clear whether a nonfarm dwelling can be approved on each parcel, since they are reviewed on a case by case basis. The dwellings have to be reviewed for their effect on the stability of the land use pattern, whether they are on land generally unsuitable land for the production of crops or livestock, and whether they will cause a significant change in or significantly increase the cost of accepted farming practices on adjacent land.

Staff will assume for purposes of review that up to 32 new nonfarm dwellings could be developed, based on the 29 vacant parcels, and the 3 tax lots potentially created by a partition.

7. **Potential Lot of Record Dwellings.** Under Section 18.16.050(E) and OAR 660-033-130(3), a lot of record dwelling may be sited on an EFU-zoned parcel on nonhigh value farmland if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F) and OAR 660-033-130(3)(c), a lot of record dwelling may be sited on high value farmland if it meets the criteria for a lot of record dwelling on nonhigh value farmland and the Planning Division finds the parcel cannot practically be managed for farm use “due to extraordinary circumstances inherent in the land or its physical setting,” such as “very steep slopes, deep ravines … or other similar natural or physical barriers.”

The Planning Division has previously determined that lot of record dwellings can be difficult to obtain, given the requirement for ownership prior to 1985 and the land cannot be suitable for farming based on the above factors. Some parcels may qualify for a lot of record dwelling, but without a specific analysis of each and every
parcel, this determination cannot be made. Staff notes that no parcels in the study area have been approved for a lot of record dwelling to date.

8. **Stability and Character of the Land Use Pattern of the Area.** Based upon the above findings, staff finds the land use pattern and character of the study area is predominately one of mixed residential and farm use on the west side of the Crooked River, with recreational (Smith Rock State Park) and open space east of the river. Much of the residential development within the area occurred prior to 1993, and the acreage in agricultural use has not experienced any noticeable change. For these reasons, staff finds that the approval of the proposed nonfarm dwellings will not materially alter the stability of the overall land use pattern of the area.

   iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

2. For the purposes of DCC 18.16.050(G) only, “unsuitability” shall be determined with reference to the following:

   a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

   b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

   c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a
**significant change in forest practices or significantly increase the cost of those practices on the surrounding land.**

**FINDING:** The applicant has included a site-specific soils report by Wert & Associates as Exhibit C to the burden of proof, which is incorporated herein by reference. This report provides detailed soils analyses for the proposed nonfarm parcels. As detailed in these reports, the NRCS map suggests that Parcel 3 is composed of the following mapping units:

- Unit 101D, Redcliff-Lickskillet-Rock outcrop complex, 15-30 % south slopes
- Unit 101E, Redcliff-Lickskillet Rock outcrop complex, 30-50% south slopes
- Unit 32A, Deschutes sandy loam, dry, 0-3% slopes

The NRCS map suggests that Parcel 2 is comprised of the following mapping units:

- Unit 101D, Redcliff-Lickskillet-Rock outcrop complex, 15-30 % south slopes
- Unit 101E, Redcliff-Lickskillet Rock outcrop complex, 30-50% south slopes
- Unit 106E, Redslide-Lickskillet complex, 30-50% north slopes
- Unit 32A, Deschutes sandy loam, dry, 0-3% slopes

However, the detailed Wert Reports provide data compiled from on-site soil tests illustrating that the parcels are actually composed of a different complex of soils than the NRCS maps suggest. The soil complex uncovered by Mr. Wert consists mostly of very shallow soils and soils with less than 2 inches of available water holding capacity (AWHC). Based upon the 20 soil pits dug within Parcel 3, Mr. Wert concluded that Parcel 3 is composed of 84% Class 7 and 8 soils.

### Parcel 3 Soil Types – Wert Analysis

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<th>Soil Mapping units</th>
<th>Class</th>
<th>Acreage</th>
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<tr>
<td>Clovcamp 10-20%</td>
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<tr>
<td>Houstake 0-10%</td>
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<td>Lickskillet 20-35%</td>
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<td>1.59</td>
</tr>
<tr>
<td>Redslide 15-30%</td>
<td>7</td>
<td>0.99</td>
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<tr>
<td>Rock outcrop-Lickskillet 30-100%</td>
<td>8 &amp; 9</td>
<td>1.06</td>
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</tbody>
</table>

Based upon the 15 soil pits dug within Parcel 2, Mr. Wert concluded that Parcel 2 is composed of 64% Class 7 and 8 soils.

### Parcel 2 Soil Types – Wert Analysis

<table>
<thead>
<tr>
<th>Soil Mapping units</th>
<th>Class</th>
<th>Acreage</th>
</tr>
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<tbody>
<tr>
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<td>Rock outcrop-Lickskillet 30-100%</td>
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</table>

The soil mapping units are described in Section 5.1 and Appendix B of each report. The photos attached to the Wert Reports provide a visual depiction of the rocky and shallow soil types and

Attachment 4: Split Zone, Flood Plain Decisions
rock outcrops on each site. The qualities described in the Wert Reports (minimal depth, low AWHC, high gravel and cobble content) render the soils unsuitable for farm use.

Staff finds that the Wert Report demonstrate that the soils within the nonfarm parcels are too rocky and do not hold adequate water to be suitable for the production of forage, and the soils cannot be cultivated for crops due to the low water holding capacity and high coarse fragment content. The subject property is not under forest assessment and, thus, (c) is not applicable. Ultimately, staff finds that the proposed nonfarm parcels are generally unsuitable for the production of farm crops and livestock because of adverse soil conditions, terrain and vegetation.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot or sales yard, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

FINDING: The applicant asserts, and staff agrees, that the nonfarm dwellings are not within one-quarter mile of a dairy farm, feed lot or sales yard.

Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.

FINDING: The applicant submitted the following information to demonstrate that public services and utilities are adequate:

1. Electricity. Central Electric Co-op
2. Road access. Parcels 1, 2, and 3 will have frontage on a public road, Coyote Butte Road.
3. Telephone. Qwest.
5. Fire protection. Redmond Fire & Rescue

Based on these findings staff finds the proposal can meet this criterion.

v. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).

FINDING: The nonfarm dwellings will be located on nonfarm parcels being created under the standards in DCC 18.16.055(B).
3. Loss of tax deferral. Except as provided in DCC 18.16.050(I)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor’s Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

**FINDING:** According to Assessor records, the property is receiving special assessment for farm use. As a condition of final plat approval, the applicant will be required to disqualify the nonfarm parcels (Parcels 2 and 3) from special assessment as specified and pay any additional tax or penalty imposed by the County Assessor. The applicant will be required to provide documentation of such disqualification prior to final plat approval.

3. Section 18.16.070. Yards

A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.

B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.

C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.

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.

**FINDING:** Because each parcel is over three acres in size, there is sufficient acreage to ensure that future dwelling proposals can meet the required setbacks. The applicant has proposed building zones that comply with required setbacks.

The building zone for Parcel 2 is setback at least 100 feet from Coyote Butte Road and over 100 feet from the western and northern boundary lines. Because Parcel 3 will be a non-farm parcel, a 25-foot setback is required and proposed along the southern boundary of Parcel 2, where it adjoins Parcel 3.

The building zone for Parcel 3 is also setback at least 100 feet from property lines on the south and west sides of the parcel because the areas to the south and west are currently employed in farm use. The building zone for Parcel 3 is also setback at least 100 feet from Coyote Butte Road. Because Parcel 2 is located directly north of Parcel 3, the property to the north will not be

Attachment 4: Split Zone, Flood Plain Decisions
employed in farm use. Therefore, the proposed 25-foot building setback for the northern property boundary on Parcel 3 satisfies the 25-foot setback requirement.

4. **Section 18.16.055, Land Divisions**

   **A. General.** A division of land in the exclusive farm use zone shall be identified on the land division application as either an irrigated land division, nonirrigated land division, or a division of land for a use permitted by DCC 18.16.030 other than a dwelling. An irrigated land division is subject to subsection B below; a nonirrigated land division is subject to subsection C below; and a division for a use other than a dwelling is subject to subsection E below.

   **B. Irrigated land division.**

   1. An irrigated land division shall be subject to the minimum lot or parcel size requirements of DCC 18.16.065, Subzones, and all applicable requirements of DCC Title 17.

   **FINDING:** The minimum lot size requirement for the EFU-TE subzone is 35 irrigated acres per DCC § 18.16.065(C). Because the Applicant proposes to create two new nonfarm parcels below this minimum lot size, the Applicant has demonstrated compliance with DCC 18.16.055(B)(2), below.

   2. **Partitions establishing parcels less than the EFU minimum parcel size established under DCC 18.16.065, may be permitted to create new parcels for nonfarm dwellings as follows:**

      b. **If the parent parcel is equal to or greater than the minimum lot size established under 18.16.065, and is greater than or equal to 80 acres in size, two new nonfarm parcels may be created subject to the following:**

         i. **Parent parcel was lawfully created prior to July 1, 2001;**

   **FINDING:** The County confirmed that the parent parcel was a lawfully created parcel through LL-00-100 and AD-00-22 which both predate July 1, 2001. The parent parcel reached its current configuration through County Lot Line adjustment files Nos. LL-11-28, LL-11-29, LL-11-30, LL-11-31, LL-11-32, LL-11-33, and LL-11-34. Since a property line adjustment serves to relocate an existing property line and does not create a new property, staff, therefore, finds that the property was lawfully created prior to July 1, 2001.

   1. **Remainder parcel shall meet the minimum lot size established under 18.16.065;**

   **FINDING:** The remainder parcel (“Parcel 1”) will have 56.26 acres of irrigated land. This meets the minimum lot size for the EFU-TE zone (35 irrigated acres).
ii. **All standards established under 18.16.050(G) for the dwellings shall be met;**

**FINDING:** The standards established under DCC 18.16.050(G) have been addressed in previous findings and are incorporated herein by reference.

iii. **No minimum lot size shall be required for the nonfarm parcel;**

**FINDING:** Even though there is no minimum lot size for the nonfarm parcels the parcels need to be large enough to accommodate all proposed improvements and their setbacks. Based on the findings made previously, both nonfarm parcels are large enough at 3.46 acres (Parcel 2) and 4.35 acres (Parcel 3) to accommodate residential development.

iv. **The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.**

**FINDING:** Staff has previously found that the parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops, livestock and merchantable tree species due to adverse soil conditions, terrain and vegetation.

5. **Section 18.16.060, Dimensional Standards**

The minimum parcel size for irrigated land divisions created subject to DCC Title 17 shall be as specified under DCC 18.16.065, “Subzones.”

**FINDING:** The minimum parcel size for irrigated land divisions in the Terrebonne subzone is 35 irrigated acres. (See: DCC 18.16.065(C)) The parent parcel in this application has 56.26 irrigated acres. All of these irrigated acres will be located on Parcel 1 following the partition.

C. **Each parcel shall have a minimum street frontage of 50 feet.**

**FINDING:** As depicted on the plat, each lot will front upon a Coyote Butte Road, a public road, for at least 50 feet.

D. **Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.**

**FINDING:** Building heights will be checked at the time a building permit has been submitted.

6. **Section 18.16.080, Stream Setbacks**
To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:

A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.

B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

FINDING: The proposed building envelopes on Parcel 2 and Parcel 3 are located over 1,500 from the Crooked River.

7. Section 18.16.090, Rimrock Setback

Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.

FINDING: Parcel 2 and Parcel 3 do not contain rimrock.

C. CHAPTER 18.84. LANDSCAPE MANAGEMENT COMBINING ZONE


The provisions of this chapter shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of this chapter shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified a landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitation in this section shall not unduly restrict accepted agricultural practices.

FINDING: The Crooked River and Highway 97 are identified on the County Zoning Map as the landscape management features. Only proposed Parcel 1 falls within the Landscape Management combining zone. No development is proposed on Parcel 1 under this application. Therefore the provisions of DCC 18.84 do not apply.
D. CHAPTER 18.88. WILDLIFE AREA COMBINING ZONE.


   In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

FINDING: Only the portion of proposed Parcel 1 east of the Crooked River falls within the Wildlife Area combining zone. No development is proposed on Parcel 1 under this application. Therefore the provisions of DCC 18.84 do not apply.

2. Section 18.88.050. Dimensional Standards.

FINDING: Only the portion of proposed Parcel 1 east of the Crooked River falls within the Wildlife Area combining zone. No division of the portion of parcel 1 zoned Wildlife Area combining zone is proposed. These criteria do not apply.


   C. The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992...

FINDING: This section is not applicable as no dwelling is proposed in the WA zone.


   A. New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:

   1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.

   2. The height of the fence shall not exceed 48 inches above ground level.

   3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

   B. Exemptions:

   1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.

   2. Corrals used for working livestock.

FINDING: The applicant has not proposed a fence in the WA zone thus, this section is not applicable.

E. CHAPTER 18.96. FLOOD PLAIN ZONE

Attachment 4: Split Zone, Flood Plain Decisions
1. **Section 18.96.010. Purposes.**

   The purposes of the Flood Plain Zone are: To implement the Comprehensive Plan Flooding Section; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of the fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.

2. **Section 18.96.020. Designated Areas.**

   The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas” revised September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.

   The Flood Plain Zone shall include all areas designated as “Special Flood Hazard Areas” by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

**FINDING:** The Deschutes County Flood Plain zone includes all areas designated as “Special Flood Hazard Areas” on the Federal Flood Insurance Rate Maps (FIRM). Special Flood Hazards Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE). The flood map for this property is FIRM No. 41017C0150E, Effective Date: September 28, 2007. The Crooked River is within the property boundary but is located in the canyon below the home sites. Based on this information, all proposed development will be located completely outside of the 100-year flood plain. Therefore, the provisions of this chapter are not applicable.

**TITLE 17 OF THE DESCHUTES COUNTY CODE.**

A. **Chapter 17.22, Approval of Tentative Plans for Partitions**

   1. **17.22.020 Requirements for Approval**

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

      1. *Proposal is in compliance with Oregon Revised Statutes Chapter 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 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;*
FINDING: The proposed partition will be in compliance with ORS Chapter 92 if it is in conformance with Titles 17 and 18 of the County Code. The comprehensive plan and implementing zoning ordinance allow the subject property to be divided into the proposed parcels as prescribed under the applicable sections of DCC Chapter 18.16 listed above. The partition will not conflict with the terms of any previously issued land use approval or create a nonconforming use. One dwelling is currently located on the subject property (Parcel 1) and the County approved a replacement dwelling on the subject property (Parcel 1) under AD-03-19, but it has not yet been built.

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

FINDING: The existing rights-of-way for the adjacent public roadways are depicted on the attached partition plat. The proposed partition will take access directly from Coyote Butte Road via existing road dedications, and will not conflict with any existing public access easements.

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.**

FINDING: The partition will access the external public road system (Eby Avenue, Cayuse, and 9th Street) via Coyote Butte Road, NE Good Pasture Loop, and NE Vineyard Way. NE Good Pasture Loop, Stonewall Lane, and a portion of NE Vineyard Way were dedicated to the public under RD-04-1. Coyote Butte Road was dedicated to the public through MP-09-5. While not needed for access to Parcel 1, 2, or 3 of this partition, a section of Coyote Butte Road extending north from the existing terminus will also be dedicated to the public as part of this partition application. The newly dedicated portion of Coyote Butte Road will provide access to additional nonfarm dwellings that the Applicant is proposing through separate land use applications.

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

FINDING: The applicant will be required to obtain access permits for new access onto Coyote Butte Road in order to provide access to Parcels 2 and 3. Based on the comments received from the County Road Department, staff finds that it is possible to obtain those permits. As a condition of approval, the applicant will be required to obtain access permits for new access onto Coyote Butte Road prior to issuance of building permits for Parcels 2 or 3.

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

FINDING: As discussed above, Parcel 1 meets the minimum lot size for an irrigated land division in the Terrebonne Subzone (110 total acres with 56 acres of irrigation) and will contain the existing dwelling and its replacement authorized under AD-03-19. Therefore, it is suitable for continued farm and residential use.

Parcels 2 and 3 are proposed for nonfarm dwelling use and, as discussed above, meet all requirements for nonfarm dwellings on nonfarm parcels. Therefore, staff finds that this criterion is satisfied.

Attachment 4: Split Zone, Flood Plain Decisions
6. All required utilities, public services and facilities are available and adequate and are proposed to be provided by the petitioner.

FINDING: Utilities, public services and facilities necessary to serve the partition are discussed above. As discussed utilities, public services and facilities are adequate for the proposed use and, in the case of road access, will be provided by the applicant.

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.

FINDING: Water rights for the property are depicted on applicant's Exhibit H. Parcel 1 will have 56.26 acres of water, and there will be no water rights within Parcels 2 and 3. As a condition of approval, the final plat shall contain a statement of water rights and be signed by the authorized representative of Central Oregon Irrigation District.

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 Title 18 of the Deschutes County Code, can be sited consistent with the requirements of Chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under Section 17.28.010 (C) of this chapter.

FINDING: There is no SM zone within one-half mile of the subject property; therefore this section is not applicable.

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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.

FINDING: The land use history of the property was discussed previously. The property has not been partitioned in the past so this partition does not constitute series partitioning.

2. Section 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.

FINDING: The applicant is proposing to extend Coyote Butte Road to out to the north end of Parcel 1. The extension will have to meet the minimum design standards listed in DCC Chapter 17, Table A for a partition. This includes a right-of-way dedication of 60 feet in width and the road improved to a width of 20 feet with 5 inches of aggregate surfacing. These road improvement have been included as conditions of approval.

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.*

**FINDING:** The standards under DCC 17.36 and 17.48 are addressed below.

**Section 17.36.010, 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.*

**FINDING:** The proposed partition includes the extension of Coyote Butte Road, which will be dedicated to the public and constructed to county standards.

2. **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.*

**FINDING:** As noted above, the Ranch dedicated NE Vineyard Way, NE Good Pasture Loop, and Stonewall Lane to the public in File No. RD-04-1. The Ranch also dedicated Coyote Butte Road to the public through Partition Plat 2011-10. As part of those dedications, the Ranch improved the roads to rural local road standards per DCC Chapter 17. The road subject to dedication in this...
proposed partition (a section extending Coyote Butte Road to the north) will also be improved to the standards required by Chapter 17.

3. **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.*

**FINDING:** The proposed extension of Coyote Butte Road is aligned so that its centerline coincides with the existing portion of Coyote Butte Road.

4. **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.*

**FINDING:** Coyote Butte Road is classified as a rural local road. DCC 17.48, Table A, lists the standards for such roads as 60 feet of right-of-way and a 20-foot wide aggregate surface, with a base depth of 5 inches. These standards will be included as conditions of approval.

5. **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.*

**FINDING:** Pursuant to DCC 18.16.055, these properties will not be eligible for any future division.

6. **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.*

**FINDING:** It is not necessary to further extend Coyote Butte Road to the boundary of the partition to permit a satisfactory future division of adjoining land. All adjoining properties have access. The proposed extension of Coyote Butte Road is intended to facilitate a desired future parcel configuration.

7. **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.

**FINDING:** The division does not abut or contain an existing or proposed collector or arterial street. Therefore, this section is not applicable.

8. **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.

**FINDING:** The subject property does not adjoin or contain a railroad, freeway or parkway. Therefore, this section is not applicable.

9. **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.

**FINDING:** The applicant is proposing to extend Coyote Butte Road, an existing street.

10. **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.
FINDING: No response was received from the utility companies indicating that additional easements are necessary. However, as a condition of approval, all existing easements must be shown on the final plat. There are no natural drainage ways that traverse the tract, except for the Crooked River, located in a deep canyon below the proposed development.

11. **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.*

FINDING: As discussed above, the parcels are appropriate for the proposed uses and are consistent with the parcel size provisions of Title 18.

12. **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.*

FINDING: As depicted on the plat, each lot will front on Coyote Butte Road, a public road, for at least 50 feet and the side lot lines intersect the streets at roughly right angles.

13. **Section 17.36.190, Through Lots**

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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.

FINDING: There are no proposed parcels with double frontage.

14. **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.

FINDING: Given the sizes of the proposed parcels, solar access is available and feasible.

15. **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.*

FINDING: The parent parcel fronts on Coyote Butte Road and Canyons Ranch Drive. Only Coyote Butte Road provides an egress route, as it connects to Good Pasture Loop and then, by a series of roads, to Highway 97. Staff finds that it is not possible to provide two points of access to the partition in this case because the parent parcel is not adjacent to any other public or private roads that could provide emergency egress.

16. **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.*
FINDING: Water will be provided by individual wells and sewage disposal will be by on-site systems. The installation of water and sewer lines is not required for this partition.

17. **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.

FINDING: The applicant provided copies of three well logs as Exhibit F to the application. The well logs generally show 25-50 gallons per minute flow at depths ranging from 147-210 feet.

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 the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDING: The property is located outside an urban growth boundary and is not within an area planned for parks. The property is not suitable for a public park and is not within the boundaries of any park district.

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 the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDING: Since there is no suitable park site within the partition, the applicant will be required to pay a fee in lieu of dedication of land. The amount of the fee is equal to $350 per new dwelling unit, or $700. Payment of this fee will be a condition of 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.

FINDING: As discussed previously, the extension of Coyote Butte Road shall meet the standards for a rural local road including a 60-foot right-of-way, and a 20-foot wide travel surface consisting of 5 inches of aggregate.

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.)

FINDING: As described above, the minimum right-of-way for Coyote Butte Road is 60 feet.

3. Section 17.48.120, Partial Width Roads

Partial width roads or half streets shall not be allowed.

FINDING: No partial width roads are proposed.

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.
FINDING: The proposed road will be extension of Coyote Butte Road; no new roads or road names are proposed.

5. Section 17.48.160, Road Development Requirements – Standards

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

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

B. Improvements of Public Rights of Way.

1. The developer of a subdivision or partition will be required to improve all public ways that are adjacent or within the land development.
2. All improvements within public rights of way shall conform to the improvement standards designated in DCC Title 17 for the applicable road classification, except where a zoning ordinance sets forth different standards for a particular zone.

FINDING: As discussed previously, the extension of Coyote Butte Road shall be required to meet the standards for a rural local road including a 60-foot right-of-way, and a 20-foot wide travel surface consisting of 5 inches of aggregate.

C. Primary Access Roads. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A. The applicable standard shall be determined with reference to the road’s classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: The proposed extension of Coyote Butte Road terminates at a development boundary and will be constructed with a paved cul-de-sac bulb.

F. Cul-de-sacs. Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more

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than 100 feet from the center of the bulb to the intersection with the main road. The maximum grade on the bulb shall be four percent.

FINDING: The proposed extension of Coyote Butte Road terminates at a development boundary and will be constructed with a paved cul-de-sac bulb. This bulb is located over 600 feet from the intersection with the main road. Staff includes a condition of approval requiring that the extension of Coyote Butte Road, terminating with a cul-de-sac bulb, be approved by the fire protection district prior to final plat approval.

G. Frontage Roads. Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.

FINDING: No frontage roads are proposed or required.

6. 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.

FINDING: The average parcel size is greater than 10 acres and, thus, (A) is applicable. These road standards will be imposed as conditions of approval.

7. 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.

**FINDING:** As a condition of approval, the applicant will be required to obtain access permits for access onto Coyote Butte Road prior to obtaining a building permit on Parcels 2 or 3. No access to a collector or arterial designated road is proposed. No commercial or industrial access is proposed. Conformance with AASHTO sight distance standards will be determined as part of the access permit application.

**IV. CONCLUSIONS:**

The proposed conditional use and partition applications can meet the requirements of Titles 17 and 18 of the Deschutes County Code. The following conditions apply.

**V. DECISION:**

APPROVAL.

**VI. CONDITIONS OF APPROVAL:**

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application. An updated title report shall be required as part of final plat review.

2. A septic site evaluation for each nonfarm parcel shall be obtained, prior to final approval of the plat.

3. The applicant shall have a licensed land surveyor prepare a partition plat which conforms with Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code.

4. The final plat shall contain a statement of water rights and be signed by the authorized representative of Central Oregon Irrigation District. No water rights shall be associated with the nonfarm parcels (Parcels 2 and 3); the remainder parcel (Parcel 1) shall have at least 35 acres of water rights.

5. 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 Tax Collector.

6. All easements of record shall be shown on the final plat.

7. The applicant shall disqualify the nonfarm parcels from farm tax deferral and all other penalties or fees imposed by the County Assessor as a result of disqualification shall be paid. Evidence that all taxes due have been paid shall be submitted to the Planning Division prior to final plat approval.

8. An access permit for any new access to Coyote Butte Road shall be applied for and approved by the County prior to obtaining a building permit for either Parcels 2 or 3.

9. Prior to final plat approval, the applicant/owner shall sign and record with the County Clerk a document binding the landowner, and the landowner’s successors in interest, prohibiting 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 under ORS 30.936 to 90.937.
10. The applicant shall pay a parks fee of $700.00 prior to final plat approval.

11. The applicant shall meet all applicable requirements of the Redmond Fire Department.

12. The applicant is proposing to extend Coyote Butte Road to out to the north end of Parcel 1. The extension will have to meet the minimum design standards listed in DCC Chapter 17, Table A for a partition. This includes a right-of-way dedication of 60 feet in width and the road improved to a width of 20 feet with 5 inches of aggregate surfacing.

13. The dedications and road improvements required on MP-11-7 (Conditions of Approval No. 16 and 17, Findings and Decision) must be finalized prior to the recording a final plat under this approval.

14. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standard.

15. The extension of Coyote Butte Road, terminating with cul-de-sac bulb, shall be approved by the fire protection district prior to final plat approval.

VII. **DURATION OF APPROVAL:**

All conditions of tentative approval and submission of an application for final plat review for the partition must occur within two (2) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

The applicant shall also apply for building permits for the proposed nonfarm dwellings within four (4) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

DESCHUTES COUNTY PLANNING DIVISION

Written by: Will Groves, Senior Planner

Reviewed by: Kevin Harrison, Principal Planner

Dated this 3rd day of May, 2012 Mailed this 3rd day of May, 2012

Attachment 4: Split Zone, Flood Plain Decisions
FINDINGS AND DECISION

FILE NUMBERS: TP-01-919/CU-01-5

APPLICANT: Paul Braly  
20115 Putnam Lane  
Bend, OR 97701

OWNERS: Walter & Jacqueline Babcock  
64815 Laidlaw  
Bend, OR 97701

REQUEST: Approval of an application for a tentative subdivision plat to create five (5) lots in the Tumalo Residential-5 acre minimum (TuR5) Zoning District of approximately five (5) acres each in size. The proposal includes a conditional use permit to allow a subdivision in the Floodplain (FP) zone

STAFF CONTACT: Chris Schmoyer, Associate Planner

I. APPLICABLE STANDARDS & CRITERIA:

Title 17, the County Subdivision and Partition Ordinance, of the Deschutes County Code (DCC):

Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans.  
Sections 17.16.100 and 17.16.105

Chapter 17.36, Design Standards.  
Sections 17.36.020, 17.36.040, 17.36.060-080, 17.36.120-220, 17.36.260, and 17.36.280

Chapter 17.44, Park Development.  
Section 17.44.010 and 17.44.020

Title 18, the Deschutes County Zoning Ordinance, of the DCC:

Chapter 18.67, Tumalo Rural Community Zoning Districts  
Sections 18.67.030, Tumalo Residential -5 acre minimum (TuR5) Zoning District.

Chapter 18.96, Floodplain (FP) zone.  
Chapter 18.56, Surface Mining Impact Area (SMIA) Combining Zone  
Chapter 18.84, Landscape Management (LM) Combining Zone.

II. BASIC FINDINGS:

A. LOCATION: The property (site) that is the subject of this application is located on the northwest side of Tumalo Road approximately one-quarter (1/4) mile due northeast of its junction with Cline Falls Highway in Deschutes County. The property has an assigned address of 20000 Tumalo Road, Bend. The property is also identified as tax lot 800 on Assessor’s Map No. 16-12-30.

Attachment 4: Split Zone, Flood Plain Decisions
**B. LOT OF RECORD:** The site is a legal lot of record because it was legally created through a partition. Specifically, the subject property was lawfully created as Parcel 2 of Partition Plat No. 1998-55 (County Land Use File No. MP-96-30).

**C. ZONING:** The site is zoned TuR5, Tumalo Residential-5 acre minimum. The subject property is situated within the Landscape Management (LM) and Surface Mining Impact Area (SMIA) Combining Zones. The Deschutes River is the Landscape Management Feature. The Deschutes County Comprehensive Plan designation for the site is Rural Residential Exception Area.

**D. PROPOSAL:** The applicant requests approval of a tentative subdivision plat to create five (5) lots in the TuR5 Zone. The proposal includes a conditional use permit to allow a subdivision in the Floodplain (FP) zone. Each lot will be at least five (5) gross acres in size and contain fifty (50) feet or more of frontage along Tumalo Road, a County maintained Rural Collector Road. The applicant has indicated that each lot will have its own on-site sewage disposal system and will be provided potable water from Laidlaw Community Water System.

**E. SITE DESCRIPTION:** The site is approximately 28.19 acres in size and has somewhat of an irregular rectangular configuration. The property contains a barn and lean-to shed. Proposed lot 1 would contain the existing structures. The western boundary of the property is represented by the Deschutes River and the eastern boundary is represented by Tumalo Road. The site contains an existing barn and lean-to and is fenced, cross-fenced and gated. The vegetation occurring on site consists of mostly irrigated pasture grasses. Pacific Power and Light and cable lines, as well as Laidlaw Water System Line, runs along the front property line of the subject property along Tumalo Road.

**F. SURROUNDING LAND USES:** Land use in the area is single family dwellings in all directions, including some hobby farming. The Deschutes River is adjacent and to the northwest of the subject property and Tumalo Road is adjacent to the southeast of the subject property. Properties surrounding the parcel are zoned TuR5, with flood plain along the Deschutes River.

West of the subject parcel, and across the Deschutes River and Cline Falls Highway, is a surface mine operation identified as Site No. 488 on the County’s inventory of designated surface mine sites. The subject property is within the SMIA Combining Zone associated with this site. Surface Mine Site No. 488 contains two pre-existing mining operations, known as Cline Falls Pit and the Highland Pit. Surface Mine Site No. 488 is zoned Surface Mining (SM). The County Assessor’s records identify the current owner of the property as CLR, incorporated. The Deschutes County Inventory of Mineral and Aggregate Resources identifies this area as Surface Mining Site No. 488. The County’s Findings and Decision, including the Economic, Social, Environmental, and Energy (ESEE) Analysis, for Site No. 488 includes the following findings. Site No. 488 consists of approximately 343 acres and is located along the westside of Cline Falls Highway, immediately north of the community of Tumalo. The parcel is identified on County Assessor’s Map No. 16-12-30 as tax lots 100, 600, 2000 and 2100. The site is fairly level with the northern half being higher in elevation than the southern half. Specifically, the northern half of Surface Mine Site No. 488 consists of tax lots 600, 2000 and 2100 and is located on a bench or terrace above tax lot 100 to the south. Current mining activity appears to only be occurring on tax lot 100 at this time. Site No. 488 has access onto Cline Falls Highway, a rural arterial road and is within one-half mile of Highway 20. The ESEE for Site No. 488 indicates that the site has an estimated 400,000 cubic yards of good quality sand and gravel. Site No. 488 has aggregate resources, but no processing occurs on-site. The site is subject to a five (5) acre excavation limit and the hours of operation are limited.

Attachment 4: Split Zone, Flood Plain Decisions
G. PUBLIC AGENCY COMMENTS: The Planning Division mailed notice to several public agencies and received the following comments which are incorporated by reference herein:

1. **Deschutes County Environmental Health**: A septic site evaluation is required for each lot.

2. **County Surveyor**: The plat name used does not show on our reserved name list but appears to be of no conflict.

3. **Watermaster-District 11**: Our records show Swalley irrigation district water rights on the parcel. The applicant needs to contact the district office to clear up any right-of-way or water right issues before final approval.

4. **Property Address Coordinator**: The address of record for this property is: 20000 Tumalo Road. This is subject to change. If this application is approved, the applicant shall contact the property address coordinator for new addresses.

5. **County Road Department**: Dick Johnson, Management Analyst, provided the following comments in regards with this proposal:

   The applicant is to meet the following conditions if this land use request is approved:
   
   1. The subdivision plat is to be prepared by a licensed land surveyor. The plat must conform to Oregon Revised statues Chapter 92 and Title 17 of the Deschutes County Code.
   2. All easements of record and existing rights-of-way shall be noted on the final mylar.
   3. An access permit must be obtained from the Deschutes County Community Development Department for all driveway access taken from Tumalo Road.
   4. Access easements shall be legally established on the parcels of land for the proposed shared driveways over which the driveways are located.
   5. The applicant is to widen Tumalo Road on his side of the road along the entire frontage of his property to 15 feet from the centerline with 2-foot wide aggregate shoulder. (This is to meet the road improvement standard for rural collector roads under the Deschutes County Transportation Plan.)
   6. Any road improvements made on Tumalo Road are to be placed within the dedicated right-of-way and are to be shown on the partition plat. The surveyor or engineer submitting the plat shall submit this information showing the location of the existing road in relation to the right-of-way on behalf of the county Engineering supervisor. In no case shall a road improvement be located outside a dedicated road right-of-way.
   7. Any work done within the public right-of-way shall be done under the supervision of the County Road Department Director or a licensed engineer approved by Deschutes County.

   Tumalo Road is classified as a rural collector road by the Deschutes County Transportation Plan. Tumalo Road is a two-lane wide paved road that is maintained by Deschutes County. The average daily traffic volume (ADT) on Tumalo Road at a location .05 mile east of the Cline Falls Highway was 2139 in 1999. The ADT at the same location on Tumalo Road was 2380 in 1998 2250 in 1995, and 1900 in 1991. The proposed five-home subdivision will add an additional 30 to 50 motor vehicle trips to Tumalo Road each day depending on the sizes of the families occupying the homes and their lifestyles.

   Access permits are required under **Section 17.48.210 Access** of the Deschutes County Subdivision Ordinance. The applicant’s proposal to use shared driveways appears to be a good idea as this will limit the number of access points along this stretch of high speed collector road. The specific location of the access driveways will have to be determined and approved based on the actual sight distance in the field. Driveway accesses also need to
meet the 300-foot spacing required for collector roads in Deschutes County.

STAFF COMMENT: A condition of approval will require that the items listed above are satisfied prior to signing of the final plat by the County Road Department.

6. Redmond Fire Department, Susie F. Lovisco, Fire Inspector: Her comments consist of a Bend Fire Department Site Plan Review Form which have the following items identified as applicable to the proposal:

   a. **Premises Identification-1998 Oregon UFC 901.4.4**
      Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background and be visible at night. Dwellings and Foster Homes that are located off of street frontage shall post a visible approve reflective address sign at the entrance to their driveway (Signs are available at local fire stations).

   b. **Street or Road Signs-1998 Oregon UFC 901.4.5**
      Streets and roads shall be identified with approved signs.

   c. **Fire Apparatus Access Roads-1998 Oregon UFC 902.1-902.2.4.2**
      Fire apparatus access roads shall be placed within 150 feet of all exterior walls of the first floor of all buildings. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet designed with a uniform all-weather driving surface to support the imposed GVW of 50,000 lbs. and a vertical clearance of not less than 13 feet 6 inches. Turning radius shall not be less than 45 feet and gradient shall not exceed 12 percent unless a variance is approve by the authorities having jurisdiction. Dead-end access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. A cul-de-sac, hammerhead or other approved means for the turning around of fire apparatus may be approved.

   e. **Smoke detection-ORS 479.255**
      Smoke detectors shall be in compliance with Oregon State Laws and the building Code. Oregon UFC 1007.2.9.1.3

   f. Shall comply with Appendix IIIE of the UFC regarding secondary access points.

7. The following agencies submitted a response of No Comments or did not respond to the notice: Tumalo Irrigation District, Division of State Lands, Department of Environmental Quality, Dept. of Fish and Wildlife, Tumalo Town Improvement District, Deschutes County Assessor, Central Electric Co-op and the County Senior Transportation Planner.

H. **PUBLIC NOTICE AND COMMENTS:** The Planning Division mailed notice of this proposal on January 23, 2001, to owners of record of property within 250 feet of the site in accordance with DCC Section 22.24.030 and ORS 197.763. The Division received the following written comment by February 5, 2001, the end of the comment period:

Jim and Maryilin Taylor – 64805 Laidlaw Lane – “I am concerned about future land owners who own’ 5 acre parcel with barn that border LAIDLAW LANE should want to access or make a road to LAIDLAW LANE that this should be DENIED, OR at Owner’s responsibility to make road access standard with quality of road LAIDLAW LANE is no in existence and up to code”.

I. **REVIEW PERIOD:** Files TP-01-919 and CU-01-5 were submitted on January 17, 2001. The application was accepted and deemed as complete on February 16, 2001. The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit dated February 2, 2001, that indicates that notice was posted where it can be clearly seen from Tumalo Road on February 2, 2001.

Attachment 4: Split Zone, Flood Plain Decisions
III. CONCLUSIONARY FINDINGS:

A. CHAPTER 17.16 APPROVAL OF SUBDIVISION TENTATIVE PLANS AND MASTER DEVELOPMENT PLANS.

1. Section 17.16.100, Required findings for approval.

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

   FINDING: The proposal meets this criterion because the tentative plat and the burden of proof statement show how it will contribute to orderly development and land use patterns in the area. The applicant proposes to establish lots that will at least five (5) gross acres in size. Each lot is intended for development with a single family dwelling. No other land uses are proposed through this application. The proposed lot size of five (5) acres is provided for in the TuR5 Zone under DCC 18.67.030 (c). The proposed lot sizes are consistent with the pattern of rural residential development on lands to the north and east of the site. Basic Finding (II)(F) of this report describes the land uses and the sizes of the properties in these areas. The proposal shows each lot will be provided with water service through Laidlaw Water District, telephone and electricity services, and an on-site sewage disposal system. The use of a lot size of 5 acres will allow placement of a dwelling and an on-site septic system on each lot.

   The subject property and each proposed lot abuts the Deschutes River to the northwest (rear lot lines). Future single-family dwellings on the new lots will be subject to Landscape Management site plan review and the 100-foot setback from the ordinary high water mark of the Deschutes River. Additionally, the Deschutes River and its riparian vegetation is located within the Flood Plain Zone. DCC Section 18.96 regulates development activities, such as fill and removal, in the Flood Plain Zone. Based on the above, staff finds that the proposal meets this criterion because it also provides for the preservation of natural features.

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

   FINDING: The proposal meets this criterion because it shows it will not create excessive demand on public facilities, services, and utilities required to serve the development.

   The County Transportation Plan designates Tumalo Road as a rural collector road. This type of road is intended to collect traffic from local roads and provide links to rural destinations. Tumalo Road is a two-lane wide paved road that is maintained by Deschutes County. The average daily traffic volume (ADT) on Tumalo Road at a location .05 mile east of the Cline Falls Highway was 2139 in 1999. The ADT at the same location on Tumalo Road was 2380 in 1998 2250 in 1995, and 1900 in 1991. The proposed five-home subdivision will add an additional 30 to 50 motor vehicle trips to Tumalo Road each day depending on the sizes of the families occupying the homes and their lifestyles. The estimated traffic from the subdivision will not be of a level to create an excessive demand on the road system.

   The proposal will not create excessive demand on a public water system because the applicant has proposed to serve each proposed lot with potable water from Laidlaw Water District and the application includes a letter from Laidlaw Water District that indicates that they are willing and able to provide water service to the proposed lots. The applicant provided a similar letter from...
Pacific Power and Light (PP & L) that indicates that they are willing and able to serve the development. Finally, the proposal will not create excessive demand on any public sewer system because each lot will be served by an individual on-site sewage disposal system. None of the proposed lots will connect to a sewer system because sewer service is not available in the area.

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

FINDING: ORS 92.090 addresses the improvement and the dedication of streets and roads, the naming of a subdivision, the conformance of a subdivision with the local zoning requirements, and the provision of water and sewage disposal service to lots within a subdivision. These requirements have been incorporated into the County Code under this chapter and Chapters 17.36 and 17.48 of the County Code. This report includes findings that show the applicant’s proposal complies with these applicable criteria, and therefore, also meets this criterion.

D. For subdivisions or portions thereof proposed within a Surface Mining Impact Area (SMIA) Combining Zone under Title 18 of the Deschutes County Code, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of Chapter 18.56 of Title 18, as amended, as demonstrated by the site plan and accompanying information required under Section 17.16.030 of this chapter.

FINDING: The Deschutes County Comprehensive Plan Map and the Official County Zoning map show the site is within the Surface Mining Impact Area associated with Surface Mining Site No. 488 (hereafter referred to as Site No. 488). Site No. 488 is located approximately 500 feet west of the subject property, across the Deschutes River and The Cline Falls Highway, and is identified on County Assessor’s Map No. 16-12-30 as tax lots 100, 600, 2000 and 2100. Surface Mine Site No. 488 contains two pre-existing mining operations, known as Cline Falls Pit and the Highland Pit. Surface Mine Site No. 488 is zoned Surface Mining (SM). The County Assessor’s records identify the current owner of the property as CLR, incorporated. The Deschutes County Inventory of Mineral and Aggregate Resources identifies this area as Surface Mining Site No. 488. The County’s Findings and Decision, including the Economic, Social, Environmental, and Energy (ESEE) Analysis, for Site No. 488 includes the following findings. Site No. 488 consists of approximately 343 acres and is located along the westside of Cline Falls Highway, immediately north of the community of Tumalo. The parcel is identified on County Assessor’s Map No. 16-12-30 as tax lots 100, 600, 2000 and 2100. The site is fairly level with the northern half being higher in elevation than the southern half. Specifically, the northern half of Surface Mine Site No. 488 consists of tax lots 600, 2000 and 2100 and is located on a bench or terrace above tax lot 100 to the south. Current mining activity appears to only be occurring on tax lot 100 at this time. Site No. 488 has access onto Cline Falls Highway, a rural arterial road and is within one-half mile of Highway 20. The ESEE for Site No. 488 indicates that the site has an estimated 400,000 cubic yards of good quality sand and gravel. Site No. 488 has aggregate resources, but no processing occurs on-site. The site is subject to a five (5) acre excavation limit and the hours of operation are limited.

As previously mentioned above, Site No. 488 is approximately 500 feet west of the western boundary of the subject property. Staff finds that compliance with the 100 foot river setback would situate future dwellings on the proposed lots approximately 600 feet from the SM Zone boundary associated with Site No. 488. As mentioned under Basic Finding (II) (B), the subject property was lawfully created as Parcel 2 of County File No. MP-96-30. Condition eleven (11) of File No. MP-96-30 required that the property owner record with County Clerk Waivers of Remonstrance for Site No. 488. Staff finds that a waiver of remonstrance was recorded with County Clerk’s Office as Official Record 98-34887, which includes the subject property (tax lot 800 on Map No.16-12-30), regarding Site No. 488, and runs with the land and is binding upon heirs, successors and assigns, etc...
Staff finds that there are several lots in the Deschutes River Homesites subdivision directly northeast of the subject property, and across Cline Falls Highway from the Site No. 488 that contains several dwellings that are situated closer to the SM Zone boundary than the future dwellings on the proposed lots would be. Additionally, staff finds that there are also several lots in Tumalo (Plat of Laidlaw) that are adjacent and to the south of the SM Zone boundary associated with Site No. 488 that are closer to the SM Zone Boundary than future dwellings on the proposed lots would be. In fact, staff finds that some of the lots in Tumalo contain dwellings which are closer than 100 feet from actual excavation sites on Site No. 488. Further, there is a block of five (5) 1 acre lots adjacent and to the southwest of the west of the subject property that all contain dwellings that situated closer to the SM Zone boundary than the future dwellings on the proposed lots would be. Based on the above findings staff finds that the placement of a dwelling on each of the proposed lots would not cause the surface mining operator to further violate the Department of Environmental Quality standards for noise and dust, since the existing dwelling in the area would already be either closer to the mine or the same or similar distance. Based on the above, staff finds that the future single-family dwelling for each of the five (5) proposed lots meets the requirements of Section 18.56 of Title 18.

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

FINDING: The applicant has proposed the name of Tumalo Riverfront Estates with this application. The burden of proof statement indicates that the proposed subdivision name “Tumalo Riverfront Estates” is appropriate because it does not occur within Deschutes County. The transmittal response from the County Surveyor’s Office indicates that the proposed name does not appear on their reserved name list, but that no other recorded subdivision in the County uses this name or a name that is similar to this name. If this application is approved, the applicant will be required to ensure the name of “Tumalo Riverfront Estates” receives final approval from the County Surveyor.


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

FINDING: The applicant’s tentative plat indicates that proposed lot 1 will use an existing driveway extending from Tumalo Road for access and that two (2) new access driveways are proposed. One of the proposed new access driveways would serve lots 2 and 3 and another would serve lots 4 and 5. The proposal meets this criterion because it shows that each lot will have frontage on and access to Tumalo Road, a Rural Collector.

B. CHAPTER 17.36 OF TITLE 17, DESIGN STANDARDS

1. Section 17.36.020 Streets.

A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including
pedestrians, bicycles, and automobiles with intersection angles, grades, tangents, and curves appropriate for 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 requirement for streets set forth in this chapter.

**B. Streets in subdivisions shall be dedicated to the public.**

**FINDING:** This finding addresses both Criteria (A) and (B). The subdivision meets criterion (A) because it assures adequate traffic circulation systems for all modes of transportation. Each lot will have direct access to a rural collector road constructed to County standards under this title. A memorandum dated January 26, 2001, received from Dick Johnson of the County Road Department indicates “The applicant is to widen Tumalo Road on his side of the road along the entire frontage of his property to 15 feet from the centerline with 2-foot wide aggregate shoulder. (This is to meet the road improvement standard for rural collector roads under the Deschutes County Transportation Plan.)” The Road Department provided a total of seven (7) conditions for approval of this proposal in their January 26, 2001 memorandum. The County Road Department’s comments are provided verbatim under Section II (G) (6). A condition of approval will require that the items required by the County Road Department, referenced above, are satisfied prior to signing of the final plat by the County Road Department. Through the implementation of these improvements, Tumalo Road will be able to handle the increase in traffic projected with this proposal. Staff finds that through conditions of approval, the proposal can satisfy criterion (A) above.

Criterion (B) is not applicable to this request because a dedicated public right of way is not included as part of this proposed subdivision.

2. **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 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.***

**FINDING:** The subject property and each of the proposed five (5) new subdivision lots will have frontage and access to Tumalo Road, a rural collector. As previously mentioned, a memorandum dated January 26, 2001, received from Dick Johnson of the County Road Department indicates “The applicant is to widen Tumalo Road on his side of the road along the entire frontage of his property to 15 feet from the centerline with 2-foot wide aggregate shoulder. (This is to meet the road improvement standard for rural collector roads under the Deschutes County Transportation Plan.)” The Road Department provided a total of seven (7) conditions for approval of this proposal in their January 26, 2001 memorandum. The County Road Department’s comments are provided verbatim under Section II (G) (5). A condition of approval will require that the items required by the County Road Department, referenced above, are satisfied prior to signing of the final plat by the County Road Department.

Attachment 4: Split Zone, Flood Plain Decisions
Through the implementation of these improvements, Tumalo Road will be able to handle the increase in traffic projected with this proposal. Staff finds that through conditions of approval, the proposal can satisfy this criterion

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

   *The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in Chapter 17.48 of this title.*

**FINDING:** The criterion is not applicable because a dedicated public right-of-way is not proposed as part of the subdivision.

4. **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.*

**FINDING:** This criterion is applicable because the applicant proposes to create lots that are more than one acre in size. The tentative plat proposes lots that are five (5) gross in size, the minimum lot size for new lots in the TuR5 Zone. An arrangement of the lots and streets to permit future subdivision is not necessary because the lots cannot be further divided under the terms of the TuR5 Zone.

5. **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.*

**FINDING:** This criterion is not applicable since a new dedicated public right-of-way is not proposed as part of the subdivision.

6. **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.*

**FINDING:** This criterion is not applicable since the applicant is not proposing to create a new dedicated public right-of-way.

7. **Section 17.36.130, Sidewalks.**

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

   **B.** *Within an urban area, sidewalks shall be required along frontage roads only on the side of the frontage road abutting the development.*
C. Sidewalk requirements for areas outside of urban area are set forth in section 17.48.175. In the absence of a special requirement set forth by the Director of Public Works under section 17.48.030, sidewalks and curbs are never required in rural areas outside unincorporated communities as that term is defined in Title 18.

FINDING: These criteria are not applicable to Tumalo Road because the site is outside of an acknowledged Urban Growth Boundary.

8. Section 17.36.140, Bicycle, Pedestrian and Transit Requirements.

   A. Pedestrian and Bicycle Circulation within Subdivision

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

   FINDING: This criterion is not applicable because the site does not abut or is nearby any existing or planned neighborhood activity centers.

   2. Subdivision layout

   FINDING: This criteria under Section 17.36.140 (A) (2) is not applicable because the proposed subdivision does not include the creation of a dedicated public right-of-way.

9. Section 17.36.150 Blocks.

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

   FINDING: This criterion is not applicable because the applicant has not proposed any blocks within the subdivision.

10. 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 Easements” on the tentative and final plat.
B. Drainage. If a tract is traversed by a watercourse such as a drainage way, channel or stream there shall be provided a storm water 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 drainage ways may be required.

FINDING: This finding addresses both criteria (A) and (B). If approved, the final plat will need to identify the required public utility easements required by the affected utility providers. Criterion (B) is not applicable because the Deschutes River does not traverse any of the proposed lots, rather, it is located west of the rear lots lines of each of the five (5) proposed lots.

11. Section 17.36.170, Lots - Size and Shape.

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

FINDING: The proposal meets this criterion because it proposes lots with the size, width, and orientation appropriate for the type of development contemplated. The plan also shows it is consistent with the lot provisions of the TuR5 Zone in Title 18 of the County Code. The applicant proposes to establish a single family dwelling on each proposed lot. The tentative plat shows each lot will be at least five (5) acres in size, which is adequate area for construction of a dwelling that will meet the setbacks of the TuR5 Zone. Additionally, this report includes findings in a following section that conclude each lot will meet the dimensional standards of the TuR5 Zone.

12. Section 17.36.180, Frontage.

A. Each lot or parcel shall abut upon a public 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, except for partitions off of US Forest Service or Bureau of Land Management roads.

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

FINDING: The tentative plat meets these criteria because it shows each lot will abut upon Tumalo Road. The plat shows each lot will have at least 50 feet of frontage and that the side lot lines of each lot are at right angles to the proposed street.

13. Section 17.36.200, Corner lots.

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

FINDING: This criterion is not applicable because the applicant has not proposed any intersecting streets, and therefore any corner lots, through this application. Additionally, this site is located outside of an Urban Growth Boundary.

Attachment 4: Split Zone, Flood Plain Decisions
14. **Section 17.36.210, Solar access performance.**

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

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

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

**FINDING:** The proposal meets these criteria because it proposes lot sizes that will ensure each proposed lot has as much solar access as feasible. The proposal includes the creation of lots at least five (5) gross acres in size. It further shows each lot has an adequate amount of level terrain for construction of a dwelling that can be provided solar access.

15. **Section 17.36.220, Underground facilities.**

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

   **A.** Obtain a permit from the Department of Public Works for placement of all underground utilities.

   **B.** Make all necessary arrangements with the utility companies and other persons or corporations affected by the installation of such underground utilities in accordance with the rules and regulations of the State Public Utility Commission.

   **C.** All underground utilities, sanitary sewers and storm drains installed in streets shall be constructed prior to the surfacing of such streets to the extent practicable, and sanitary sewers shall be placed to such length as will obviate the necessity for disturbing the street improvements when service connections are made.

**FINDING:** These criteria are not applicable because the proposed utility connections to the are outside of an acknowledged urban growth boundary.
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.*

**FINDING:** The tentative plan and the burden of proof statement show the subdivision will have three (3) points of access to Tumalo Road. The subdivision will not involve construction of a new public road. No other public roads abut the site that would provide the opportunity for an additional point of access.

17. **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 section 17.36.300, individual wells for subdivisions are allowed when parcels are larger than 10 acres.*

**FINDING:** This criterion is not applicable because the applicant proposes to serve each lot with hook-up to Laidlaw Water System. The record includes a letter from Laidlaw Water System that indicates that they are willing and able to serve potable water to the new lots.

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 $350.00 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.

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, 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 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 deposited with the County Treasurer and be sued for acquisition of suitable are 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 of County Commissioners and/or applicable park district.

**FINDING:** Staff finds that no suitable area exists within the development for such park and/or recreation purposes. Therefore, staff finds that applicant can comply with these criteria through paying a fee in lieu of dedication, through the method set forth in Section 17.44.020(A). For this subdivision, a total of $1,750 (5 lots x $350.00 per lot) must be paid to the County Treasurer. The applicant can meet this criterion by paying the fee of $1,750 prior to final approval of the subdivision plat.
D. CHAPTER 18.67, TUMALO RESIDENTIAL 5-ACRE (TuR5) ZONING DISTRICT.

1. Section 18.67.030, Residential-5 acre minimum (TuR5) District.

   The purpose of the Tumalo Residential-5 Acre Minimum District is to retain large rural residential lots.

   A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review:
   1. Single-family dwelling or a manufactured home subject to DCC 18.116.070.

   FINDING: The proposal meets this criterion because it proposes to create each lot for the purpose of establishing a single family dwelling for each lot.

   C. Lot Requirements. The minimum lot or parcel size in the TuR5 District is five (5) acres.

   FINDING: The proposal meets this criterion because the tentative plat and the burden of proof statement show each lot will be at least five (5) gross acres in size. DCC 18.04.680(A) requires the calculation of lot area as gross area for lots larger than 2.5 acres in size.

E. CHAPTER 18.96, FLOOD PLAIN (FP) ZONE.

1. Section 18.96.020, Designated Areas.

   The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" dated August 16, 1988, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department. The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Division will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

   FINDING: The Flood Plain Zone for the subject property is Zone AE, as documented by Flood Insurance Rate Map (FIRM) No. 410170140C, Effective Date: August 16, 1988. Zone AE provides a base flood elevation. Portions of the proposed parcels will contain mapped flood plain. Unless and until the FIRM map is changed to remove this floodplain, development with the floodplain is subject to DCC Chapter 18.96.

2. 18.96.030. Uses permitted outright

   E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by section 18.116.230.
FINDINGS: Staff finds this criterion is not applicable to this request since each parcel would be provided road frontage along Tumalo Road.

3. **18.96.040. Conditional uses permitted.**
   
   H. Subdividing or partitioning of land any portion which is located in the flood plain subject to the provisions of this title and Deschutes County Code Title 17, the Subdivision/Partition Ordinance.

FINDINGS: This is a request to subdivide property that is located in both the TuR5 Zone and the Flood Plain Zone. The request is being reviewed against all applicable criteria in Titles 17 and 18.

4. **18.96.060. Limitations on conditional uses.**
   
   C. No subdivision or partition shall be allowed which creates the potential for additional residential dwellings in the flood plain.

FINDINGS: Staff finds that all of the proposed lots have adequate area for construction of a residence outside of the mapped flood plain. Specifically, according to Deschutes County Geographic Information System mapping, based on FEMA, Flood Insurance Rate Mapping, approximately 80% or more of each of the proposed lots will contain area outside of the mapped 100 year floodplain. All new development will have to be sited in those portions of lots 1 through 5 that is outside of the mapped floodplain. Staff finds this criterion to be satisfied.

5. **18.96.080. Criteria to evaluate conditional uses**

   **Subdivision and Partition Proposals.**
   
   1. All subdivision and partition proposals shall be consistent with the need to minimize flood damage.
   
   2. All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.

FINDINGS: As mentioned in the previous finding, each of the proposed lots would have adequate area for construction of a residence outside of the mapped flood plain. Staff finds these criteria to be satisfied.

F. **CHAPTER 18.84, LANDSCAPE MANAGEMENT COMBINING ZONE.**

   1. Section 18.84.040. Uses permitted conditionally.

   Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provision of this chapter.

FINDING: Each of the proposed lots are entirely situated within the Landscape Management Combining Zone associated with the Deschutes River. Therefore, a condition of approval will stipulate that dwellings and structures on each of the new lots will require separate Landscape Management Review prior to the issuance of building and septic permits as they are not a part of this review and approval.

Attachment 4: Split Zone, Flood Plain Decisions
IV. CONCLUSIONS:

Based on the forgoing Basic Findings and Conclusionary Findings, Staff concludes the application for a tentative subdivision plat and conditional use permit to create five (5) lots in the TuR5 and Flood Plain Zones meets all applicable criteria for approval in Titles 17 and 18 of the Deschutes County Code.

Other permits may be required. The applicant is responsible for obtaining any necessary permits from the Deschutes County Building Division, the Deschutes County Environmental Health Division and the Deschutes County Road Department, as well as any required state and federal permits.

V. DECISION:

APPROVAL of the tentative plat, subject to the following Conditions of Approval.

VI. CONDITIONS OF APPROVAL:

1. This approval is based upon the tentative plat and the supporting documentation submitted with the application. Any substantial change in this approved plan will require review and approval through a separate land use application.

2. The applicant shall ensure a final plat for the subdivision is prepared in accordance with the requirements of Chapter 17.24 of Title 17 of the Deschutes County Code and ORS Chapter 92. A licensed land surveyor must prepare the final plat. All property corners and public rights of way must be located and monumented. The final plat shall include the exact lot size for each of the lots.

3. All advalorem 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 the County Treasurer.

4. The applicant shall obtain approval of separate site evaluations for each proposed lot and submit copies of each approved site evaluation to the Planning Division prior to final approval of the subdivision plat.

5. The applicant shall pay to the County Treasurer the sum of $1,750 ($350.00 X 5 lots) for the parks dedication fee as required by Chapter 17.44 of Title 17. Documentation that this fee has been paid shall be provided to the Planning Division prior to final plat approval.

6. Prior to signing of the final plat by the County Road Department, the following must be satisfied:

   a. Access easements shall be legally established on the parcels of land for the proposed shared driveways over which the driveways are located.

   b. The applicant is to widen Tumalo Road on his side of the road along the entire frontage of his property to 15 feet from the centerline with 2-foot wide aggregate shoulder. (This is to meet the road improvement standard for rural collector roads under the Deschutes County Transportation Plan.)
c. Any road improvements made on Tumalo Road are to be placed within the dedicated right-of-way and are to be shown on the partition plat. The surveyor or engineer submitting the plat shall submit this information showing the location of the existing road in relation to the right-of-way on behalf of the county Engineering supervisor. In no case shall a road improvement be located outside a dedicated road right-of-way.

d. Any work done within the public right-of-way shall be done under the supervision of the County Road Department Director or a licensed engineer approved by Deschutes County.

7. The final plat shall show all existing and any required public utility easements on the plat. Such easements shall be identified as “public utility easements”.

8. Prior to signing of the final plat, the applicant shall obtain approval for the Subdivision name from the County Surveyor.

9. The final plat shall contain a statement of water rights, and the appropriate certificate or permit number. The plat shall be signed by an authorized representative from the Swalley Irrigation District.

10. Dwellings and structures on each of the new lots will require separate Landscape Management Review prior to the issuance of building and septic permits as they are not a part of this review and approval.

11. All new development shall be located outside of the mapped floodplain.

12. The applicant shall comply with all necessary requirements of the Bend Fire Department listed on the checklist submitted into the record and referenced in Basic Finding (II)(G)(6) of this report.

13. New addresses must be obtained from the Property Address Coordinator.

14. All exterior lighting shall be installed in compliance with Chapter 15.10 of the County Code, Outdoor Lighting Control.

15. The applicant shall obtain access permits from the County Community Development Department prior to construction of any new access onto Tumalo Road.

Attachment 4: Split Zone, Flood Plain Decisions
VII. **DURATION OF APPROVAL:**

The applicant shall meet all conditions of this approval and submit an application for final plat approval within **two (2) years** from the date this decision become final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

**This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest.**

DESCHUTES COUNTY PLANNING DIVISION

Written By: Chris Schmoyer, Associate Planner

Reviewed By: Kevin M. Harrison, Principal Planner

CRS/slr
DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: TP-07-996, CU-07-22, and V-07-3

APPLICANT: Labrador Ventures
Brad Hughes
1019 Pacific Avenue, Suite 916
Tacoma, Washington 98402

PROPERTY OWNERS: Parker L. Johnstone, III and Sharon Y. Johnstone
Parker L. Johnstone Jr. and Catherine R. Johnstone
P.O. Box 1787
Redmond, Oregon 97756

APPLICANT’S AGENT: Heidi Kennedy
64180 Old Bend Redmond Highway
Bend, Oregon 97701

REQUEST: The applicant requests tentative plan and conditional use approval to establish a 6-lot cluster development to be called “Parker Ranch” on a 46.73-acre parcel zoned MUA-10 and located northwest of Redmond adjacent to the Deschutes River. The applicant also requests approval of a variance to the county’s subdivision access standards to allow access from a private road.

STAFF REVIEWER: Ruth Wahl, Associate Planner

HEARING DATE: July 26, 2007

RECORD CLOSED: August 21, 2007

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 17.08, Definitions and Interpretation of Language

   * Section 17.08.030, Definitions Generally

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

   * Section 17.16.080, Tentative Plan as a Master Plan
   * Section 17.16.100, Required Findings for Approval
   * Section 17.16.105, Access to Subdivisions

Attachment 4: Split Zone, Flood Plain Decisions
3. Chapter 17.36, Design Standards

* Section 17.36.020, Streets
* Section 17.36.040, Existing Streets
* Section 17.36.050, Continuation of Streets
* Section 17.36.060, Minimum Right of Way and Roadway Width
* Section 17.36.080, Future Extension of Streets
* Section 17.36.120, Street Names
* Section 17.36.130, Sidewalks
* Section 17.36.140, Bicycle, Pedestrian and Transit Requirements
* Section 17.36.160, Easements
* Section 17.36.170, Lots-Size and Shape
* Section 17.36.180, Frontage
* Section 17.36.210, Solar Access Performance
* Section 17.36.260, Fire Hazards
* Section 17.36.290, Individual wells
* Section 17.36.300, Public Water System

4. Chapter 17.44, Park Development

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

5. Chapter 17.48, Design and Construction Specifications

* Section 17.48.090, Intersections
* Section 17.48.100, Minimum Right of Way Width
* Section 17.48.130, Road Names
* Section 17.48.140, Bikeways
* Section 17.48.160, Road Development Requirements-Standards
* Section 17.48.180, Private Roads

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

1. Chapter 18.04, Title, Purpose and Definitions

* Section 18.04.030, Definitions

2. Chapter 18.32, Multiple Use Agriculture (MUA-10)

* Section 18.32.020, Uses Permitted Outright
* Section 18.32.030, Conditional Uses Permitted

3. Chapter 18.84, Landscape Management Combining Zone

* Section 18.84.020, Application of Provisions
* Section 18.84.030, Uses Permitted Outright
* Section 18.84.040, Uses Permitted Conditionally
* Section 18.84.050, Use Limitations

4. Chapter 18.96, Flood Plain Zone

* Section 18.96.020, Designated Areas
* Section 18.96.030, Uses Permitted Outright
* Section 18.96.040, Conditional Uses Permitted
* Section 18.96.060, Limitations on Conditional Uses


* Section 18.116.220, Conservation Easements on Property Adjacent to Rivers and Streams-Prohibitions

6. Chapter 18.128, Conditional Use

* Section 18.128.015, General Standards Governing Conditional Uses
* Section 18.128.200, Cluster Development (Single-family Residential Uses Only)

II. FINDINGS OF FACT:

A. Location: The subject property is located at 7291 Homestead Way, Redmond, and is further identified as Tax Lot 100 on Deschutes County Assessor’s map 14-12-26D.

B. Zoning and Plan Designation: The subject property is zoned Multiple Use Agricultural (MUA-10). Portions of the property near the Deschutes River are zoned Flood Plain (FP), and most of the subject property is zoned Landscape Management Combining (LM) because it is within one-quarter mile of the river. The property is designated Agriculture on the county’s comprehensive plan map.

C. Site Description: The subject property is 46.73 acres in size and roughly triangular in shape. It is bounded on the west by the Deschutes River and on the north, east and south by large undeveloped tracts of land owned and managed by the U.S. Department of the Interior, Bureau of Land Management (BLM). The majority of the property is located on a relatively level plateau above the river. The western portion of the property slopes steeply approximately 50 feet down to the river. There are a few rocky ridges in the northern, eastern and southern parts of the property. The property is developed with a single-family dwelling and several outbuildings near the northeast corner of the property, and a private well and an on-site septic system. Access to the property is from a private road within a 60-foot-wide BLM “Assignment of Right-of-Way” that crosses the adjacent BLM land to the east and connects with N.W. Homestead Way, a dedicated public road located approximately 3,100 feet east of the subject property’s eastern boundary within the Tetherow Crossing Subdivision. The record indicates this easement currently is...
improved with a 28-foot-wide cinder surface, and that this cindered roadway extends beyond the eastern boundary of the BLM land approximately 400 feet over private property within or adjacent to the Tetherow Crossing Subdivision. The record indicates this private road is called N.W. Homestead Way. Finally, the record indicates the subject property has 23.2 acres of groundwater rights, and is receiving farm tax deferral.

D. **Surrounding Zoning and Land Uses:** On the north, east and south the subject property abuts large tracts of undeveloped BLM rangeland zoned MUA-10. To the west across the Deschutes River are properties zoned Exclusive Farm Use-Terrebonne Subzone (EFU-Te), engaged in farm use and developed with single-family dwellings and agricultural buildings. Property north of the BLM land is zoned MUA-10 and developed with the Odin Falls Ranch Subdivision with single-family dwellings on 2.5-acre lots. Property east of the BLM land is zoned MUA-10 and developed with the Tetherow Crossing Subdivision with single-family dwellings on primarily 5-acre lots.

E. **Procedural History:** The applicant submitted the subject applications on April 12, 2007. By a letter dated May 11, 2007, the Planning Division notified the applicant that the application was incomplete and allowed the applicant 30 days to submit the missing information. The applicant submitted the requested information on May 24, 2007 and the applications were accepted as complete on that date. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.427 would have expired on October 22, 2007. A public hearing on the applications was held on July 26, 2007. At the hearing, the applicant submitted a revised tentative plan reducing the number of lots in the proposed cluster development from eight to six and reconfiguring the proposed open space areas. The Hearings Officer concluded at the hearing that the revised tentative plan did not constitute a modification requiring a new application. The Hearings Officer also received testimony and evidence, left the written evidentiary record open through August 3, 2007, and allowed the applicant through August 10, 2007 to submit final argument pursuant to ORS 197.763.

By a letter dated August 3, 2007, the applicant requested that the written record be extended one week to allow it to obtain additional comments from the Redmond Fire Department. By an order dated August 7, 2007, the Hearings Officer reopened and extended the written evidentiary record through August 14, 2007 and allowed the applicant through August 21, 2007 to submit final arguments pursuant to ORS 197.763. The applicant’s final argument was received by the county on August 21, 2007 and the record closed on that date. Because the applicant agreed to or requested that the written record be extended from July 26 through August 21, 2007, under Section 22.24.140(E) of the county’s land use procedures ordinance the 150-day period was tolled for 26 days and now expires on November 16, 2007. As of the date of this decision there remain 44 days in the 150-day period.

F. **Proposal:** The applicant is requesting tentative subdivision plan and conditional use approval to establish a 6-lot residential cluster development on the subject property to be called “Parker Ranch.” In addition, the applicant requests approval of a variance to the county’s subdivision access standards to allow the cluster development to be accessed by
a private road consisting of the existing easement across the adjacent BLM land and a proposed private road within the subdivision. The applicant proposes to improve both segments of the private road to the county’s standards for private roads. The private road would terminate in a “hammerhead” dead-end between subdivision Lots 1 and 2. Five of the six lots would have 2.43 acres each. Lot 1, on which the existing dwelling and outbuildings would be located, would contain 3 acres. The cluster development would include 30.4 platted acres of common open space more or less surrounding the residential lots, including the area adjacent to the river and within the river canyon that would be conveyed to a homeowners’ association. The applicant proposes to provide domestic and irrigation water to each lot through either individual private on-site wells or through a public water system. The applicant proposes to provide sewage disposal through an individual on-site septic system on each lot.

G. Public/Private Agency Comments: The Planning Division sent notice of the applicant’s proposal to a number of public and private agencies and received responses from: the Deschutes County Road Department (road department), Transportation Planner, Environmental Health Division, Assessor, and Property Address Coordinator; the Redmond Fire Department; the Central Oregon Irrigation District; the Oregon Department of Water Resources, Watermaster- District 11; and the BLM. These comments are set forth verbatim at pages 3-7 of the staff report and are included in the record. The following agencies either had no comments or did not respond to the notice: the Deschutes County Building Division; the Redmond School District; the Central Oregon Parks and Recreation District; and the Oregon Health Division. The record includes “willing-to-serve” letters from Cascade Natural Gas, Central Electric Cooperative, Qwest, and Bend Broadband.

H. Public Notice and Comments: The Planning Division mailed individual written notice of the applicant’s proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. In addition, notice of the public hearing was published in the Bend “Bulletin” newspaper, and the subject property was posted with a notice of proposed land use action. As of the date the record in this matter closed the county had received no letters from the public in response to these notices. No members of the public testified at the public hearing.

I. Lot of Record: The staff report states the county recognizes the subject property as a single legal lot of record on the basis of the county’s previous issuance of building and septic permits (B15893, B36058, and S36526).

III. CONCLUSIONS OF LAW:

MUA-10 ZONE STANDARDS

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

1. Chapter 18.32, Multiple Use Agricultural Zone (MUA-10)
a. Section 18.32.020, Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

* * *

B. A single family dwelling, or a manufactured home subject to DCC 18.116.070.

b. Section 18.32.030, Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

* * *

P. Cluster Developments

FINDINGS: The applicant proposes to develop the subject property with a 6-lot residential cluster development with single-family dwellings and open space. Section 18.04.030 defines “cluster development” as:

* * * a development permitting the clustering of single or multi-family residences on part of the property, with individual lots of not less than two acres in size and not exceeding three acres in size. No commercial or industrial uses not allowed by the applicable zoning ordinance are permitted.

The Hearings Officer finds the applicant’s proposal falls within this definition as all residential lots will be clustered together and will be at least two acres in size, and no commercial or industrial uses are proposed. Therefore, I find the applicant’s proposal consists of uses permitted outright and conditionally in the MUA-10 Zone. The proposed cluster development’s compliance with the applicable conditional use approval criteria is addressed in the findings below.

c. Section 18.32.040, Dimensional Standards

In an MUA Zone, the following dimensional standards shall apply:

A. The minimum lot size shall be 10 acres, except planned and cluster developments shall be allowed an equivalent density of one unit per seven and one-half acres and 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.

B. The minimum average lot width shall be 100 feet and the minimum street frontage 50 feet.
C. The minimum average lot depth shall be 150 feet.

**FINDINGS:** The subject property is 46.73 acres in size. The applicant’s original tentative plat proposed eight lots which would have resulted in a density of more than 7.5 dwelling units per acre. At the public hearing the applicant submitted a revised tentative plan for a six-lot cluster development that would produce a density of one dwelling unit per 7.7 acres, therefore satisfying the standard in Paragraph (A) of this section. The revised tentative plan shows all lots are at least 100 feet wide and 150 deep and have at least 50 feet of frontage on N.W. Homestead Court, therefore satisfying the standards in Paragraphs (B) and (C) of this section.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal satisfies all applicable standards in the MUA-10 Zone.

**SUPPLEMENTARY PROVISIONS**


   a. Section 18.116.220, Conservation Easements on Property Adjacent to Rivers and Streams-Prohibitions

      A. As a condition of approval of all land use actions involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Paulina Creek, Whychus Creek and Tumalo Creek, the property owner shall convey to the County a conservation easement, as defined in DCC 18.04.030, "Conservation Easement," affecting all property on the subject lot which is within 10 feet of the ordinary high water mark of the river or stream.

      B. The form of the conservation easement shall be as prescribed by the County and may contain such conditions as the County deems necessary to carry out the purposes described in DCC 18.04.030, "Conservation Easement."

      C. Any public access required as part of a conservation easement shall be subject to the following conditions:

         1. Public access shall be limited to foot traffic for recreational purposes and the putting in or taking out of boats.

         2. Unless otherwise permitted by the affected property owner, public access does not allow public passage through other private property to gain access to the property subject to the conservation easement.
3. Unless otherwise permitted by state law, County ordinance or the property owner, no person on the subject property as a result of a public access requirement of a conservation easement shall deposit solid waste, damage or remove any property, (including wildlife and vegetation) maintain or ignite fires or fireworks, discharge firearms or camp.

FINDINGS: The subject property is adjacent to the Deschutes River and therefore the provisions of this section apply. The Hearings Officer finds the applicant will be required as a condition of approval to execute and record with the Deschutes County Clerk a conservation easement on a form approved by the county and covering all land within 10 feet of the ordinary high water mark (OHWM) of the Deschutes River.

GENERAL CONDITIONAL USE APPROVAL CRITERIA

3. Chapter 18.128, Conditional Use
   a. Section 18.128.015, General Standards Governing Conditional Uses

   Except for those conditional uses permitting individual single-family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:

FINDINGS: The Hearings Officer finds these conditional use standards apply to the applicant’s proposal because it would include more than one single-family dwelling.

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

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

FINDINGS: The applicant proposes to establish a 6-lot residential cluster development on the 46.73-acre subject property. The residential lots would be clustered and located primarily along the west side of the subject property adjacent to the Deschutes River. They would have access from a private road consisting of a new road within the subdivision and an existing easement across the adjacent BLM land that connects to N.W. Homestead Way, a dedicated public road within the Tetherow Crossing Subdivision. The private subdivision road would terminate in a “hammerhead” dead-end between proposed Lots 1 and 2. Domestic and irrigation water would be provided either by individual on-site wells or by a public water system, and sewage disposal would be provided by private on-site septic systems. The open space would be contiguous and would essentially surround the residential lots. Police protection would be provided by the Deschutes County Sheriff, and fire protection would be provided by the Redmond Fire Department through a contract with the Deschutes Rural Fire Protection District #1 (hereafter RFPD). The applicant proposes to satisfy the fire department’s requirements for fire protection
and fire apparatus access. For these reasons, the Hearings Officer finds the subject property is suitable for the proposed residential cluster development considering the location and size of the subject property and the design and operating characteristics of the cluster development.

2. **Adequacy of transportation access to the site; and**

**FINDINGS:** The applicant proposes access to the residential lots via a private road consisting of a new road within the subdivision to be called N.W. Homestead Court and the existing easement across the adjacent BLM land that would be called N.W. Homestead Way and essentially would be a continuation of the road located within the Tetherow Crossing Subdivision. The private road would terminate in a “hammerhead” dead-end between proposed Lots 1 and 2. The applicant proposes to improve both the on-site and off-site segments of the private access road to the county’s standards for private roads.

In its comments on the applicant’s modified proposal, the road department recommended that the applicant be required to dedicate the easement across the BLM land and to improve the easement to the county’s improvement standards for local public roads. The road department also requested that the applicant be required to execute and record a road maintenance agreement for the BLM easement. The applicant does not propose to dedicate the BLM easement because it lacks authority to do so. In addition, in its comments on the applicant’s proposal, the BLM stated the existing easement was granted to Parker Johnstone and that any subsequent owner such as a homeowners’ association must apply for reassignment of the easement. As discussed in detail in the findings below concerning the applicant’s variance request, the Hearings Officer has found the applicant will not be required to dedicate the BLM easement, but will required to improve this easement to the county’s standards for private roads if the BLM permits such improvements.

In support of its proposal, the applicant submitted a traffic study dated March 30, 2007, and an addendum to the study dated May 22, 2007, prepared by Scott Ferguson of Ferguson & Associates, Inc. Both of these studies were based on the applicant’s original proposal for an 8-lot cluster development and therefore predict higher traffic levels than would be generated by a 6-lot cluster development. The traffic study predicted the 8-lot cluster development would generate 67 new average daily vehicle trips (ADTs) – not counting trips for the existing dwelling – of which 7 would occur during the p.m. peak hour (4:00 p.m. to 6:00 p.m. weekdays). The traffic study concluded the addition of these new trips would increase the amount of traffic on N.W. Homestead Way through the Tetherow Crossing Subdivision by only approximately 4 percent, and would increase the traffic flow through the intersection of N.W. Helmholtz Way and N.W. Coyner Avenue by only approximately 2 percent. The traffic study concluded that with the addition of this minimal amount of traffic the affected roads and intersection would continue to function at acceptable levels of service. The traffic study also concluded sight and stopping distances at the Helmholtz/Coyner intersection would be adequate for safe operation with the addition of traffic generated by the proposed cluster development. In the addendum to the traffic study, Mr. Ferguson re-evaluated potential traffic impacts adding to background traffic the traffic predicted to be generated by the newly-approved Johnson Meadows Subdivision located east of the subject property. Mr. Ferguson concluded that considering this additional projected traffic the affected roads and intersections still would function at acceptable levels of service.

Attachment 4: Split Zone, Flood Plain Decisions
Based on the Ferguson traffic study, the Hearings Officer finds the addition of the minimal traffic generated by the proposed 6-lot cluster development will not exceed the capacity of the affected streets and the intersection. And as discussed in detail in the findings below, I have found the applicant will be required to improve the on-site segment of the private road to the county’s standards for private roads, and to improve the off-site portion of the private road on BLM land at least to the fire department’s minimum standards for fire apparatus access roads. Therefore, I find the subject property is suitable for the applicant’s proposed cluster development considering transportation access.

3. The natural and physical features of the site, including but not limited to, general topography, natural hazards and natural resource values.

FINDINGS: The majority of the subject property, and the area on which the proposed cluster development, single-family dwellings and access road would be developed, is generally level and therefore would not require significant grading for development. The record indicates the property does not have any natural hazards. The applicant proposes to preserve the existing rock outcrops on the subject property as well as the features within the Deschutes River canyon within the platted open space areas. For these reasons, the Hearings Officer finds the subject property will be suitable for the proposed residential cluster development considering its natural and physical features.

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

FINDINGS: As discussed in the Findings of Fact above, most of the surrounding land is owned and managed by the BLM and is undeveloped. Property further to the north and east is developed with rural residential subdivisions with lots ranging in size from 2.5 to 5 acres. The privately-owned property to the west is zoned EFU-Te, engaged in farm use consisting of livestock grazing on irrigated pasture and hay production, and also developed with single-family dwellings and agricultural buildings. These agricultural uses are separated from the subject property by the Deschutes River and its canyon. The applicant proposes to develop the subject property with 6 lots, five of which would be approximately 2.4 acres in size and one of which would be 3 acres in size. Lots 2 through 6 would be adjacent to the river, but according to the applicant’s revised subdivision plat their rear lot lines would be located at least 300 feet from the nearest land to the west across the river. For these reasons, the Hearings Officer finds the proposed cluster development will be compatible with existing and projected uses on surrounding properties considering the factors discussed above.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposed cluster development satisfies, or with conditions of approval will satisfy, all applicable general conditional use criteria.

CLUSTER DEVELOPMENT CONDITIONAL USE APPROVAL CRITERIA
b. Section 18.128.200, Cluster Development (Single-family Residential Uses Only)

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

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

FINDINGS: Section 23.24.030 of the comprehensive plan establishes the following policies concerning the determination of need for residential uses:

1. Because 91 percent of the new County population will live inside an urban area, with only 3,039 new rural lots required, and in light of the 17,377 undeveloped rural tracts and lots as well as the energy, environmental and public service costs, all future rural development will be stringently reviewed for public need before approval. As a guideline for review if a study of existing lots within three miles of the proposed development indicates approximately 50 per cent or more of those lots have not had structures constructed thereon, then the developer shall submit adequate testimony justifying additional lots in that area. This will permit development in areas where such is needed (other policies considering energy, public facilities, safety and other development aspects shall also be considered) while restricting future division in areas where many undeveloped lots already exist. (Emphasis added.)

The Hearings Officer finds the above-underscored language means that if less than 50 percent of the lots within a three-mile radius of the property are developed with dwellings the applicant must demonstrate through specific evidence that there is a need for additional lots. The applicant’s burden of proof includes a detailed analysis of uses on all land located within a 3-mile radius and shows that of the 1,132 parcels within this area 79 percent are developed with dwellings. Therefore, I find the applicant’s proposed cluster development is consistent with this plan policy and the applicant is not required to demonstrate a need for additional residential uses.

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

FINDINGS: The Hearings Officer finds the applicant’s proposed subdivision will have the following environmental, social and economic impacts, each of which is discussed separately in the findings below.

1. Environmental Impacts. The staff report states, and the Hearings Officer concurs, that the most likely environmental impacts from the proposed subdivision involve the introduction of five new dwellings, five new on-site septic systems and up to five new wells, and the removal of some existing vegetation for structures, driveways and the private subdivision road. I find the applicant will be required as conditions of approval to obtain an approved septic site evaluation
for proposed Lots 2 through 6, and to obtain approval of any public water system serving the proposed cluster development if individual wells are not utilized. As discussed in the findings below, I have found the applicant has demonstrated through the submission of three well logs that water is available to serve the proposed cluster development at a relatively shallow depth. For these reasons, and with imposition of these conditions of approval, I find the proposed cluster development will have minimal if any environmental impacts.

2. Social Impacts. The Hearings Officer finds the most likely social impacts from the proposed subdivision involve the addition of five new households to the area with their attendant traffic, noise and children attending school. However, as discussed above, I have found the existing transportation system can handle the additional traffic that would be generated by the proposed subdivision. I also find the 2.5- to 3-acre size of the proposed residential lots will minimize noise impacts on surrounding property. Finally, I find the addition of a few children to the Redmond public schools enrollment will not adversely affect the schools.

3. Economic Impacts. The Hearings Officer finds the most likely economic impacts from the proposed subdivision involve additional payroll for construction workers building new dwellings on the residential lots and improvements to the access road, as well as the addition of five new households to the area resulting in an increase in the county’s tax base. I find these impacts would be positive.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposed cluster development will have neutral or positive environmental, social and economic impacts.

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

FINDINGS: Much of the land surrounding the subject property consists of large undeveloped BLM parcels. However, the land north and east of the BLM land is developed with rural subdivisions and single-family dwellings, and the property to the west across the Deschutes River is developed with farm uses and rural residences. All of these uses are separated from the subject property by considerable distances. The proposed cluster development would create five new rural residential lots similar in size to other such lots in the surrounding area, and representing a tiny increase in area density. The proposed cluster development would maintain 80 percent of the property in open space. For these reasons, the Hearings Officer finds the proposed cluster development will not have an adverse impact on, and will be consistent with, the rural character of the area.

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

FINDINGS: The record indicates there are no lands in the surrounding area zoned for or employed in forest use. The property to the west is zoned EFU-Te and developed with farm uses including livestock grazing on irrigated pasture and hay production, relatively low-intensity uses. These farm uses would be separated from the proposed cluster development by the Deschutes River and its canyon and would be at least several hundred feet from the nearest point on the...
The owners of these farm-zoned parcels did not comment on the applicant’s proposal, which the Hearings Officer finds signify they are not concerned about potential negative impacts from the cluster development on their farm activities. With respect to impacts on wildlife, the subject property is not located within a Wildlife Area Combining (WA) Zone and therefore the county has not identified the area as critical wildlife habitat. In any event, I find the size of the proposed residential lots and the large amount of open space will assure retention of much of the existing habitat. For these reasons, I find the proposed cluster development will little or no effect on agricultural or forestry activity or wildlife and habitat in the surrounding area.

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

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

FINDINGS: Under this section, the developed area of the cluster development cannot exceed 16.36 acres (35% of 46.73 acres) and the open space must include at least 30.37 acres (65% of 46.73 acres). The proposed cluster development would include 30.4 acres of common open space, 15.13 acres of residential lots, and 1.2 acres of roads, therefore satisfying this criterion.

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

FINDINGS: The proposed cluster development would include 30.4 contiguous acres of platted common open space essentially surrounding the residential lots and including the area between the residential lots and the Deschutes River. The applicant has not identified the uses that would be permitted on the open space, but the Hearings Officer finds that as a condition of approval the applicant will be required to execute and record deed restrictions specifying that common area
uses can include only those uses listed in this section – i.e., management of natural resources, trail systems and similar outdoor uses consistent with the nature of the open space area. For these reasons, and with imposition of this condition of approval, I find the applicant’s proposal satisfies the requirements in this paragraph.

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

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property is not located in a WA Zone.

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

**FINDINGS:** The proposed Lots 2 through 6 would be contiguous to one another. Lot 1 would be separated from Lot 2 by the “hammerhead” vehicle turnaround at the terminus of N.W. Homestead Court as well as part of the open space area. The Hearings Officer finds the proposed width of N.W. Homestead Court at this point would be 28 feet which will allow for human and wildlife passage and is much narrower than any of the proposed residential lots. Therefore, I find the applicant’s proposal satisfies this criterion.

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

**FINDINGS:** The proposal’s compliance with the requirements of Title 17 is discussed in detail in the findings below. The Hearings Officer has found the applicant’s proposal satisfies, or with conditions of approval will satisfy, all applicable provisions of Title 17.

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

**FINDINGS:** The maximum density permitted for a cluster development on the 46.73-acre MUA-10 zoned subject property is six dwellings, and the applicant is proposing six dwellings, therefore satisfying this criterion.
The open space of the proposed development shall be platted as a separate parcel or in common ownership of some or all of the clustered lots or parcels. For any open space or common area provided as a part of the cluster development, the owner shall submit proof of deed restrictions recorded in the County records. The deed restrictions shall preclude all future rights to construct a residential dwelling on the lot, parcel or tract designated as open space or common area for as long as the lot, parcel or tract remains outside an urban growth boundary. The deed shall also assure that the use of the open space shall be continued in the use allowed by the approved cluster development plan, unless the whole development is brought inside an urban growth boundary. If open space is to be owned by a homeowner’s association or if private roads are approved, a homeowner’s association must be formed to manage the open space and/or road areas. The bylaws of the association must be recorded prior to or concurrent with the filing of the final plat. If the open space is located within the Wildlife Area Combining Zone, the management plan for the open space must be recorded with the deed restrictions or bylaws of the homeowner’s association.

FINDINGS: The Hearings Officer finds this criterion has four components applicable to the proposed MUA-10-zoned cluster development, each of which is addressed separately in the findings below.

1. Platting of Open Space. The applicant proposes to plat the 30.4 acres of open space as common open space as shown on the revised tentative subdivision plat.

2. Deed Restrictions. The applicant has not submitted draft deed restrictions. The Hearings Officer finds the applicant will be required as a condition of approval to submit to the Planning Division for review and approval by the county’s legal counsel sample deed restrictions, and to record with the Deschutes County Clerk deed restrictions on the deed for each cluster development lot, that preclude development of the open space with dwellings for as long as the subject property remains outside the Redmond urban growth boundary (UGB).

3. Homeowners’ Association. The applicant proposes to create a homeowners’ association to which the open space would be conveyed and which would manage the open space and maintain the private access road both within the subdivision and on the BLM easement. In addition, the Hearings Officer finds the applicant will be required as a condition of approval to submit or assist the homeowners’ association in submitting an application to the BLM to re-assign the BLM easement from Parker Johnstone to the homeowners’ association. The applicant submitted with its burden of proof sample subdivision CC & Rs consisting of CC & Rs from the Lynwood
Acres Subdivision near Sisters. These documents create a homeowners’ association, establish its bylaws, and establish uses permitted within the subdivision and enforcement of subdivision rules. I find the applicant will be required as a condition of approval, and prior to submitting the final subdivision plat for approval, to submit to the Planning Division for review and approval by the county’s legal counsel, and to record with the Deschutes County Clerk, CC & Rs for the proposed Parker Ranch that are comparable to the Lynwood Acres CC & Rs in content and form.

4. Bylaws. As discussed above, the applicant submitted sample CC & R’s including bylaws for the homeowners’ association. The Hearings Officer finds the applicant will be required as a condition of approval, and prior to submitting the final subdivision plat for approval, to submit to the Planning Division for review and approval by the county’s legal counsel, and to record with the Deschutes County Clerk, homeowners’ association bylaws comparable in content and form to those for the Lynwood Acres Subdivision in content and form.

For the foregoing reasons, and with imposition of the above-described conditions of approval, the Hearings Officer finds the applicant’s proposed cluster development will satisfy this criterion.

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

FINDINGS: The applicant proposes to provide access to the residential lots in the cluster development from a private road consisting of a new interior subdivision road to be called N.W. Homestead Court and the existing easement across the adjacent BLM land. The applicant proposes to plat the interior subdivision road and to improve both the on-site and off-site segments of the private road to the county’s standards for private roads. However, in its
comments on the applicant’s proposal, the BLM stated that in order for the applicant to pave the easement it would have to apply to the BLM for permission to do so, and the BLM would be required to undertake an environmental assessment of such paving under the National Environmental Policy Act (NEPA) before permitting paving of the easement. The Hearings Officer finds the applicant will be required as a condition of approval to make an application to the BLM for permission to pave the easement. In addition, as discussed in the findings above, I have found the applicant will be required as a condition of approval to execute and record CC & Rs that place responsibility for maintenance of the private subdivision road as well as the BLM easement on the homeowners’ association, and to apply to the BLM to re-assign the easement to the homeowners’ association. Finally, as discussed in the findings below concerning the applicant’s variance request, I have found the applicant will not be required to dedicate the BLM easement. For these reasons, and with imposition of these conditions of approval, I find the applicant’s proposal will satisfy this criterion.

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

FINDINGS: The record includes “willing-to-serve” letters from several private utility companies. The Hearings Officer finds the applicant will be required as a condition of approval to install all service connections for these utilities underground where feasible.

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

FINDINGS: The proposed cluster development will include five new dwelling units, therefore satisfying this criterion.

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

FINDINGS: The proposed cluster development will include 5 new lots, therefore satisfying this criterion.

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

FINDINGS: The applicant proposes to serve the cluster development lots with private on-site septic systems and not a community sewer system, therefore satisfying this requirement.

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

Attachment 4: Split Zone, Flood Plain Decisions
FINDINGS: The Hearings Officer finds the proposed cluster development will have no impact on accepted forest practices on nearby lands because there are no forest-zoned lands within the surrounding area. I also have found the proposal will not have any impact on the EFU-zoned parcels across the Deschutes River because of the relatively low intensity of these farm uses and the distance across the river and its canyon. For these reasons, I find the proposed cluster development also will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on nearby lands.

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

FINDINGS: The subject property is separated from the EFU-zoned lands to the west by the Deschutes River and its canyon. The applicant’s revised tentative plan shows the rear lot lines of Lots 2 through 6 would be located at least 300 feet from the eastern property boundaries of the lots on the west side of the river, and the lot lines of Lot 1 would be located even further away. Therefore, the Hearings Officer finds no dwellings on these lots could be placed closer than 100 feet from the EFU-zoned lots.

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

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

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

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

FINDINGS: The Hearings Officer finds the applicant has submitted a tentative subdivision plat and sample CC & Rs that meet the requirements in this section, but has not submitted draft deed restrictions. As discussed above, I have found the applicant will be required as a condition of approval to submit to the Planning Division for review and approval by the county’s legal counsel deed restrictions containing the language required to be included under Section 18.128.200(B)(7) above. I find that with imposition of this condition of approval the applicant’s submission will include all information required by this paragraph.

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

* * *

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

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

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

FINDINGS: The applicant submitted photographs of the subject property including the upper plateau area and the portion of the property within the Deschutes River canyon. The applicant does not propose to remove any features on the subject property, or to employ the subject property in farm or forest uses. Therefore, the Hearings Officer finds the applicant’s proposal satisfies this criterion.

D. Dimensional Standards:

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

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

FINDINGS: The applicant’s proposed cluster development is subject to the minimum setbacks and 30-foot building height limit in the MUA-10 Zone. The Hearings Officer has found the proposed residential lots are large enough to accommodate single-family dwellings meeting the minimum MUA-10 Zone setbacks. I find building heights will be verified at the time of building permit issuance. And at 46.73 acres the subject property exceeds the twenty-acre minimum area for a cluster development. Therefore, I find the applicant’s proposal satisfies this criterion.

E. Conditions for phased development shall be specified and performance bonds shall be required by the Planning Director or Hearings Body to assure completion of the project as stipulated, if required improvements are not completed prior to platting.
**FINDINGS:** The Hearings Officer finds this paragraph is not applicable to the proposed cluster development because the applicant does not propose to develop it in phases.

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

**FINDINGS:** The road cross-section drawing for the proposed interior subdivision road on the applicant’s revised tentative plan shows this road would have 20 feet of pavement which is the minimum width established for private roads in Table “A” of Title 17. However, the applicant’s burden of proof states the private subdivision road would have 28 feet of pavement. The Hearings Officer finds that without 28 feet of pavement there would not be sufficient room to accommodate bicycles and pedestrians as well as vehicles. Therefore, I find that as a condition of approval the applicant either must plat and improve N.W. Homestead Court within the subdivision with 28 feet of pavement, or plat and improve this road with 20 feet of pavement and provide a separate multi-use bicycle/pedestrian path.

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

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

2. For schools or commercial uses where the addition of a connection would reduce the walking or cycling distance to an existing or planned transit stop, school, shopping center, or neighborhood park by 200 feet or by at least 50 percent over other available routes.

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

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

FINDINGS: The Hearings Officer finds that separate bicycle and pedestrian connections as required by this section are neither necessary nor appropriate in the proposed cluster development inasmuch as such connections would not significantly reduce walking or cycling distance to any public or commercial destination given the rather remote location of the subject property, the presence of the Deschutes River on the west, and the length of the easement across BLM lands.

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

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to execute and record with the Deschutes County Clerk a conditions of approval agreement on a form acceptable to the county.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposed cluster development satisfies, or with conditions of approval will satisfy, all applicable cluster development conditional use approval criteria.

**LM ZONE STANDARDS**

4. Chapter 18.84, Landscape Management Combining Zone (LM)

a. Section 18.84.020, Application of Provisions

The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the comprehensive plan or the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management roadways of from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.

FINDINGS: The Deschutes River forms the western boundary of the subject property. Therefore the portions of the subject property located within one-quarter mile (1,320 feet) from the OHWM on the river’s east side are subject to the provisions of the LM Zone. The revised
tentative plan shows virtually all of the subject property is located within one-quarter mile of the river and therefore the Hearings Officer finds the proposed cluster development is subject to the applicable provisions of the LM Zone, discussed in the findings below.

b. Section 18.84.030, Uses Permitted Outright

Uses permitted in the underlying zone with which the LM Zone is combined shall be permitted in the LM Zone, subject to the provisions of DCC 18.84.

c. Section 18.84.030, Uses Permitted Conditionally

Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.

FINDINGS: As discussed in the findings above, the Hearings Officer has found the applicant’s proposed cluster development and the single-family dwellings that would be sited on the subdivision lots are uses permitted conditionally and outright, respectively, in the MUA-10 Zone. Therefore, I find these uses also are permitted in the LM Zone.

d. Section 18.84.050, Use Limitations

A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.

B. Structures that are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards in the underlying zone.

FINDINGS: The Hearings Officer finds any new dwellings constructed on the cluster development lots will be subject to the provisions of this section, and will require LM Zone site plan review whether or not they would be visible from the Deschutes River.
For the foregoing reasons, the Hearings Officer finds the applicant’s proposed cluster development satisfies all applicable criteria in the LM Zone.

**FLOOD PLAIN ZONE STANDARDS**

5. Chapter 18.96, Flood Plain Zone

a. Section 18.96.020, Designated Areas

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised June 8, 1998, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.

The Flood Plain Zone shall include all areas designated as "Special provided in the Flood Insurance Study, the Planning Division will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway. Flood Hazard Areas” by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been

**FINDINGS:** The record indicates the only part of the subject property within the Deschutes River flood plain is located well below the upper plateau where the residential lots would be located. The revised tentative plan shows that part of the property will be within the designated common open space.

b. Section 18.96.060, Limitations on Conditional Uses

The following limitations shall apply to all uses allowed by DCC 18.96.040:

* * *

C. No subdivision or partition shall be allowed which creates the potential for additional residential dwellings in the flood plain.

**FINDINGS:** As discussed above, the proposed residential lots will not be located within the flood plain.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposed cluster
development satisfies all applicable criteria in the FP Zone.

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

SUBDIVISION APPROVAL CRITERIA

1. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans
   a. Section 17.16.080, Tentative Plan as a Master Plan
      A. As an alternative to the filing of a master plan for phased development, the applicant may file a tentative plan for the entire development. The plan must comply with the provisions of DCC Title 17 for tentative plans.
      
      B. If the applicant proposed to phase development, he shall provide sufficient information regarding the overall development plan and phasing sequence when submitting the tentative plan.

      C. If the tentative plan is approved with phasing, the final plat for each phase shall be filed in accordance with DCC 17.24.020 through 17.24.110.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose a phased development of the cluster development.

b. Section 17.16.100, Required Findings for Approval
   A. The subdivision contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forest lands and other natural resources.

FINDINGS: In several previous decisions, the Hearings Officer has found this subdivision approval criterion has three separate components. The applicant must demonstrate that the proposed subdivision will: (1) be served by adequate infrastructure; (2) be consistent with surrounding developed and undeveloped land considering factors such as density and lot configuration; and (3) preserve natural features and resources on the property. Each of these components is addressed separately in the findings below.

1. Adequate Public Facilities and Services. The applicant proposes that subdivision lots would be served by on-site individual wells or a public water system, and individual on-site septic systems. The residential lots would have access from a private road located within the
subdivision and on the adjacent BLM easement that would connect to N.W. Homestead Way, a dedicated public road within the Tetherow Crossing Subdivision. The applicant proposes to improve both segments of this private road to the county’s private road standards, and will be required as a condition of approval to apply to the BLM for permission to improve the easement with pavement, and if the easement cannot be paved to improve it to the fire department’s minimum standards for fire apparatus access roads. Police protection would be provided by the Deschutes County Sheriff and fire protection would be provided by the RFPD. Utilities would be provided by Central Electric Cooperative, Qwest and other affected utility providers. As discussed in detail in findings elsewhere in this decision, the Hearings Officer has found available infrastructure will be adequate to serve the proposed subdivision. For these reasons, I find the proposed subdivision will contribute to the orderly development and land use patterns in the area considering public facilities and services.

2. Surrounding Development and Land Use Patterns. The tentative plan proposes 6 residential lots and approximately 30 acres of open space for an overall density of 7.7 gross acres per dwelling unit. As discussed in the Findings of Fact above, the area surrounding the subject property is characterized by a mixture of zoning districts and land uses. To the north, east and south are large undeveloped parcels owned and managed by the BLM. Further to the north and east are rural residential subdivisions with lots ranging from 2.5 to 5 acres in size. To the west across the Deschutes River are EFU-zoned parcels developed with farm uses and single-family dwellings. The Hearings Officer finds the proposed 6-lot cluster development with large areas of open space will be consistent with this land use pattern considering lot size and density.

3. Preservation of Natural Features and Resources. The natural features on the site include the Deschutes River and its canyon and scattered rock outcrops. The portions of the property adjacent to the river and including the rock outcrops would be preserved by inclusion in the platted open space.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal will contribute to the orderly development and land use patterns in the surrounding area.

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

FINDINGS: The Hearings Officer finds the proposed subdivision will have impacts on the following public facilities and services.

1. Police Protection. Because the subject property is located outside of any city limits, police protection will be provided by the Deschutes County Sheriff’s Office which did not comment on the applicant’s proposal.

2. Fire Protection. The record indicates the subject property is located within the boundaries of the RFPD and will receive fire protection from the Redmond Fire Department. In its comments on the applicant’s proposal, the fire department did not indicate it would be unable to provide fire protection for dwellings developed on the subject property. The fire department stated that
the applicant should be required as a condition of approval to do the following:

a. provide an engineered fire flow analysis to demonstrate sufficient fire flow within the subdivision for fire protection;

b. provide water on the site prior to construction;

c. dedicate the portion of N.W. Homestead Way that crosses the BLM property;

d. provide a fire apparatus access road that;
   - extends to within 150 feet of all portions of the exterior walls of the dwellings’ first stories;
   - has an unobstructed width of 20 feet;
   - has an unobstructed vertical clearance of not less than 13 feet 6 inches;
   - has a turning radius of 30 feet inside and 50 feet outside;
   - has a grade not exceeding 10 percent;
   - is designed and maintained with an all-weather surface that will support a 75,000-pound fire apparatus; and
   - has an approved area for turning around fire apparatus;

e. post “Fire Lane” signs on both sides or roads that are 20 to 26 feet in width and around any cul-de-sacs prohibiting on-street parking; and

f. post green address signs approved by the fire department on all buildings with address numbers that are plainly legible and visible from the street or road fronting the building.

The Hearings Officer has found the applicant will not be required to dedicate the BLM easement. However, I find the applicant will be required as a condition of approval to comply with all other fire department requirements, and to submit to the Planning Division written documentation from the fire department that all such requirements have been met, with the exception of posting individual building address signs, prior to submitting the final subdivision plat for approval.

3. Transportation Facilities. The applicant proposes to provide access to the residential lots via a private road including the interior subdivision road to be called N.W. Homestead Court and the easement on the adjacent BLM land. The applicant proposes to improve both segments of the private road to the county’s standards for private roads. However, as discussed above the applicant must receive approval from the BLM to pave the easement, and if such permission is not given the applicant must improve the easement to the fire department’s minimum standards for fire apparatus access roads. As also discussed above, the applicant will be required as a condition of approval to improve the interior subdivision road with either 20 feet of pavement and a separate bicycle and pedestrian path, or with 28 feet of pavement. The Hearings Officer has found the applicant’s submitted traffic study demonstrates traffic generated by the proposed 6-lot cluster development will not exceed the capacity of affected roads and intersections. For these reasons, I find the proposed subdivision will not create excessive demand on transportation facilities.
4. Utilities. The record includes “willing-to-serve” letters from several private utility companies including Central Electric Cooperative and Qwest.

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

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

FINDINGS: The Hearings Officer finds the provisions of ORS Chapter 92, including ORS 92.090, are implemented through Title 17 of the Deschutes County Code, and therefore compliance with Title 17 will assure compliance with ORS Chapter 92.

D. For subdivisions or portions thereof proposed within a Surface Mining Impact Area (SMIA) zone under DCC Title 18, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of DCC 18.56, as amended, as demonstrated by the site plan and accompanying information required under DCC 17.16.030.

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

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

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to obtain approval of the subdivision name from the Deschutes County Surveyor.

b. Section 17.16.105, Access to Subdivisions

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

FINDINGS: The applicant proposes to provide access to the residential subdivision lots from a private road that would consist of a new subdivision road to be called N.W. Homestead Court platted and improved to the county’s standards for private roads, and the easement across the
adjacent BLM land. This private road would connect to N.W. Homestead Way, a dedicated public road within the Tetherow Crossing Subdivision east of the BLM land. As discussed in the findings above, cluster developments may have access from private roads. However, the road department has requested that the applicant dedicate the BLM easement, and this section requires that subdivisions be access by roads constructed to county standards and accepted for maintenance by a government entity. The applicant has not proposed to dedicate the BLM easement because it lacks authority to do so. Rather, the applicant proposes, and will be required as conditions of approval, to apply to the BLM for permission to pave the easement and to re-assign the easement from Parker Johnstone to the subdivision homeowners’ association, and to record subdivision CC & Rs that place responsibility for maintenance of both the on-site and off-site segments of the private road on the homeowners’ association. The applicant has requested a variance to this subdivision access standard to allow it to provide the proposed private road maintained by a homeowners’ association. As discussed in the variance findings below, the Hearings Officer has found the applicant’s proposal satisfies all applicable variance criteria, and therefore the applicant will not be required to dedicate the BLM easement to the public or secure county maintenance of the off-site private road.

2. Chapter 17.36, Design Standards
   a. Section 17.36.020, Streets
      A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles, and automobiles with intersection angles, grades, tangents, and curves appropriate for 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 requirement 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.

**FINDINGS:** As discussed above, the applicant proposes access to the subdivision lots from a private interior subdivision road to be called N.W. Homestead Court, and the easement across adjacent BLM land, both segments of which the applicant proposes to improve to the county’s private road standards. This private road would connect to N.W. Homestead Way, a dedicated...
public road within the Tetherow Crossing Subdivision east of the BLM land. As discussed in the variance findings below, the Hearings Officer has found the applicant will not be required to dedicate the BLM easement, but will be required as a condition of approval either to improve it to the county’s standards for private roads if permitted by the BLM, or to the fire department’s minimum standards for fire apparatus access roads.

b. Section 17.36.040, Existing Streets

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

FINDINGS: Section 17.08.030 defines “road or street” as “a public or private way that is created to provide ingress and egress to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress and egress to land in conjunction with the use of such land for forestry, mining or agricultural purposes.” The Hearings Officer finds the easement across the adjacent BLM land falls within this definition. The record indicates this private road is located within a 60-foot-wide easement and is improved with a 28-foot-wide cinder surface. As discussed in the findings above, the applicant will be required as a condition of approval to apply for permission from the BLM to pave this easement, and if such permission is not granted the applicant will be required to improve the easement to the fire department’s minimum standards for fire apparatus access roads. I find that with imposition of these conditions of approval the applicant’s proposal will satisfy this criterion.

c. Section 17.36.050, Continuation of Streets

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

FINDINGS: The applicant proposes to plat and improve to the county’s private road standards an interior subdivision road as well as to improve the easement across the adjacent BLM land. The Hearings Officer has found the BLM easement constitutes a “road or street” as defined in Title 17. This on-site and off-site private road would connect with N.W. Homestead Way, a dedicated public road in the Tetherow Crossing Subdivision. Therefore, I find the proposed private road could be considered to constitute a continuation of N.W. Homestead Way. I find
from the applicant’s revised tentative plan that the private road centerline will align with the centerline of the public road, therefore satisfying this criterion.

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

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

FINDINGS: As discussed above, the applicant has proposed and will be required as a condition of approval to plat and improve to the county’s private road standards the proposed interior subdivision road, N.W. Homestead Court, and to improve to these same standards the BLM easement if permitted to do so by the BLM. And as discussed in the variance findings below, the Hearings Officer has found the applicant has demonstrated its proposal qualifies for a variance to the county’s subdivision access standards that would require access from a public road improved to the county’s standards for public roads and maintained by the county. Therefore, I find the applicant’s proposal satisfies this criterion.

e. Section 17.36.080, Future Extension of Streets

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

FINDINGS: The Hearings Officer finds it is not possible for the applicant to provide for the future extension of the private subdivision street because of the location of the Deschutes River, and because in its comments on the applicant’s proposal the BLM stated it will not grant any additional access easements for the subject property over abutting BLM land.

f. 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.

FINDINGS: The applicant will be required as a condition of approval to obtain approval of the proposed interior subdivision road name – N.W. Homestead Court -- from the Deschutes County Property Address Coordinator.

g. Section 17.36.130, Sidewalks

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

FINDINGS: The subject property is located outside any urban area. The road department has not recommended that the applicant provide curbs and sidewalks on the proposed subdivision road, and therefore the applicant will not be required to do so.

h. Section 17.36.140, Bicycle, Pedestrian and Transit Requirements

A. Pedestrian and Bicycle Circulation within Subdivision

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

FINDINGS: As discussed in the findings above, the applicant’s revised tentative plan shows the private subdivision street would be improved with 20 feet of pavement, but the applicant’s burden of proof states the road would be improved with 28 feet of pavement. The Hearings Officer has found 20 feet of pavement width is not sufficient to accommodate vehicles, bicycles and pedestrians. Therefore, the applicant will be required as a condition of approval either to improve N.W. Homestead Court within the subdivision with 28 feet of pavement, or improve it with 20 feet of pavement and provide a separate bicycle and pedestrian path along the private subdivision road. I find that with imposition of this condition of approval the applicant’s proposal will satisfy this criterion.

2. Subdivision layout

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

FINDINGS: The applicant proposes to terminate N.W. Homestead Court in a “hammerhead” dead-end located between Lots 1 and 2. The Hearings Officer finds the proposed dead-end is necessary due to the presence of the Deschutes River on the west and the lack of available through street connections on the abutting BLM property to the north, east and south. Therefore, I find the proposed road terminus is justified. However, I find that as a condition of approval the applicant will be required to submit written documentation from the RFPD or the Redmond Fire Department that the proposed “hammerhead” satisfies fire code standards. I find that with imposition of this condition of approval the applicant’s proposal will satisfy this criterion.

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

FINDINGS: The Hearings Officer finds this criterion is not applicable because there are no planned or existing neighborhood activity centers in the area of the subject property.

(c) Local roads shall align and connect with themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400 foot intervals.

(d) Connections shall not be more than 400 feet long and shall be as straight as possible.

FINDINGS: The Hearings Officer finds these criteria are not applicable because there are no roads in the area other than N.W. Homestead Way which is located over 3,000 feet from the eastern boundary of the subject property.

3. Facilities and Improvements

(a) Bikeways may be provided by either a separate paved path or an on-street bike lane, consistent with the requirements of this title.

(b) Pedestrian access may be provided by sidewalks.
or a separate paved path, consistent with the requirements of this title.

(c) Connections shall have a 20-foot right of way with at least a 10-foot usable surface.

FINDINGS: The applicant proposes to provide pedestrian and bicycle access on the new private subdivision road. The Hearings Officer has found that to assure such access the applicant will be required to improve the interior subdivision road with 28 feet of pavement, or improve the road with 20 feet of pavement and provide a separate bicycle and pedestrian path along the road.

i. 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 Easements” on the tentative and final plat.

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to provide all utility easements required by the affected utility providers, and to show all public utility easements labeled as such on the final subdivision plat.

B. Drainage. If a tract is traversed by a watercourse such as a drainage way, channel or stream there shall be provide a storm water easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or parkways parallel to major watercourses or drainageways may be required.

FINDINGS: The Hearings Officer finds the criterion is not applicable because the subject property is not traversed by a water course or other similar features. As discussed above, the Deschutes River forms the western boundary of the subject property.

j. 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 Title 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 the County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table and related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.

**FINDINGS:** The proposed residential lots would range in size from 2.43 to 3 acres. The lots are generally rectangular in shape and are surrounded by the proposed common open space areas. The Hearings Officer finds these lots will be appropriate for development of single-family dwellings and on-site wells and septic systems. The record indicates the proposed Lot 1 has an approved septic system. Therefore, the applicant will be required as a condition of approval to obtain an approved septic site evaluation for Lots 2 through 6. And as discussed in the findings below, the applicant will be required as a condition of approval to obtain approval from the Oregon Health Division for any public water system serving the subdivision.

**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 the off-street service and parking facilities required by the type of use and development contemplated.**

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property is not zoned or planned for business or industrial use.

k. **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. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards. Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.**

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

**FINDINGS:** The revised tentative plan shows each residential lot in the proposed cluster development will abut a private road for at least 50 feet, and all side lot lines are at right angles
to the private subdivision road to the extent practical, therefore satisfying this criterion.

i. Section 17.36.210, Solar Access Performance

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

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

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

FINDINGS: The Hearings Officer finds the size of the proposed subdivision lots will allow maximum solar access for dwellings.

m. Section 17.36.260, Fire Hazards

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

FINDINGS: The revised subdivision plat shows a single access to the subject via a new private subdivision road, N.W. Homestead Court, and the adjacent BLM easement. The Hearings Officer finds that because the Deschutes River forms the western boundary of the subject property, and the abutting property to the north, east and south is owned by the BLM which has stated no additional access easements for the subject property will be granted, it is not possible for the applicant to provide a second point of access.

n. 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.

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.

FINDINGS: The applicant has proposed to provide domestic and irrigation water to the subdivision lots either through individual on-site wells or through a public water system. The record includes copies of three well logs for wells in the area, including the existing well on the subject property, showing water is available at depths from 140 to 150 feet. The Hearings Officer finds that if the applicant elects to provide water through a public water system, plans for such a system shall be submitted to and approved by the Oregon Health Division, and the applicant shall submit to the Planning Division written documentation from the Health Division that these plans have been approved prior to submitting the final subdivision plat for approval.

3. Chapter 17.44, Park Development

a. Section 17.44.010, Dedication of Land

b. Section 17.44.020, Fee in Lieu of Dedication

FINDINGS: Sections 17.44.010 and 17.44.020 establish the requirement for a dedication of land for parks, or in lieu of a dedication the payment of a fee for the parks. Because the subject property is located within the boundaries of the Central Oregon Parks District, the Hearings Officer finds this requirement do not apply to the proposed subdivision.

4. Chapter 17.48, Design and Construction Specifications

a. 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).
FINDINGS: The Hearings Officer finds this road standard applies to public roads and therefore is not applicable to the proposed private road access for the subdivision. As discussed above, the applicant will be required as a condition of approval either to improve the interior subdivision road with 28 feet of pavement width, or provide 20 feet of pavement width and a separate multi-use bicycle and pedestrian path along the road.

b. 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 Deschutes County Code Title 16.

FINDINGS: As discussed in the findings above, the Hearings Officer has found the applicant will be required as a condition of approval to obtain approval of the use of the name N.W. Homestead Court from the Deschutes County Property Address Coordinator.

c. Section 17.48.140, Bikeways

A. General Design Criteria

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

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

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

B. Multi-use Paths

1. Multi-use paths shall be used where aesthetic, recreation and safety concerns are primary and a direct route with few intersections can be established. If private roads are constructed to a width of less than 28 feet, multi-use paths shall be provided.
2. Multi-use paths are two-way facilities with a standard width of 10 feet, but with a 12-foot width if they are subjected to high use by multiple users. These paths shall meet County multi-use path standards and shall connect with bike facilities on public roads.

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

D. Shoulder Bikeways

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

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

E. Mountain Bike Trails

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

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

FINDINGS: As discussed in the findings above, the Hearings Officer has found that to assure adequate bicycle and pedestrian access for the subdivision the applicant will be required as a condition of approval either to improve the interior subdivision road with 28 feet of pavement width or to improve the road with 20 feet of pavement width and provide a separate bicycle and pedestrian path along the road. I find that with imposition of this condition of approval the proposed private subdivision road will provide for adequate and safe access and circulation for vehicles, bicycles and pedestrians.

d. Section 17.48.160, Road Development Requirements-Standards

A. Subdivision Standards. All roads in new subdivisions shall either be constructed to a standard acceptable for inclusion in the county maintained system or the subdivision shall be part of a special road district or a homeowners association in a planned unit development.
FINDINGS: The applicant proposes to plat and improve a new private interior subdivision road, N.W. Homestead Court, in accordance with the county’s private road standards. The applicant has proposed, and will be required as a condition of approval, to create a homeowners’ association that will be responsible for maintenance of the private subdivision road.

B. Improvements of Public Rights of Way.

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

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

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not propose and will not be required to dedicate or improve any public rights-of-way as part of the subdivision.

C. Primary Access Roads. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A (or the applicable standard set forth in a zoning ordinance). The applicable standard shall be determined with reference to the road's classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved County, city or state maintained road that provides the primary access to the subdivision from such a road. (Emphasis added.)

FINDINGS: Under the above-underscored definition, the “primary access road” to the proposed subdivision would be the existing BLM easement which extends from the eastern boundary of the subject property to N.W. Homestead Way, a dedicated public road within the Tetherow Crossing Subdivision. As discussed in the findings below, the applicant has requested, and the Hearings Officer has approved, a variance to the county’s subdivision access standards so that the applicant need not dedicate the BLM easement. However, I have found the applicant will be required as a condition of approval to request approval from the BLM to improve the easement in accordance with the county’s private road standards including pavement, and if such permission is not granted to improve the BLM easement to the fire department’s minimum standards for fire apparatus access roads. I find that with imposition of these conditions of approval, and with approval of the requested variance, the applicant’s proposal will satisfy this criterion.

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

FINDINGS: As discussed in the findings above, the Hearings Officer has found the applicant will not be required to construct a secondary access road to the proposed subdivision because of the topography – the Deschutes River to the west – and the public ownership and lack of ability to obtain additional access easements on adjacent lands to the north, east and south.

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

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

FINDINGS: No cul-de-sac is proposed. The applicant proposes to terminate N.W. Homestead Court within the subdivision by a “hammerhead” dead end, resulting in an access road that would be approximately 4,900 feet in length including both the private interior subdivision road and the BLM easement. In its comments on the applicant’s proposal the fire department stated the length of this dead-end would be acceptable from a fire protection perspective as long as each lot is developed with a water source acceptable to the department and operational prior to issuance of building permits. The Hearings Officer finds the applicant will be required as a condition of approval to provide such a water source for each subdivision lot, and to submit to the Planning Division written documentation from the fire department that such water source is acceptable to the fire department, prior to submitting the final subdivision plat for approval.

e. Section 17.48.180, Private Roads

The following minimum road standards shall apply for private roads:

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

B. Minimum radius of curvature, 50 feet;

C. Maximum grade, 12 percent;

D. At least one road name sign will be provided at each intersection for each road;
E. A method for continuing road maintenance acceptable to the County;

F. Private road systems shall include provisions for bicycle and pedestrian traffic. In cluster and planned developments limited to ten dwelling units, the bicycle and pedestrian traffic can be accommodated within the 20-foot wide road. In other developments, shoulder bikeways shall be a minimum of four feet wide, paved and striped, with no on-street parking allowed within the bikeway, and when private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.

FINDINGS: The applicant proposes subdivision lot access from a private road, N.W. Homestead Court, and the existing BLM easement. As discussed in the findings above, the applicant will be required as a condition of approval to improve the interior subdivision road to the county’s standards for private roads, including either 28 feet of pavement width or 20 feet of pavement width and a separate bicycle/pedestrian pathway. The applicant also will be required as a condition of approval to request permission from the BLM to improve the easement to the county’s private road standards including pavement, and if such permission is not granted to improve the easement to the fire department’s minimum standards for fire apparatus access roads. The applicant also has proposed, and will be required as a condition of approval, to establish a homeowners’ association that would be responsible for maintenance of the entire private road including both the interior subdivision road and the BLM easement.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposed subdivision satisfies, or with conditions of approval will satisfy, all applicable approval criteria in Title 17 with the exception of the road access requirement in Section 17.16.105 for which the applicant has requested a variance, discussed in the findings immediately below.

VARIANCE APPROVAL CRITERIA

6. Chapter 17.56, Variances

   a. Section 17.56.020, Variance Criteria

      A variance may be granted unqualifiedly or may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body makes all of the following findings:

      A. That the literal application of the ordinance would create practical difficulties resulting in greater private expense than public benefit;

FINDINGS: The applicant has requested approval of a variance to the county’s subdivision access standards that would require it to dedicate to the public and improve to the county’s...
public road standards the existing BLM easement. As discussed above, because the applicant proposes a cluster development the interior subdivision road may be a private road. The applicant proposes to improve the BLM easement to the county’s private road standards including either 24 or 28 feet of paved surface and a 2-foot-wide gravel shoulder on each side of the easement. However, the record indicates the BLM must grant permission to pave the easement. Therefore, the Hearings Officer has found the applicant will be required as a condition of approval to seek such approval from the BLM. The applicant also will be required as a condition of approval to apply for, or assist the homeowners’ association in applying for, permission from the BLM to re-assign the easement from Parker Johnstone to the homeowners’ association.

The applicant argues the literal application of the county’s subdivision access and public road dedication and improvement standards would create practical difficulties resulting in greater private expense than public benefit because:

- when the applicant’s predecessor purchased the subject property in 1990 the county’s current subdivision access road requirements were not in place, and the county had approved residential subdivisions north and east of the subject property utilizing substandard private roads – e.g., N.W. 62nd Street and Odin Falls Way;

- according to the applicant’s traffic study, the proposed subdivision will generate a minimal amount of traffic – 67 p.m. peak hour trips for 7 new dwellings – which would represent only a two percent increase in traffic on affected roads and would not negatively impact the function of these roads or their intersections;

- consequently, the cost of improving the BLM easement the approximately 3,100 feet from the subject property’s eastern boundary to N.W. Homestead Way would far exceed any public benefit; and

- the only reasonable way to manage the cost of improving the BLM easement would be the creation of a local improvement district (LID) in the surrounding area, and efforts to establish such an LID have been unsuccessful.

The Hearings Officer finds these arguments are persuasive. And I find that while there are compelling reasons to require that subdivisions have access from dedicated public roads improved to county standards and maintained by the county, other forms of access may be adequate to provide adequate physical and permanent legal access. For example, Section 17.22.020(3) allows partitions off BLM and Forest Service easements where there is a written agreement with the public agency that provides for permanent legal access and any required maintenance. The applicant’s proposed subdivision would create 6 lots that would have access off a BLM easement that is subject to a written grant of right-of-way that may be assigned to a homeowners’ association for the proposed subdivision. For these reasons, I find the applicant’s proposal satisfies this variance criterion.

B. That the condition creating the difficulty is not general throughout the surrounding area, but is unique to the
applicant's site;

**FINDINGS:** The applicant argues the condition creating the difficulty – the existing access to the subject property via a BLM easement and the applicant’s inability to dedicate that easement to the public, potential inability to improve it to the county’s road standards, and the significant length of the easement -- is unique to the subject property because of its physical isolation from the surrounding area by the Deschutes River on the west and the large tracts of BLM land on the north, east and south, and because the private property to the east already has been developed with rural residential subdivisions containing hundreds of lots that take access from substandard public roads not maintained by the county. The applicant asserts the subject property is the last remaining privately-owned parcel in the MUA-10 Zone on the east side of the river that has not been developed with a residential subdivision. The Hearings Officer agrees that the subject property’s location and status, and its existing access from a BLM easement, are conditions that are unique and not general throughout the surrounding area, and therefore the applicant’s proposal satisfies this variance criterion.

C. **That the condition was not created by the applicant;**

**FINDINGS:** The applicant asserts the condition creating the difficulty is the result of the land use pattern in the surrounding area that was established well before the applicant’s predecessor purchased the property in 1990. The applicant also states its predecessor believed at the time of purchase that the subject property could be developed in a similar manner – i.e., with rural residential development on lots in the five-acre size range using the existing substandard road network. The Hearings Officer agrees the applicant did not cause this difficulty, nor could the applicant’s predecessor reasonably have anticipated at the time the property was purchased that the county would impose a requirement for access to subdivisions from public roads improved to minimum county standards. Therefore, I find the applicant’s proposal satisfies this variance criterion.

D. **That the variance conforms to the comprehensive plan and the intent of the ordinance being varied.**

**FINDINGS:** As discussed in findings throughout this decision, the Hearings Officer has found the applicant’s proposed cluster development satisfies, or with conditions of approval, will satisfy all applicable approval criteria for the MUA-10, FP and LM Zones, all applicable conditional use approval criteria, and all subdivision approval criteria with the exception of the subdivision access standards from which the applicant seeks a variance. I also find plan policies and intent or purpose statements in the zoning ordinance do not establish mandatory approval criteria for the applicant’s proposal. Therefore, I find the applicant’s proposal satisfies this variance criterion.

**For the foregoing reasons, the Hearings Officer finds the applicant’s proposed variance to the subdivision road access standards in Title 17 satisfies all applicable approval criteria.**
IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby APPROVES the applicant’s tentative subdivision plat for a 6-lot subdivision, APPROVES the applicant’s proposed conditional use permit for a 6-lot cluster development, and APPROVES the applicant’s proposed variance to the county’s subdivision road access standards to allow access to the subdivision from a private road including the existing BLM easement, SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

1. This approval is based on the applicant’s revised tentative plan for a 6-lot cluster development submitted on July 26, 2007, the applicant’s burden of proof statements, supplemental materials, and written and oral testimony. Any substantial change to the approved plan will require a new land use application and approval.

PRIOR TO SUBMITTING THE FINAL SUBDIVISION PLAT FOR APPROVAL:

2. The applicant/owners shall:

a. submit to the Deschutes County Road Department engineered design and construction plans for N.W. Homestead Court within the subdivision and for the easement across the adjacent BLM land;

b. improve N.W. Homestead Court within the subdivision with either 20 feet of paved surface with 2-foot-wide gravel shoulders and a separate multi-use bicycle and pedestrian path along the road, or with 28 feet of paved surface with 2-foot-wide gravel shoulders;

c. apply to the BLM for permission to improve the existing 60-foot-wide easement across the adjacent BLM land with either 24 or 28 feet of paved surface with 2-foot-wide gravel shoulders;

d. if the BLM grants permission, improve the BLM easement with either 24 or 28 feet of paved surface and 2-foot-wide gravel shoulders;

e. if the BLM does not grant permission to pave the existing easement, improve the BLM easement to the fire department’s minimum standards for fire apparatus access roads, as described in Condition 8 below, which may include a gravel surface;

f. survey and stake roads as required by Section 17.48.200 of the Deschutes County Code;

g. construct all road improvements with road department inspection and approval; and

h. submit to the road department information from the surveyor or engineer filing
the subdivision plat information showing the location of the existing roads in relation to the road right-of-way, and construct all required improvements within legally established or dedicated rights-of-way.

3. The applicant/owners shall submit to the Planning Division written documentation from the BLM that the existing easement across the BLM property abutting the subject property on the east has been assigned to the homeowners’ association and that such assignment includes an agreement between the BLM and the homeowners’ association for maintenance of the BLM easement.

4. The applicant/owners shall obtain an approved septic site evaluation for subdivision Lots 2 through 6 from the Deschutes County Environmental Health Division.

5. The applicant/owner shall provide a water source for each subdivision lot from either an individual on-site well or a public water system, and shall submit to the Planning Division written documentation from the Redmond Fire Department that such water source is acceptable to the fire department.

6. If the applicant/owners elect to provide water to the subdivision lots through a public water system, the applicant/owners shall submit to the Oregon Health Division for its review and approval plans for such a system, and shall submit to the Planning Division written documentation from the Health Division that these plans have been approved. The water system shall be operational with water lines extended to the boundary of each lot in the subdivision.

7. The applicant/owners shall submit to the Planning Division for review and approval by the county’s legal counsel CC & Rs for the subdivision, comparable in content and form to the Lynwood Acres CC & Rs, and including the creation of and bylaws for the homeowners’ association, transfer of the private subdivision road and the open space areas to the homeowners’ association, placement of maintenance responsibility for the private subdivision road and BLM easement on the homeowners’ association, and a description of uses permitted within the subdivision including the open space areas consistent with the use limitations in the county code.

8. The applicant/owners shall comply with all requirements of the Redmond Fire Department, including the following:

   a. provide an engineered fire flow analysis to demonstrate sufficient fire flow within the subdivision for fire protection;

   b. provide water on the site prior to construction;

   c. provide a fire apparatus access road that;

      • extends to within 150 feet of all portions of the exterior walls of the dwellings’ first stories;
• has an unobstructed width of 20 feet;
• has an unobstructed vertical clearance of not less than 13 feet 6 inches;
• has a turning radius of 30 feet inside and 50 feet outside;
• has a grade not exceeding 10 percent;
• is designed and maintained with an all-weather surface that will support a 75,000-pound fire apparatus; and
• has an approved area for turning around fire apparatus;

d. post “Fire Lane” signs on both sides or roads that are 20 to 26 feet in width and around any cul-de-sacs prohibiting on-street parking; and

e. post green address signs approved by the fire department on all buildings with address numbers that are plainly legible and visible from the street or road fronting the building.

9. The applicant/owners shall submit to the Planning Division written documentation from the Deschutes Rural Fire Protection District or the Redmond Fire Department that the proposed “hammerhead” terminus of N.W. Homestead Court within the subdivision satisfies fire code standards.

10. The applicant/owners shall install all service connections for these utilities underground where feasible.

11. The applicant/owners shall obtain approval of the subdivision name from the Deschutes County Surveyor.

12. The applicant/owners shall obtain approval from the Deschutes County Property Address Coordinator for the new subdivision road name and for new addresses for the new subdivision lots.

13. The applicant/owners shall provide any utility easement(s) required by the affected utility providers.

14. The applicant/owners shall execute and record with the Deschutes County Clerk a conservation easement covering all land within 10 feet of the OHWM of the Deschutes River on a form approved by the county.

15. The applicant/owners shall submit to the Planning Division for review and approval by the county’s legal counsel, and shall record with the Deschutes County Clerk, deed restrictions for each subdivision lot that preclude all future rights to construct a residential dwelling on the open space, and that assure use of the open space is limited to management of natural resources, trail systems or other outdoor uses that are consistent with the character of the natural landscape until the entire subdivision is brought into the Redmond urban growth boundary,

16. The applicant/owners shall post a road name sign for N.W. Homestead Court at the
eastern boundary of the subject property where the private subdivision road and the existing BLM easement connect.

WITH OR ON THE FINAL PLAT:

17. The applicant/owners shall show on the final subdivision plat all easements of record including utility easements and existing rights-of-way on the final subdivision plat.

18. The applicant/owners shall record the CC & Rs including the homeowners’ association bylaws with the Deschutes County Clerk.

19. The applicant/owners shall execute and record with the Deschutes County Clerk a conditions of approval agreement on a form acceptable to the county.

20. The applicant/owners shall submit a current title report or subdivision guarantee.

PRIOR TO REQUESTING A BUILDING PERMIT FOR EACH STRUCTURE:

21. The applicant/owners shall submit to the Planning Division written documentation from the Redmond Fire Department that all requirements set forth in Condition 8 have been met, with the exception of posting individual building address signs which shall be posted at the time of construction.

22. The applicant/owners shall apply for and obtain LM site plan approval for the dwelling. The type of review will depend on whether or not the dwelling will be visible from the Deschutes River.

AT THE TIME OF CONSTRUCTION OF DWELLINGS:

22. No dwelling or accessory structure shall not cover in excess of 30 percent of the total lot area.

Dated this _____ day of October, 2007

Mailed this _____ day of October, 2007

___________________________
Karen H. Green, Hearings Officer

THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS TIMELY APPEALED.

Attachment 4: Split Zone, Flood Plain Decisions
FINDINGS AND DECISION

FILE NUMBERS: TP-08-1008/CU-08-64

APPLICANTS/OWNERS: Walter and Jacqueline Babcock
20050 Tumalo Road
Bend, OR 97701

REQUEST: Applications for a subdivision plat to create four lots in the Tumalo Residential-5 acre minimum (TuR5) Zoning District. The proposal includes a conditional use permit to allow a subdivision in the Flood Plain (FP) zone

STAFF CONTACT: Paul Blikstad, Senior Planner

I. APPLICABLE STANDARDS & CRITERIA:

Title 17, the County Subdivision and Partition Ordinance, of the Deschutes County Code (DCC):
   Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans.
      Sections 17.16.100 and 17.16.105
   Chapter 17.36, Design Standards.
      Sections 17.36.020, 17.36.040, 17.36.060-080, 17.36.120-220, 17.36.260,
         17.36.280 and 17.36.290
   Chapter 17.44, Park Development.
      Section 17.44.010 and 17.44.020

Title 18, the Deschutes County Zoning Ordinance, of the DCC:
   Chapter 18.67, Tumalo Rural Community Zoning Districts
      Sections 18.67.030, Tumalo Residential –5 acre minimum (TuR5) Zoning District,
         18.67.080 and 18.67.090.
   Chapter 18.96, Floodplain (FP) zone.
   Chapter 18.56, Surface Mining Impact Area (SMIA) Combining Zone
   Chapter 18.84, Landscape Management (LM) Combining Zone.

II. BASIC FINDINGS:

A. LOCATION: The subject property has an assigned address of 20500 Tumalo Road, Bend. The property is also identified on County Assessor’s Map Nos. 16-12-30, as Tax Lot 805, and 16-12-29C, as Tax Lot 3400.

B. LOT OF RECORD: The subject property is a legal lot of record pursuant to being Parcel
1 of Partition Plat No. 1998-55 (County Land Use File No. MP-96-30), as adjusted under lot line adjustment LL-02-70.

C. **ZONING:** The property is zoned TuR5, Tumalo Residential-5 acre minimum. There is also Flood Plain (FP) zone adjacent to the river. The subject property is situated within the Landscape Management (LM) and Surface Mining Impact Area (SMIA) combining zones. The Deschutes River is the landscape management feature. The Deschutes County Comprehensive Plan designation for the site is Rural Community and Landscape Management.

D. **PROPOSAL:** The applicant requests approval of a tentative subdivision plat to create four (4) lots in the TuR5 Zone. The proposal includes a conditional use permit to allow a subdivision in the Flood Plain zone. The proposed lots are: 12.2 acres for lot 1; 5 acres for lots 2 and 3; and 22.2 acres for lot 4. Each lot is to have at least fifty (50) feet of frontage on Tumalo Road, a County maintained rural collector road. The applicant has indicated that each lot will have its own on-site sewage disposal system and will be provided potable water from either Laidlaw Water or on-site wells. The lots are to be for single-family development.

E. **SITE DESCRIPTION:** The site is approximately 44.4 acres in size and has a somewhat irregular shape. The property contains an existing dwelling, barn, pond, fenced areas, irrigated areas, and a paved driveway extending from Tumalo Road back to the existing dwelling and barn. There is also a gravel driveway running parallel to the Deschutes River. The river forms the northern boundary of the property, and Tumalo Road forms the southern boundary of the property. The vegetation occurring on site consists of mostly irrigated pasture grass, some trees, as well as introduced vegetation surrounding the dwelling. The eastern portion of the site is higher in elevation that the rest of the property, which is mostly flat.

F. **SURROUNDING LAND USES:** Land use in the area is single family dwellings in all directions, including some hobby farming. The Deschutes River is adjacent and to the north of the subject property, and Tumalo Road is adjacent to the south of the subject property. Properties surrounding the parcel are zoned TuR5 or Multiple Use Agricultural (MUA-10), with flood plain along the Deschutes River.

West of the subject parcel, and across the Deschutes River and Cline Falls Highway, is a surface mine operation identified as Site No. 488 on the County’s inventory of designated mine sites. The subject property is within the SMIA combining zone associated with this site. Surface Mine site no. 488 contains two pre-existing mining operations, known as Cline Falls Pit and the Highland Pit. Surface Mine Site No. 488 is zoned Surface Mining (SM). The County Assessor’s records identify the current owner of the property as CLR, incorporated. The County’s Findings and Decision, including the Economic, Social, Environmental, and Energy (ESEE) Analysis, for Site No. 488 includes the following findings. Site No. 488 consists of approximately 343 acres and is located along the west side of Cline Falls Highway, immediately north of the community of Tumalo. The parcel is identified on County Assessor’s Map No. 16-12-30 as tax lots 100, 600, 2000 and 2100. The site is fairly level with the northern half being higher in elevation than the southern half. Specifically, the northern half of Surface Mine Site No. 488 consists of tax lots 100, 2000 and 2100 and is located on a bench or terrace above tax lot 600 to the south. There is no current mining activity and staff notes that this mine has not been used for several years. Site No. 488 has access onto Cline Falls Highway,
a rural arterial road and is within one-half mile of Highway 20.

G. **PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice of the proposed subdivision to several public agencies and received the following comments which are incorporated by reference herein:

- **Deschutes County Environmental Health:** There are records for one septic system. Each new residential lot requires an approved septic site evaluation.

- **Property Address Coordinator:** If this application is approved, the applicants shall contact the property address coordinator for new addresses. Any proposed road names must be reviewed and approved by the PAC.

- **County Road Department:**

  **Background information:**

  - Tumalo Road is a County Road (rural collector classification). The ADT in the vicinity of the application is 2610 (2008 count). The right-of-way width is 60 feet. The paved width of Tumalo Road is 30 feet, therefore the right-of-way and paved width meet County standard.
  - It appears that all lots will access Tumalo Road from a proposed access easement. This will create only one access onto Tumalo Road which is preferred by the Road Department. The applicant will need to pave an approach apron from the driveway onto Tumalo Road for a minimum distance of 25 feet from the edge of pavement on Tumalo Road and width of 24 feet. This will prevent damage to the edge of pavement on Tumalo Road from cars exiting the property.

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

  1. All easements of record or existing rights-of-way shall be noted on the final mylar.
  2. Access easements shall be legally established on the parcels of land for the proposed shared driveways.
  3. The approach onto Tumalo Road for these properties shall be paved a minimum distance of 25 feet from the edge of pavement on Tumalo Road and a width of 24 feet.
  4. An access permit shall be obtained for the new access onto Tumalo Road.
  5. The surveyor or engineer who submitted the final plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be needed.

Attachment 4: Split Zone, Flood Plain Decisions
dedicated as directed by the Deschutes County Road Department to meet current County standards.

Bend Fire Department:

Water Supply – 2004 Oregon IFC Section 508

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. See the City of Bend Fire Marshal for approval of firefighting water supply.

Premises Identification – 2004 Oregon IFC 505.1

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background and visible at night. Dwellings and Foster Homes that are located off of street frontage shall post a visible approved reflective address sign at the entrance to their driveway. (Signs are available at local Fire Stations)

Fire Apparatus Access Roads (General) – 2004 Oregon IFC Section 503 and Appendix D

Fire apparatus access roads shall be placed within 150 feet of all exterior walls of the first floor of all buildings. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet designed with a uniform all-weather driving surface to support the imposed GVW of 75,000 lbs. and a vertical clearance of not less than 13 feet 6 inches. Turning radius shall not be less than 45 feet and gradient shall not exceed 12 percent unless the authorities having jurisdiction approved a variance. Dead-end access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. A cul-de-sac, hammerhead or other means for the turning around of fire apparatus may be approved.

Pacific Power and Light:

This is to advise you that Pacific Power has electric service distribution facilities at or near 20050 Tumalo Road, 16-12-29C, tax lot 3400 and 16-12-30, tax lot 805 in Deschutes County, Oregon; and Pacific Power has certified rights to provide electric energy in this area.

Pacific Power will provide electric service to this project within a reasonable time after service is applied for. These extensions are provided under our Rules and Regulations as filed with the Oregon State Public Utilities Commissioners. These Rules and Regulations require that under some situations, the developer or customer will be required to participate in the line extension costs.

Electric service to this project is in accordance with the Rates, Rules and Regulations of Pacific Power’s files Electric Tariff.
Please Note: If your development includes a Public Utility Easement (PUE), Pacific Power requires the following language to be included on the construction drawings and plat map.

“Utilities shall have the right to install, maintain, and operate their equipment above and below ground and all other related facilities within the Public Utility Easements, identified on this plat map as may be necessary or desirable in serving the lots identified herein, including the right of access to such facilities and the right to require the removal of any obstructions including trees and vegetation that may be placed within the PUE at the low owner’s expense. At no time may any permanent structures be placed within the PUE or any other obstruction which interferes with the use of the PUE without the prior written approval of the Utilities and facilities in the PUE.”

Swalley Irrigation District:

On this 44.4 acre parcel there is 28.5 acres of water right. The water right is specific to certain portions of the parcel and must be transferred by the state Water Resources Department if there is any change.

Before we can approve the application, we need to have the landowner define where all of the water rights will actually be overlaid on each lot and how the water will be delivered. Currently there is only one pump diversion from the river to serve the entire parcel. We need to know what system will be put in place and be assured that easements will be granted among the properties so no one loses the ability to irrigate. Some of the water may have to be moved by transfer based on location of utility lines and other features.

We would encourage the applicant to come to our office and work out additional details so that his surveyor can provide the necessary water right layer locations. We will be glad to assist in the necessary water right transfer or other needs.

The following agencies did not respond to the notice: County Assessor, Watermaster, Tumalo Town Improvement District, Qwest, Oregon State Parks, and the County Transportation Planner.

H. PUBLIC NOTICE AND COMMENTS: The Planning Division mailed notice of this proposal to all property owners within 250 feet of the subject property. No comments have been received.

I. REVIEW PERIOD: These applications were submitted on August 15, 2008. They were accepted and deemed complete on September 15, 2008. The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit dated August 28, 2008, that indicates that notice was posted where it can be clearly seen from Tumalo Road on August 27, 2008.

III. CONCLUSIONARY FINDINGS:

Title 17 of the Deschutes County Code, Subdivisions
A. Chapter 17.16 Approval of Subdivision Tentative Plans and Master Development Plans

1. Section 17.16.100, Required findings for approval.

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

FINDING: The proposal meets this criterion because the tentative plat and the burden of proof statement show how it will contribute to orderly development and land use patterns in the area. The applicant proposes to establish lots that will at least five (5) gross acres in size. Each lot is intended for development with a single family dwelling. No other land uses are proposed through this application. The proposed lot size of five (5) acres is provided for in the TuR5 Zone under DCC 18.67.030 (c). The proposed lot sizes are consistent with the pattern of rural residential development on lands to the north and east of the site. Basic Finding (II)(F) of this report describes the land uses and the sizes of the properties in these areas. The proposal shows each lot will be provided with water service through Laidlaw Water District or private wells, telephone and electricity services, and an on-site sewage disposal system. The use of a lot size of 5 acres will allow placement of a dwelling and an on-site septic system on each lot.

The subject property abuts the Deschutes River to the north (rear lot lines). Future single-family dwellings and any accessory structures on the new lots will be subject to Landscape Management site plan review and the 100-foot setback from the ordinary high water mark of the Deschutes River. Additionally, the Deschutes River and its riparian vegetation is located within the Flood Plain zone. DCC Section 18.96 regulates development activities, such as fill and removal, in the FP zone. Based on the above, staff finds that the proposal meets this criterion because it also provides for the preservation of natural features.

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

FINDING: The proposal meets this criterion because it shows it will not create excessive demand on public facilities, services, and utilities required to serve the development.

The County Transportation Plan designates Tumalo Road as a rural collector road. This type of road is intended to collect traffic from local roads and provide links to rural destinations. Tumalo Road is a two-lane wide paved road that is maintained by Deschutes County. The average daily traffic volume (ADT) on Tumalo Road at a nearby location was 2610 in 2008. The proposed four-lot subdivision (three new dwellings) will add an additional 30 motor vehicle trips to Tumalo Road each day. The estimated traffic from the subdivision will not be of a level to create an excessive demand on the road system. The capacity of this road is estimated at no less than 5,000 vehicle trips.

The proposal will not create excessive demand on a public water system because the applicant has proposed to serve each proposed lot with potable water from Laidlaw Water District (or on-site wells), and the application includes a letter from Laidlaw Water District that indicates that they are willing and able to provide water service to the proposed lots. The applicant provided a similar letter from Pacific Power and Light that indicates that they are willing and able to serve the development (similar to their transmittal response). Finally, the proposal will not create

Attachment 4: Split Zone, Flood Plain Decisions
excessive demand on any public sewer system because each lot will be served by an individual on-site sewage disposal system. None of the proposed lots will connect to a sewer system because sewer service is not available in the area.

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

FINDING: ORS 92.090 addresses the improvement and the dedication of streets and roads, the naming of a subdivision, the conformance of a subdivision with the local zoning requirements, and the provision of water and sewage disposal service to lots within a subdivision. These requirements have been incorporated into the County Code under this chapter and Chapters 17.36 and 17.48 of the County Code. This report includes findings that show the applicant’s proposal complies with these applicable criteria, and therefore, also meets this criterion.

D. For subdivisions or portions thereof proposed within a Surface Mining Impact Area (SMIA) Combining Zone under Title 18 of the Deschutes County Code, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of Chapter 18.56 of Title 18, as amended, as demonstrated by the site plan and accompanying information required under Section 17.16.030 of this chapter.

FINDING: The Deschutes County Comprehensive Plan Map and the Official County Zoning map show the site is within the Surface Mining Impact Area associated with Surface Mining site no. 488 (hereafter referred to as site no. 488). Site no. 488 is located approximately 500 feet west of the subject property, across the Deschutes River and The Cline Falls Highway, and is identified on County Assessor’s Map No. 16-12-30 as tax lots 100, 600, 2000 and 2100. Surface Mine Site No. 488 contains two pre-existing mining operations, known as Cline Falls Pit and the Highland Pit. Surface Mine Site No. 488 is zoned Surface Mining (SM). The County Assessor’s records identify the current owner of the property as CLR, incorporated.

The County’s Findings and Decision on MP-06-30 has already addressed the SMIA zone for this property, and a waiver of remonstrance was already signed and recorded for the subject property. Additionally, the existing dwellings on lots within Tumalo Riverfront Estates located to the south of the subject property are located closer to the mining site than any proposed new dwellings on the new lots in the proposed subdivision. Staff finds that no additional findings are necessary to approve the dwelling sites on the proposed new lots 2-4 in the SMIA zone.

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

FINDING: The applicant has proposed the name of North Star subdivision with this application, which will require approval from the County Surveyor.

2. Section 17.16.105, Access to Subdivisions.

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

Attachment 4: Split Zone, Flood Plain Decisions
arterial meets relevant county standards and has been accepted for maintenance purposes.

FINDING: The applicant’s tentative plat indicates that the proposed lots will use a common driveway extending from Tumalo Road for access. The proposal meets this criterion because it shows that each lot will have frontage on and access to Tumalo Road, a rural collector road.

B. Chapter 17.36, Design Standards

1. Section 17.36.020 Streets.

   A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles, and automobiles with intersection angles, grades, tangents, and curves appropriate for 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 requirement for streets set forth in this chapter.

   B. Streets in subdivisions shall be dedicated to the public.

FINDING: The subdivision meets criterion (A) because it assures adequate traffic circulation systems for all modes of transportation. Each lot will have access to a rural collector road constructed to County standards under this title. No new streets are proposed, and a common access is proposed from Tumalo Road, as preferred by the County Road Department.

2. 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 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.

FINDING: The proposed new subdivision lots will have access to Tumalo Road, a rural collector. The County Road Department has stated that no road improvements are required to this road, since it is already approved to County standards. It is wide enough to accommodate the 30 new vehicle trips per day caused by the development of three new lots with dwellings.

Attachment 4: Split Zone, Flood Plain Decisions
3. **Section 17.36.060, Minimum Right of Way and Roadway Width.**

The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in Chapter 17.48 of this title.

**FINDING:** The criterion is not applicable because a dedicated public right-of-way is not proposed as part of the subdivision.

4. **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.*

**FINDING:** This criterion is applicable because the applicant proposes to create lots that are more than one acre in size. The tentative plat proposes lots that are five (5) gross in size, the minimum lot size for new lots in the TuR5 Zone. An arrangement of the lots to permit future subdivision appears to allow the possibility of dividing lot 4 into lots that meet the requirements of the TuR5 Zone. Lot 1 cannot be further divided based on the 10-acre minimum lot size for lots in the flood plain zone.

5. **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.*

**FINDING:** This criterion is not applicable since a new dedicated public right-of-way is not proposed as part of the subdivision.

6. **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.*

**FINDING:** This criterion is not applicable since the applicant is not proposing to create a new dedicated public right-of-way.

7. **Section 17.36.130, Sidewalks.**

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

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

**C.** Sidewalk requirements for areas outside of urban area are set forth in section 17.48.175. In the absence of a special requirement set forth by the
**Finding:** These criteria are not applicable to Tumalo Road because the site is outside of an acknowledged Urban Growth Boundary, and the comprehensive plan for Tumalo does not show sidewalks for Tumalo Road.

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

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

1. The tentative plan for a proposed subdivision shall provide for bicycle and pedestrian routes, facilities and improvements within the subdivision and to nearby existing or planned neighborhood activity centers, such as schools, shopping areas and parks in a manner that will:

   a. minimize such interference from automobile traffic that would discourage pedestrian or cycle travel for short trips;
   
   b. provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers; and
   
   c. otherwise meet the needs of cyclists and pedestrians, considering the destination and length of trip.

**Finding:** This criterion is not applicable because the site does not abut or is nearby any existing or planned neighborhood activity centers.

2. **Subdivision Layout**

3. **Facilities and Improvements**

**Finding:** The criteria under 17.36.140 (A) (2 and 3) are not applicable because the proposed subdivision does not include the creation of any new dedicated public right-of-way. No improvements to Tumalo Road are required for this subdivision.

9. **Section 17.36.150 Blocks.**

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

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

**Finding:** These criteria are not applicable because the applicant has not proposed any blocks within the subdivision, and the property is not located within an urban growth boundary.
10. 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 Easements” 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 a tract is traversed by a watercourse such as a drainage way, channel or stream there shall be provided a storm water 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 drainage ways may be required.

FINDING: The final plat will need to identify any public utility easements required by the affected utility providers. Criterion (B) is not applicable because the Deschutes River does not traverse any of the proposed lots, rather, it is located on the west side of the rear lot lines of each of the new undeveloped lots.

11. Section 17.36.170, Lots - Size and Shape.

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

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

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 the off-street service and parking facilities required by the type of use and development contemplated.

FINDING: The proposal meets this criterion because it proposes lots with the size, width, and orientation appropriate for the type of development contemplated. The plan also shows it is consistent with the lot provisions of the TuR5 Zone in Title 18 of the County Code. The applicant proposes to establish a single family dwelling on each proposed lot (lots 2-4). The tentative plat shows each lot will be at least five (5) acres in size, which is adequate area for construction of a dwelling that will meet the setbacks of the TuR5 Zone. Additionally, this report includes findings in a following section that conclude each lot will meet the dimensional...
standards of the TuR5 zone. Staff finds that with the large size, septic site evaluation approval should not be an issue, considering that the Tumalo Riverfront Estates lots to the west were approved for individual septic systems. The property is not zoned or planned for business or industrial use. It will remain residential use.

12. Section 17.36.180, Frontage.

A. Each lot or parcel shall abut upon a public 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, except for partitions off of US Forest Service or Bureau of Land Management roads. 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.

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

FINDING: The tentative plat meets these criteria because it shows each lot will abut upon Tumalo Road. The plat shows each lot will have at least 50 feet of frontage and that the side lot lines of each lot are at right angles to the proposed street. The property is not within the La Pine Neighborhood Planning Area.

13. Section 17.36.200, Corner lots.

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

FINDING: This criterion is not applicable because the property is located outside of an urban growth boundary.


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

B. This solar access shall be protected by solar height restrictions on burdened properties for the benefit of lots or parcels receiving the solar access.
C. If the solar access for any lot or parcel, either at the southern building line or at 10 feet above the southern building line, required by this performance standard is not feasible, supporting information must be filed with the application.

FINDING: The proposal meets these criteria because it proposes lot sizes that will ensure each proposed lot has as much solar access as feasible. The proposal includes the creation of lots at least five (5) gross acres in size. It further shows each lot has an adequate amount of level terrain for construction of a dwelling that can be provided solar access.

15. Section 17.36.220, Underground facilities.

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

A. Obtain a permit from the Department of Public Works for placement of all underground utilities.

B. Make all necessary arrangements with the utility companies and other persons or corporations affected by the installation of such underground utilities in accordance with the rules and regulations of the State Public Utility Commission.

C. All underground utilities, sanitary sewers and storm drains installed in streets shall be constructed prior to the surfacing of such streets to the extent practicable, and sanitary sewers shall be placed to such length as will obviate the necessity for disturbing the street improvements when service connections are made.

FINDING: These criteria are not applicable because the proposed utility connections to the area outside of an acknowledged urban growth boundary.

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.

FINDING: The residents on the proposed lots will be able to travel either east or west on Tumalo Road. The subdivision will not involve construction of a new public road. No other public roads abut the site that would provide the opportunity for an additional point of access.

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.

FINDING: If the applicant proposes a connection to Laidlaw Water District, water lines must be installed to each property prior to final plat approval.

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.*

FINDING: The applicant is intending to serve each lot with hook-up to Laidlaw Water System. The record includes a letter from Laidlaw Water System that indicates that they are willing and able to serve potable water to the new lots. An alternative to the hook-ups is individual wells for the proposed lots. Well logs for the area indicate well depths of 425 to 480 feet. Individual wells are a viable option for the proposed lots.

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 $350.00 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.**

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, 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 deposited with the County Treasurer and be sued for acquisition of suitable are 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 of County Commissioners and/or applicable park district.**

FINDING: Staff finds that no suitable area exists within the development for such park and/or recreation purposes. Therefore, staff finds that applicant can comply with these criteria through paying a fee in lieu of dedication, through the method set forth in Section 17.44.020(A). For this subdivision, a total of $1,050 (3 new lots x $350.00 per lot) must be paid. The applicant can meet this criterion by paying the fee of $1,050 prior to final approval of the subdivision plat.
Title 18 of the Deschutes County Code, County Zoning Ordinance

A. Chapter 18.67, Tumalo Rural Community Zoning Districts

1. Section 18.67.030, Residential-5 acre minimum (TuR5) District.

The purpose of the Tumalo Residential-5 Acre Minimum District is to retain large rural residential lots.

A. Permitted Uses. The following uses and their accessory uses are permitted outright and do not require site plan review:

1. Single-family dwelling or a manufactured home subject to DCC 18.116.070.

FINDING: The proposal meets this criterion because it proposes to create each lot for the purpose of establishing a single family dwelling for each one.

C. Lot Requirements. The minimum lot or parcel size in the TuR5 District is five (5) acres.

FINDING: The proposal meets this criterion because the tentative plat and the burden of proof statement show each lot will be at least five (5) gross acres in size. DCC 18.04.680(A) requires the calculation of lot area as gross area for lots larger than 2.5 acres in size.

2. Section 18.67.080, Standards for all districts.

A. Solar Setback. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.

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

C. Off-Street Parking and Loading. Off-street parking and loading shall be provided subject to the applicable provisions of DCC 18.116.

D. Lot Coverage. Except where otherwise noted, the primary and accessory buildings located on any lot or parcel shall not cover more than 30 percent of the total lot or parcel.

E. Building Height. Except where otherwise indicated, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

F. Rimrock Setback. Setbacks from the rimrock are subject to the applicable provisions of DCC 18.116.160.

G. River Setback. All new structures or additions to existing structures within 100 feet from the ordinary highway water mark of designated streams and
rivers are subject to the applicable provisions of DCC 18.120.030. For the purpose of DCC 18.67.070, decks are considered part of a structure.

FINDING: Development of the proposed lots will be subject to the setbacks listed in A, B and G above. The subject property has no rimrock as defined in the DCC. Structures on the proposed lots are also subject to the maximum lot coverage and building height standards under D and E above. No specific off-street parking or loading standards will apply to individual dwellings on the proposed lots.

3. Section 18.67.090, Right-of-way development standards.

A. Applicability. The standards in this section shall, in conjunction with the provisions of DCC 17.36, 17.40 and 17.48 relating to improvements in the right-of-way, apply to improvements in the right-of-way required by land use approvals. Right-of-way improvements shall be those authorized by subdivision, partition, conditional use or site plan requirements, as applicable. The standards set forth in this section shall govern over any conflicting standards set forth in DCC Title 17.

B. Road Access. For properties abutting Highway 20, when there is a choice to take access from a road other than Highway 20, no access shall be taken from Highway 20.

C. Roadways. Any roadway improvement shall conform to the applicable provisions of DCC Title 17, Table 18.67-A and the functional classification assigned to the road segment by the Comprehensive Plan for the Tumalo Rural Community.

D. Bikeways. Required bikeway improvements shall conform to the standards set forth in DCC 17.48.140 and applicable specifications of DCC Title 17, Table 18.67-A.

E. Sidewalks.

1. Sidewalks shall meet the standards set forth in Table 18.67-A. Sidewalks are required only where specified in the Comprehensive Plan Map for Tumalo, Map D1 “Planned Pedestrian Improvements.”

2. Sidewalks may be constructed either at the time of development or may be deferred until later through formation of a local improvement district. Applicants electing to defer sidewalk construction shall be required as a condition of approval to submit and have recorded a waiver of remonstrance signed by the land owner waiving the land owner’s rights to have any objection to LID formation counted against formation of the LID.

F. Drainage. Drainage facilities shall be required if necessary to meet the standard of DCC 17.48.190. Where specified in Title 17, Table 18.67-A, drainage shall be accomplished by swales constructed in accordance with the specifications set forth in Title 17, Table 18.67-A and the drawing set forth in DCC 17.48.

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**FINDING:** The County Road Department has indicated that no road improvements are required for the proposed subdivision. Tumalo Road is already improved to County standards. Sidewalks are not required on Tumalo Road for the Tumalo rural community. Drainage for the road is already established by the County for Tumalo Road.

**B. Chapter 18.96, Flood Plain Zone.**

1. **Section 18.96.020. Designated Areas.**

   The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" dated August 16, 1988, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department. The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Division will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

**FINDING:** The Flood Plain zone for the subject property is Zone AE, as documented by Flood Insurance Rate Map (FIRM) No. 41017C0465E, Effective Date: September 28, 2007. Zone AE provides a base flood elevation. A portion of the proposed lot 1 will contain mapped flood plain. Unless and until the FIRM map is changed to remove this flood plain, development with the flood plain is subject to DCC Chapter 18.96.

2. **Section 18.96.040. Conditional uses permitted.**

   The following uses and their accessory uses may be allowed subject to the applicable sections of this title:

   **H. Subdividing or partitioning of land any portion which is located in the flood plain subject to the provisions of DCC Title 18 and DCC Title 17, the Subdivision/Partition Ordinance.**

**FINDINGS:** This is a request to subdivide property that is located in both the TuR5 zone and the Flood Plain zone. The request is being reviewed against all applicable criteria in Titles 17 and 18.

3. **Section 18.96.060. Limitations on conditional uses.**

   **C. No subdivision or partition shall be allowed which creates the potential for additional residential dwellings in the flood plain.**

**FINDINGS:** Staff finds that all of the flood plain zone appears to be located on the proposed lot no. 1, which already has a dwelling. The applicant has purposefully included the flood plain zone on lot no. 1 to meet the 10-acre minimum lot size below. Lots 2-4 are all out of the flood plain zone and have adequate area for construction of a residence outside of the mapped flood
plain. All new development will have to be sited outside of the mapped floodplain. Staff finds this criterion to be satisfied.

4. Section 18.96.080. Criteria to evaluate conditional uses

E. Subdivision and Partition Proposals.
1. All subdivision and partition proposals shall be consistent with the need to minimize flood damage.

2. All subdivision and partition proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

3. All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.

FINDINGS: As mentioned in the previous finding, each of the proposed lots would have adequate area for construction of a residence outside of the mapped flood plain. Utilities would come from Tumalo Road, opposite the flood plain zone. Staff finds these criteria to be satisfied.

5. Section 18.96.110, Dimensional Standards.

In an FP Zone, the following dimensional standards shall apply:

A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.

B. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

C. Minimum lot size shall be 10 acres for all areas which have received an exception to the Statewide Planning Goals for resource uses. Area which have not received an exception to the Statewide Planning Goals shall have a minimum lot size of 80 acres.

FINDING: Lot 1 of the proposed subdivision is the only lot that has mapped flood plain. The applicant is proposing no structures within that portion of lot no. 1 that is in the flood plain. Items A and B above are thus not applicable to the proposed subdivision. Lot 1 is 12.2 acres, according to the tentative plan, and meets the 10-acre minimum in C above for areas like the subject property that received an exception to the Statewide Planning Goals for the County.

C. Chapter 18.84, Landscape Management Combining Zone.

1. Section 18.84.040. Uses permitted conditionally.

Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provision of this chapter.

FINDING: Each of the proposed lots are entirely situated within the LM combining zone associated with the Deschutes River. Therefore, a condition of approval will stipulate that
dwellings and structures on each of the new lots will require separate Landscape Management Review prior to the issuance of building and septic permits as they are not a part of this review and approval.

IV. CONCLUSIONS:

Based on the foregoing findings, Staff concludes the applications for a tentative subdivision plat and conditional use permit to create four (4) lots in the TuR5 and Flood Plain zones meets all applicable criteria for approval in Titles 17 and 18 of the Deschutes County Code.

Other permits may be required. The applicant is responsible for obtaining any necessary permits from the Deschutes County Building Division, the Deschutes County Environmental Health Division and the Deschutes County Road Department, as well as any required state and federal permits.

V. DECISION:

APPROVAL of the tentative plat, subject to the following Conditions of Approval.

VI. CONDITIONS OF APPROVAL:

1. This approval is based upon the tentative plat and the supporting documentation submitted with the application. Any substantial change in this approved plan will require review and approval through a separate land use application.

2. The applicant shall ensure a final plat for the subdivision is prepared in accordance with the requirements of Chapter 17.24 of Title 17 of the Deschutes County Code and ORS Chapter 92. A licensed land surveyor must prepare the final plat. All property corners and public rights of way must be located and monumented. The final plat shall include the exact lot size for each of the lots.

3. All advalorem 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 the County Treasurer.

4. Prior to final plat approval, the applicant shall obtain approval of separate site evaluations for each proposed lot.

5. Prior to final plat approval, the applicant shall pay to the County Treasurer the sum of $1,050 ($350.00 X 3 lots) for the parks dedication fee as required by Chapter 17.44 of Title 17. Documentation that this fee has been paid shall be provided to the Planning Division.

6. Prior to final plat approval, the applicant shall obtain an access permit for the proposed approach onto Tumalo Road. The approach shall be paved a minimum distance of 25 feet from the edge of the pavement on Tumalo Road and have a width of no less than 24 feet. The approach shall be completed prior to final plat review.
7. The final plat shall show all existing and any required public utility easements on the plat. Such easements shall be identified as “public utility easements”.

8. Prior to final plat approval, the applicant shall obtain approval for the Subdivision name from the County Surveyor.

9. The final plat shall contain a statement of water rights, and the appropriate certificate or permit number. The plat shall be signed by an authorized representative from Swalley Irrigation District.

10. Dwellings and structures on each of the new lots will require separate Landscape Management Review prior to the issuance of building and septic permits as they are not a part of this review and approval.

11. All new development shall be located outside of the mapped floodplain.

12. The applicant shall comply with all necessary requirements of the Bend Fire Department listed on the checklist submitted into the record and referenced in Basic Finding of this decision.

13. New addresses must be obtained from the Property Address Coordinator prior to development of the proposed lots.

VII. DURATION OF APPROVAL:

The applicant shall meet all conditions of this approval and submit an application for final plat approval within two (2) years from the date this decision become final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest.

DESGHUTES COUNTY PLANNING DIVISION

Written by: Paul Blikstad, Senior Planner

Reviewed by: Kevin Harrison, Acting Planning Director

PEB/slb

Dated this ____ day of September, 2008    Mailed this ____ day of September, 2008
FINDINGS AND DECISION

FILE NUMBERS: CU-11-34, CU-11-35 and MP-11-12

APPLICANT/OWNER: Canyons Land & Cattle Company, LLC
10400 N.E. Canyons Ranch Drive
Terrebonne, OR 97760

AGENT: Renee France, Attorney at Law
Ball Janik, LLP
101 S.W. Main Street; Suite 1100
Portland, OR 97204

REQUEST: CU-11-34: A conditional use permit for a nonfarm dwelling on proposed Parcel 2, a 3.25-acre parcel in the EFU-TE zone.

CU-11-35: A conditional use permit for a nonfarm dwelling on proposed Parcel 3, a 5.31-acre parcel in the EFU-TE zone.

MP-11-12: Minor Partition to divide a 415.49-acre parcel into three parcels.

STAFF CONTACT: Paul Blikstad, Senior Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, County Zoning
Chapter 18.16, Exclusive Farm Use (EFU) Zones
18.16.030, Conditional uses permitted – High value and nonhigh value farmland
18.16.050, Standards for dwellings in the EFU zones
18.16.055, Land divisions
18.16.060, Dimensional standards
18.16.070, Yards
18.16.080, Stream setbacks
18.16.090, Rimrock setback
Chapter 18.84, Landscape Management Combining Zone
Chapter 18.88, Wildlife Area Combining Zone

Title 17 of the Deschutes County Code, Partitions.
Chapter 17.22, Approval of Tentative Plans for Partitions
Chapter 17.36, Design Standards
Chapter 17.48, Design and Construction Specifications

Oregon Revised Statutes 215.417

Attachment 4: Split Zone, Flood Plain Decisions

Quality Services Performed with Pride
BASIC FINDINGS:

A. LOCATION: The subject property has an assigned address of 20875 NW Butler Road, Terrebonne. It is identified on Deschutes County Assessor’s Maps 14-13, as tax lot 200, and 14-13-3, as tax lot 400.

B. LOT OF RECORD: The subject property is a single legal lot of record pursuant to prior deed history. It has been adjusted through a somewhat recent property line adjustment (File No. LL-11-31).

C. ZONING: The property is zoned Exclusive Farm Use – Terrebonne subzone (EFU-TE), with Flood Plain adjacent to the Crooked River. Portions of the property are also located within the Landscape Management (LM) and Wildlife Area (WA) combining zones. It is designated agriculture on the Deschutes County Comprehensive Plan.

D. PROPOSAL: The applicant is proposing to divide a 415.49-acre parcel into three parcels. Parcel 1 would be 406.93 acres with 40.03 acres of water rights. Parcel 2 would be 3.25 acres with no water rights and a nonfarm dwelling reviewed under CU-11-34 (site no. 58). Parcel 3 would be 5.31 acres and no water rights and a nonfarm dwelling reviewed under CU-11-35 (site no. 57). The partition is considered an irrigated land division for purposes of review.

E. SITE DESCRIPTION: According to the applicant, the property contains approximately 415.49 acres with 40.03 acres of water rights. The property is irregular in shape, with a mixture of some grasses, juniper woodland and irrigated meadows. Farm use, in the form of pasture/hay and livestock grazing occurs on a portion of the property. The portion of the property east of the Crooked River has a varied topography, with a vegetative cover of juniper trees and scrub brush. There is an existing dwelling on the parent parcel (tax account no. 14-13-3, 400A1 – file no. CU-01-48), which will remain on the larger parcel 1. The National Wetlands Inventory, “Opal City” Map (1995) indicates the subject property contains wetlands associated with irrigation ponds and adjacent to the river. No development is proposed in or near a mapped wetland.

The proposed dwellings are located on sites 58 (Parcel 2) and 57 (Parcel 3), as identified within the Ranch at the Canyons. Both of these proposed parcels are located near the northern end of the property. The home sites have scattered junipers, sagebrush and grasses, along with abundant surface rocks. The proposed parcels are to be accessed from Coyote Butte Road, a gravel road within the ranch.

F. SURROUNDING LAND USES: The property is located within, and is surrounded by, the Ranch at the Canyons development, which contains juniper woodland, pasture and hay operations and scattered residences. To the east is the Crooked River located in a deep canyon; to the east and southeast is Smith Rock State Park. The land north of the tax lot 400 is located within Jefferson County, and land to the east of tax lot 200 is located within Crook County.

G. SOILS: According to NRCS soil mapping for this area, the subject property contains the following soil types:

32A: Deschutes Sandy loam, dry, 0 to 3% slopes. This soil is typically composed of 85 percent Deschutes soil and similar inclusions and 15 percent contrasting inclusions. It is
found on lava plains between 2,500 and 4,000 feet in elevation with native vegetation of western juniper, mountain big sagebrush and grasses. This soil is well drained with a moderately rapid permeability and a water capacity of about 4 inches. Major uses include irrigated cropland and livestock grazing and the soil has a soil capability of 6S when not irrigated and 3S when irrigated. This is a high-value soil when irrigated.

142B: Stukel-Rock Outcrop-Deschutes complex, dry, 0 to 8% slopes. This complex is typically composed of 35 percent Stukel soil and similar inclusions, 30 percent rock outcrop, 20 percent Deschutes soil and similar inclusions and 15 percent contrasting inclusions. This complex is found on lava plains between 2,500 and 3,500 feet in elevation with native vegetation of western juniper, mountain big sagebrush and grasses. These soils are well drained, with moderately rapid permeability and a water capacity of about 4 inches. Major uses include livestock grazing with the Stukel part of the complex having a soil capability of 6E when not irrigated and 4E when irrigated. The rock outcrop part has a soil capability of 8S. The Deschutes part has a soil capability of 6E when not irrigated and 3E when irrigated.

49A: Fluvents, 0 to 1% slopes. This soil is typically composed of 90 percent Fluvents and 10 percent contrasting inclusions. It is found on flood plains at elevations between 1,200 and 1,500 feet. Native vegetation is willow, rabbitbrush, big sagebrush and reeds. This soil is somewhat excessively to excessively drained with a moderately rapid to very rapid permeability and a water capacity of about 5 inches. Major uses include wildlife habitat with the Fluvents part of the soil having a soil capability of 6S when not irrigated.

81F: Lickskillet-Rock Outcrop complex, very gravelly, 45 to 80% south slopes. This complex is typically composed of 60 percent Lickskillet soil and similar inclusions, 35 percent rock outcrop and 5 percent contrasting inclusions. This complex is found on canyon sideslopes between 2,000 and 4,500 feet in elevation with native vegetation of western juniper, Wyoming big sagebrush, antelope bitterbrush and grasses. These soils are well drained, with rapid permeability and a water capacity of about 1 inch. Major uses include livestock grazing with the Lickskillet part of the complex having a soil capability of 7E and the rock outcrop part having a soil capability of 8S.

117C: Simas silt loam, 0 to 15% slopes. This soil is typically composed of 85 percent Simas soil and similar inclusions, and 15 percent contrasting inclusions. It is found on hills between 2,600 and 3,500 feet in elevation with native vegetation of western juniper, low sagebrush, antelope bitterbrush, Idaho fescue and bluebunch wheatgrass. This soil is well drained, with a slow permeability and a water capacity of about 7 inches. Major uses include livestock grazing. It has a soil capability of 6E, with no rating for irrigated soil.

110E: Schrier-Tub complex 30 to 60% north slopes. This complex is typically composed of 45 percent Schrier soil and similar inclusions, 40 percent Tub soil and similar inclusions, and 15 percent contrasting inclusions. It is found on sideslopes of hills between 2,600 and 4,500 feet in elevation with native vegetation of mountain big sagebrush, Idaho fescue and bluebunch wheatgrass. This soil is well drained, with a moderate permeability and a water capacity of about 10 inches. Major uses include livestock grazing. It has a soil capability of 6E, with no rating for irrigated soil.

101D/101E: Redcliff-Lickskillet-Rock outcrop complex, 15 to 30% and 30 to 50% slopes, respectively. This complex is typically composed of 60 percent Redcliff soil and similar inclusions, 35 percent Lickskillet soil and similar inclusions, and 15 percent contrasting inclusions. It is found on sideslopes of hills between 2,600 and 4,500 feet in elevation with native vegetation of mountain big sagebrush, Idaho fescue and bluebunch wheatgrass. This soil is well drained, with a moderate permeability and a water capacity of about 10 inches. Major uses include livestock grazing. It has a soil capability of 6E, with no rating for irrigated soil.
inclusions, 20 percent Lickskillet soil and similar inclusions, 15 percent rock outcrop, and
5 percent contrasting inclusions. This complex is found on canyonsides between 2,000
and 4,500 feet in elevation, with native vegetation of western juniper, Wyoming big
sagebrush, antelope bitterbrush, and grasses. These soils are well drained, with
moderate permeability and a water capacity of about 2 inches. Major uses include
livestock grazing. The Redcliff soil has a soil capability of 6E, and the Lickskillet soil has
a soil capability of 7E, with no rating for irrigated land.

106D/106E: Redslide-Lickskillet complex, 15 to 30% and 30 to 50% north slopes,
respectively. This complex is typically composed of 50 percent Redslide soil and similar
inclusions, 30 percent Lickskillet soil and similar inclusions, and 15 percent contrasting
inclusions. This complex is found on canyonsides between 2,000 and 4,000 feet in
elevation, with native vegetation of western juniper, antelope bitterbrush, mountain big
sagebrush, Idaho fescue and grasses. These soils are well drained, with moderately
rapid permeability and a water capacity of about 2 inches. Major uses include livestock
grazing. The Redslide soil has a soil capability of 6E, and the Lickskillet soil has a soil
capability of 7E, with no rating for irrigated land.

80D: Lickskillet-Redcliff very gravelly loams 15 to 30% slopes. This soil complex is
typically composed of 45 percent Lickskillet soil and similar inclusions, 40 percent
Redcliff soil and similar inclusions, and 15 percent contrasting inclusions. It is found on
side slopes of hills between 2,600 and 4,500 feet in elevation with native vegetation of
western juniper, Wyoming big sagebrush, antelope bitterbrush, bluebunch wheatgrass,
and Sandberg bluegrass. This soil is well drained, with a moderate permeability and a
water capacity of about 1 inch. Major uses include livestock grazing. It has a soil
capability of 6E/7E, with no rating for irrigated soil.

Additionally, the applicant has included a site-specific soils report by Wert & Associates
as Exhibit B to the burden of proof, which is incorporated herein by reference. This
report provides detailed soils analyses for the proposed nonfarm parcels. As detailed in
these reports, the NRCS map suggests that Parcels 2 and 3 are composed of the
following mapping units:

- 106D, Redslide-Lickskillet complex, 15 to 30% slopes
- 32A, Deschutes sandy loam, dry, 0 to 3% slopes

However, the detailed Wert Report provides data compiled from on-site soil tests
illustrating that the parcels are actually composed of a different complex of soils than the
NRCS maps suggest. The soil complex uncovered by Mr. Wert consists mostly of
shallow soils and soils with less than 2 inches of available water holding capacity
(AWHC). Based upon the 28 soil pits dug within Parcel 3, Mr. Wert concluded that
Parcel 3 is composed of 66% Class 7 and 8 soils.

**Parcel 3 Soil Types – Wert Analysis**

<table>
<thead>
<tr>
<th>Soil Mapping units</th>
<th>Class</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clovcamp 10-20%</td>
<td>6</td>
<td>0.53</td>
</tr>
<tr>
<td>Deskamp 15-30%</td>
<td>6</td>
<td>1.3</td>
</tr>
<tr>
<td>Lickskillet 20-35%</td>
<td>7</td>
<td>1.07</td>
</tr>
<tr>
<td>Redslide 20-30%</td>
<td>7</td>
<td>0.29</td>
</tr>
</tbody>
</table>
Based upon the 26 soil pits dug within Parcel 2, Mr. Wert concluded that Parcel 2 is composed of 92% Class 7 soils.

**Parcel 2 Soil Types – Wert Analysis**

<table>
<thead>
<tr>
<th>Soil Mapping units</th>
<th>Class</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houstake 0-10%</td>
<td>6</td>
<td>0.26</td>
</tr>
<tr>
<td>Lickskillet 20-40%</td>
<td>7</td>
<td>1.07</td>
</tr>
<tr>
<td>Soil B</td>
<td>7</td>
<td>0.10</td>
</tr>
<tr>
<td>Bakeoven Soil B 25-40%</td>
<td>7</td>
<td>1.82</td>
</tr>
<tr>
<td>Parcel total area</td>
<td></td>
<td>3.25</td>
</tr>
</tbody>
</table>

The soil mapping units are described in Section 5.1 and Appendix B of each report. The photos attached to the Wert Reports provide a visual depiction of the rocky and shallow soil types and rock outcrops on each site. The qualities described in the Wert Reports (minimal depth, low AWHC, high gravel and cobble content) render the soils unsuitable for farm use, as discussed below.

Oregon Revised Statutes (ORS) 215.211 created a process for property owners and others who wish to challenge published soils information on agricultural land when applying for certain land use changes. Under ORS 215.211, such an application must be accompanied by more detailed soils data produced by a professional soil classifier. ORS 215.211 specifies a role for the Oregon Department of Land Conservation and Development in this process. Amendments to OAR 660-033-0030 adopted in December 2011 establish a process for assessing agricultural land capability under ORS 215.211.

The current application(s) is not subject to the requirements of ORS 215.211, because, as specified in OAR 660-033-0030(5)(d)\(^1\), the soil survey in this application was completed and submitted prior to October 1, 2011, on September 30, 2011.

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

1. **Deschutes County Road Department:** The Road Department submitted the following comments:

   **Background information:**

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\(^1\) OAR 660-033-0030(5)(d). This section and section (9) of this rule implement Oregon Laws 2010, chapter 44, section 1, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection © of this section. However, a local government may consider soils assessments that have been complete and submitted prior to October 1, 2011.
• In looking at the maps provided by the applicant, there must have been a lot line adjustment done on this lot as it does not match the lot layout shown on the current assessor’s map.

• The applicant is showing Parcel 2 accessing a portion of Coyote Butte Road. This right-of-way will have to be dedicated and improved either on this application, MP-11-11 or MP-11-10. Staff visited the site and the road is constructed to County partition standards.

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

2. Applicant shall dedicate 60 feet of right-of-way for the extension of Coyote Butte Road either through this application, MP-11-11 or MP-11-10.

3. The applicant shall construct Coyote Butte Road to the standards listed in DCC 17.48.170(A). This includes building the roadway to a width of 20 feet with 5 inch depth aggregate surfacing. This improvement will be completed either through this application or MP-11-10.

4. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional rights-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standards.

2. County Transportation Planner: I have reviewed the transmittal materials for two non-farm dwellings in conjunction with an irrigated land division at the Ranch of the Canyons, 20875 NW Butler Road, Terrebonne aka 14-13, TL 200 and 14-13-3, TL 400. As the two sites combined will generate less than 20 new daily trips based on the most recent ITE Manual and as DCC 17.16.115(C)(4) has a minimum threshold of 50 new weekday trips, no traffic analysis is required.

BOCC Resolution 2008-059 sets the Countywide transportation system development charge (SDC). As of July 1, 2011, the rate for a p.m. peak hour trips is $3,528. The p.m. peak hour rate for a single-family home is 1.01, according to the ITE. The SDC would be $3,563 for each home or a total of $7,126.

3. Deschutes County Environmental Soils: Each lot for each proposed residence will require a complete approved site evaluation report before an permit for an onsite system to serve the proposed residences can be applied for or used.

4. Pacific Power and Light, County Assessor: No comment responses.
5. **Redmond Fire and Rescue:** The fire department submitted comments which are attached to this decision and incorporated herein by reference. Most relevant to these applications are the following comments:

1. Fire apparatus access roads shall extend to within 150 feet of all portions of the building as measured by an approved route around the exterior of the building.
2. Fire apparatus access roads shall have an unobstructed width of not less that 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches.
3. Fire apparatus roads shall be designed and maintained to support the imposed loads of 70,000 lbs. and shall be surfaced so as to provide all-weather driving capabilities.
4. The required turning radius of a fire apparatus access road shall be 30 feet inside and 50 feet outside.
5. The grade of the fire apparatus access roads shall be within the limits established by the fire code official (10%).
6. Length of dead end greater than 500 feet shall meet the turnaround requirements and the width of the road shall be a minimum of 26 feet clear for apparatus.

6. No response was received from Central Oregon Irrigation District, Central Electric Cooperative, CenturyLink, Redmond Area Parks and Recreation District.

I. **PUBLIC COMMENTS:** The Planning Division mailed notice of the conditional use and partition applications to all property owners within 750 feet of the subject property. No comments were submitted in response to the notice.

J. **REVIEW PERIOD:** These applications were originally submitted on September 30, 2011. A letter to the applicant stating that the applications were incomplete was mailed out on October 26, 2011. The applicant submitted the missing information on March 16, 2012, within the time allowed under DCC 22.08.030. The applications were then accepted as complete on March 16, 2012. The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit for the applications dated March 22, 2011 that indicates that the applicant posted notice of the land use action on that same date.

K. **LAND USE HISTORY:** The subject property was originally identified as a legal lot of record through application no. LR-99-35. Subsequently, the property was reconfigured through a series of property line adjustments including the following:

   LL-99-110 (CS 14147)
   LL-00-99 (CS 14269)
   LL-00-111 (CS 14335)
   LL-01-2 (CS 14360)
   LL-08-106 (no survey filed with Surveyor)
   LL-11-31 (no survey filed with Surveyor)

   Application no. CU-01-48 was approved for a nonfarm dwelling for site 20 at the Ranch, which is the identified dwelling under “E” (site description) above.
III. CONCLUSIONARY FINDINGS:

TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

A. CHAPTER 18.16, EXCLUSIVE FARM USE ZONES.

1. Section 18.16.030, Conditional uses permitted - High value and non-high value farmland.

   The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of Title 18.

   A. Nonfarm dwelling

   FINDING: The applicant is proposing to establish a nonfarm dwelling on each of two nonfarm parcels created by this partition. DCC section 18.16.050 is addressed below.

2. Section 18.16.050, Standards for Dwellings in the EFU Zones

   Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

   G. Nonfarm Dwelling.

   1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

      a. The Planning Director or Hearings Body shall make findings that:

      i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

   FINDING: The applicant will be required to sign and record the waiver listed above as a condition of final plat approval. There are no forest zoned properties or properties devoted to forest use on nearby lands.
The area surrounding the proposed parcels is a mix of farm uses, rural residential uses and recreational uses (Smith Rock State Park). Typical farming practices in the area include hay production, pasture and livestock grazing (horses and cattle).

Based on data compiled from the Oregon State University (OSU) Extension Service, it is generally accepted that farming practices in the surrounding area can generate the following types of impacts. Maintaining irrigated pasture can generate dust form re-seeding, drifting of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing and possible water run-off from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape. Growing grass hay can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from baling hay, manure odor from spreading manure for fertilizer and possible water run-off from irrigation. Based upon this information, it is necessary to determine whether the impacts from the farm uses occurring on nearby lands devoted to farm use are likely to create conflicts with the nonfarm dwellings that will force a significant change in, or significantly increase the cost of, accepted farming practices.

To address this criterion, the applicant physically inspected the farm uses in the surrounding area and reviewed Assessor's data for adjacent parcels. In addition, the applicant reviewed County GIS maps for the surrounding area. These maps show all EFU-zoned properties within a one-mile radius of the subject property. The majority of the EFU-zoned property within this radius is owned and managed by the Ranch at the Canyons.

The County GIS maps and land use records show 64 EFU-zoned tax lots within a one-mile radius of the subject property within Deschutes County. There are also at least 23 existing dwellings within this area. Of the 64 EFU-zoned tax lots within the study area (within Deschutes County), all but two are privately owned. Several of the tax lots fall within the Ranch of the Canyons, and they are part of larger legal parcels (i.e. each tax lot is not a separate legal parcel). Forty-one of the tax lots are receiving farm tax deferral. Thus, the majority of the privately-owned EFU-zoned properties are in farm tax deferral and are being used for both residential and agricultural purposes. The farm use closest to the proposed nonfarm dwellings occurs on the tax lot directly east (14-13-3, 300). Additional pasture and hay production fields are located on Ranch lands to the north, west and south of the proposed parcels. The lands east of the Crooked River are part of an approximately 550-acre tract protected as open space and agricultural use in perpetuity under a conservation easement that the Ranch has executed with the Deschutes Basin Land Trust. The Ranch has in place a management program to promote and maintain agricultural use along with residential use that ensures that residential development will not affect the farm use within the Ranch.

Parcels 2 and 3 are located primarily on Coyote Butte and are mostly geographically separated from farming activities. Neither parcel shows signs of past farm use; both parcels have sufficient area to provide 100-foot setbacks from all property lines. Finally, the farm uses occurring nearby include livestock grazing and hay production, which are low intensity farm uses.

The portion of the study area located within Jefferson County includes a total of 14 tax lots, ranging in size from .46 acre (Ford) to 9,050 acres (BLM). There are four dwellings on the 14 tax lots. The parcels are generally large, with some farming occurring.

Attachment 4: Split Zone, Flood Plain Decisions
The portion of the study area within Crook County includes two tax lots, one of which is public land (BLM) of 743.22 acres, and one privately owned tax lot of 40.89 acres. No dwellings exist on either tax lot.

Based on the information provided by the applicant and observed by staff, staff finds that the proposed dwellings, and the activities associated with the dwellings, will not force a significant change in, or significantly increase the cost of, accepted farming practices on nearby lands devoted to farm use.

II. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

FINDING: On June 1, 1998, the Land Conservation and Development Commission adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter 660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The rules continue to apply the three-step “stability” analysis first articulated in Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989). The rules are as follows:

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the County shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a) and section 4 of this rule, including identification of predominant soil classifications, the
parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

1. Cumulative Impacts Analysis Area. The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property’s boundaries and including approximately 3,000 acres (hereafter called “study area”). Staff finds this area of analysis is suitable to provide a comprehensive analysis of the character of the area surrounding the subject property because of its size and the number of properties located within it. As indicated in a foregoing finding, the study area is primarily zoned EFU-TE, and a portion of the study area is located in Jefferson County, as well as a smaller portion within Crook County.

As discussed above, there are 64 EFU-zoned tax lots in the Deschutes County portion of the study area (excluding the subject property), all but two of which are privately owned. The privately owned properties in the Deschutes County portion of the study area range in size from 1.5 to 251.33 acres. Thirty-two of the tax lots in the study area are 20 acres or less in size, 17 tax lots are between 20+ and 40 acres in size, 9 tax lots are between 40 and 80 acres in size, and 6 tax lots are larger than 80 acres.

2. Types of Farm Uses. The EFU zoned land in the study area involves farming primarily in the form of hay production and livestock grazing on irrigated pasture and dry land. Forty-one of the tax lots in the study area are receiving farm tax deferral, and most of them appear to have some kind of farm use occurring. The amount of water rights on these farm deferred properties ranges from 0 to 119 acres. Based upon the amount of irrigation and the size of the parcels in the study area, staff estimates a total of 1200 acres (acreage that is possibly being irrigated) are engaged in farm use and approximately 300 acres are not engaged in farm use. As discussed above, the predominant farm practices include hay production and livestock grazing.

2 This area is larger than the normal 2,000 acres, due to the very irregular shape of the parent parcel.
The record indicates that the study area is located within the Central Oregon Irrigation District. It includes soil type(s) that are high value (32A, 86A and 104A), and non-high value (49A, 81F, 101D, 101E, 106D, 106E, 110D, 110E and 142B). Although there is a swath of high value soils (32A and 104A) that runs through the study area in a north-south direction, the majority of those soils located south of N.E. Eby Avenue and west of N.E. 9th Street are either zoned MUA-10 or are located within the Terrebonne UUC.

3. Existing Dwellings. The record indicates that 23 of the 62 privately owned tax lots in the Deschutes County portion of the study area have dwellings. These dwellings were built in the following years: 9 dwellings prior to 1979, 4 dwellings from 1979 to 1992, and 10 dwellings from 1993 to present.

The Jefferson County portion of the study area has 14 tax lots, with two that are publicly owned (BLM). Four of the 12 privately owned tax lots have dwellings.

The Crook County portion of the study area has two tax lots, one of which is privately owned. This privately owned tax lot does not have a dwelling.

Staff finds that the dwellings developed in Deschutes County prior to 1979 predated the County’s EFU zone and therefore were not subject to EFU zoning requirements. According to the applicant, the County has approved 12 replacement dwellings within the study area to replace houses that were built prior to 1978. These data show that a majority of the dwellings within the study area were constructed prior to EFU zoning and that residential and farm uses have co-existed in this area for over 20 years.

4. Dwelling Development Trends Since 1993. As discussed above, most of the dwellings constructed in Deschutes County in 1993 or after were either nonfarm dwellings or replacement dwellings. The information from Jefferson County indicates that none of the 4 dwellings were constructed in 1993 or after.

5. Potential Nonfarm Parcels. Thirty-nine of the privately owned tax lots in the Deschutes County portion of the study area are vacant. However, several of the tax lots within the ranch are not separate legal lots of record. Staff estimates that as many of half of these tax lots are not separate legal lots of record. Of the existing vacant tax lots in Deschutes County, 12 of them have land use permits for houses which, staff assumes, will be built in the future. That leaves 8 vacant tax lots (legal lots of record) which could potentially accommodate a new nonfarm dwelling. Staff believes that there is only one tax lot within the study area with enough irrigation water to qualify for an irrigated land division, where a small, dry unproductive portion of a farm property is partitioned off from a larger farm parcel that qualifies under sections 18.16.055 and 18.16.065 of Title 18 (14-13-4A, 200). However, this tax lot has no public road frontage and would not be eligible for a partition based on that status.

Staff notes that the applicant has applied for three partitions (the subject partition, as well as MP-11-10 and MP-11-11) for irrigated land divisions. These additional 6 nonfarm dwellings are not included in the 7 listed above.
It is not clear whether each of the above parcels could qualify for a partition, since each parcel would have to have enough dry area with poor soils to accommodate a dwelling (with 100-foot setbacks from new property lines) septic system, and meet the road frontage standard.

It appears that none of the tax lots could qualify for a non-irrigated land division where a dry 40-80-acre parcel could be divided into two parcels, or a parcel larger than 80 acres could be divided into dry parcels, leaving at least an 80-acre parent parcel. There would be no potential for non-irrigated land divisions for any additional new nonfarm parcels.

6. Potential Nonfarm Dwellings. Theoretically, if all of the existing and potential properties identified above were approved for nonfarm dwellings there could be an additional 8 such dwellings (not including the other partitions in the Ranch property).

It is not clear whether a nonfarm dwelling can be approved on each parcel, since they are reviewed on a case by case basis. The dwellings have to be reviewed for their effect on the stability of the land use pattern, whether they are on land generally unsuitable land for the production of crops or livestock, and whether they will cause a significant change in or significantly increase the cost of accepted farming practices on adjacent land.

Staff will assume for purposes of review that up to 8 new nonfarm dwellings could be developed, based on the 8 vacant parcels that would potentially be considered available for development.

7. Potential Lot of Record Dwellings. Under Section 18.16.050(E) and OAR 660-033-130(3), a lot of record dwelling may be sited on an EFU-zoned parcel on nonhigh value farmland if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F) and OAR 660-033-130(3)(c), a lot of record dwelling may be sited on high value farmland if it meets the criteria for a lot of record dwelling on nonhigh value farmland and the Planning Division finds the parcel cannot practically be managed for farm use “due to extraordinary circumstances inherent in the land or its physical setting,” such as “very steep slopes, deep ravines … or other similar natural or physical barriers.”

The Planning Division has previously determined that lot of record dwellings can be difficult to obtain, given the requirement for ownership prior to 1985 and the land cannot be suitable for farming based on the above factors. Some parcels may qualify for a lot of record dwelling, but without a specific analysis of each and every parcel, this determination cannot be made. Staff notes that no parcels in the study area have been approved for a lot of record dwelling to date.

8. Stability and Character of the Land Use Pattern of the Area. Based upon the above findings, staff finds the land use pattern and character of the study area is predominately one of mixed residential and farm use on the west side of the Crooked River, with recreational (Smith Rock State Park) and open space east of
the river. Most of the residential development within the area occurred prior to 1993, and the acreage in agricultural use has not experienced any noticeable change.

While there has been residential development within the Ranch at the Canyons, a lot of it can be attributed to replacement dwellings and careful siting of new homes to preserve on-going agricultural activities within the Ranch. Moreover, staff is aware that the Ranch has increased agricultural use within it’s boundaries over what occurred historically. For these reasons, staff finds that the approval of the proposed nonfarm dwellings will not materially alter the stability of the overall land use pattern of the area.


Approval of the proposed nonfarm dwellings will make a total of 25 dwellings in this study area. Staff finds the cumulative effect of adding these nonfarm dwellings will not “materially alter the stability of the land use pattern in the area” by making it more difficult for the existing farms to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or by diminishing the number of tracts or acreage in farm use. The farm use in the area, according to a comparison of the 1985 and 2006 air photos in the record, has remained stable for a number of years, and in fact the Ranch has increased the amount of land in production. Staff finds that adding these dwellings will not tip the balance from resource to non-resource use, and will not impact the existing farming that occurs in the area. The recent trend (after the State of Oregon’s revised, more stringent income requirements) for dwelling approvals has been for nonfarm dwellings.

The approval of the proposed nonfarm dwellings will not set a precedent for the wholesale approval of nonfarm dwellings to the detriment of surrounding farming. This request is for a nonirrigated land division to allow two smaller dry, unproductive parcels to be created from a larger parent parcel.

Staff believes that all of the parcels currently in farm use will remain relatively stable and that there will be little or no expansion of farm use in the area, given the soil types, topography and availability of water rights. The property that is capable of being farmed appears to already be farmed. Staff finds that the approval of the proposed dwellings will not affect the amount of farming or the type of farming.

For the foregoing reasons, staff finds approval of the proposed nonfarm dwellings will not destabilize the agricultural character of the surrounding area.

iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.
2. For the purposes of DCC 18.16.050(G) only, “unsuitability” shall be determined with reference to the following:

   a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

   b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

   c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

**FINDING:** As demonstrated by the Wert Report, the proposed nonfarm parcels are unirrigated and composed predominantly of Class 7 and 8 soils. Therefore, they are not presumed to be suitable for farm use. As further noted in the Wert Report, the majority of the test pits revealed shallow depth, high percentages of coarse fragments and low water holding capacity. Staff finds that the Wert Report demonstrates that the soils within the nonfarm parcels are too rocky and do not hold adequate water to be suitable for the production of forage, and the soils cannot be cultivated for crops due to the low water holding capacity and high coarse fragment content. The subject property is not under forest assessment and, thus, (c) above is not applicable. Ultimately, staff finds that the proposed nonfarm parcels are generally unsuitable for the production of farm crops and livestock because of adverse soil conditions, terrain and vegetation.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot or sales yard, unless adequate
provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

FINDING: The applicant asserts, and staff agrees, that the nonfarm dwellings are not within one-quarter mile of a dairy farm, feed lot or sales yard.

Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.

FINDING: The applicant submitted the following information to demonstrate that public services and utilities are adequate:

1. Electricity - Central Electric Co-op
2. Road access - Coyote Butte Road, a dedicated public road
3. Telephone – CenturyLink
4. Domestic water - Private wells
5. Fire protection. Redmond Fire & Rescue

Based on these findings and the Applicant’s ability to conform to the conditions of approval specified above, staff finds the proposal can meet this criterion.

v. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).

FINDING: The nonfarm dwellings will be located on nonfarm parcels being created under the standards in DCC 18.16.055(B)(2)(b).

3. Loss of tax deferral. Except as provided in DCC 18.16.050(l)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor’s Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.
FINDING: According to Assessor records, the property does not appear to be receiving special assessment for farm use. As a condition of final plat approval, the applicant will be required to verify whether the land for parcels 2 and 3 are receiving special assessment, and if so, pay any additional tax or penalty imposed by the County Assessor. The applicant will be required to provide documentation of such disqualification prior to final plat approval.

3. Section 18.16.070, Yards
   A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.

FINDING: In the applicant’s Exhibit B, the soil survey prepared by Wert and Associates, Inc., there are scaled drawings showing building envelopes for Parcels 2 and 3. The building envelope on Parcel 2 is set back at least 500 feet from the front property line; the building envelope for Parcel 3 is also set back at least 600 feet from the front property line. Since Coyote Butte Road is a local street, both nonfarm dwellings will meet the front yard requirement.

   B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.

FINDING: The building envelope on Parcel 2 is at least 100 feet from all side property lines, except the south side lot line, which is adjacent to the proposed parcel 3. The building envelope on Parcel 3 is at least 100 feet from all side property lines, except the north side property line adjacent to Parcel 2. Both the 100-foot standard is met for those side lot lines adjacent to property in farm use and receiving special assessment for farm use (14-13-3, 300), and the lesser setback for the two side yard setbacks adjacent to the nonfarm parcels. The solar setback will need to be met for any structures on these new parcels.

   C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.

FINDING: The building envelopes on Parcels 2 and 3 are at least 100 feet from the rear property lines adjacent to property in farm use (14-13-3, 302), meeting the above 100-foot standard.

   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.

FINDING: Staff is not aware of any greater setback required by the State of Oregon or Title 15.

4. Section 18.16.055, Land Divisions

Attachment 4: Split Zone, Flood Plain Decisions
A. **General.** A division of land in the exclusive farm use zone shall be identified on the land division application as either an irrigated land division, nonirrigated land division, or a division of land for a use permitted by DCC 18.16.030 other than a dwelling. An irrigated land division is subject to subsection B below; a nonirrigated land division is subject to subsection C below; and a division for a use other than a dwelling is subject to subsection E below.

B. **Irrigated land division.**

1. An irrigated land division shall be subject to the minimum lot or parcel size requirements of DCC 18.16.065, Subzones, and all applicable requirements of DCC Title 17.

2. Partitions establishing parcels less than the EFU minimum parcel size established under DCC 18.16.065, may be permitted to create new parcels for nonfarm dwellings as follows:

   a. If the parent parcel is equal to or greater than the minimum lot size established under 18.16.065, and is greater than or equal to 80 acres in size, two new nonfarm parcels may be created subject to the following:

      i. **Parent parcel was lawfully created prior to July 1, 2001;**

      FINDING: According to the applicant, the property contains 415.49 acres, with 40.03 acres of irrigated land and, thus, the proposed partition is an irrigated land division. The parent parcel was approved as a lot of record under application nos. LR-99-35, and reconfigured through a series of property line adjustments. Since a property line adjustment serves to relocate an existing property line and does not create a new property, staff, therefore, finds that the property was lawfully created prior to July 1, 2001. Additionally, the property is eligible for up to two new nonfarm parcels and that is what has been proposed.

      ii. **Remainder parcel shall meet the minimum lot size established under 18.16.065;**

      FINDING: The remainder parcel in this partition is Parcel 1, which will contain 406.93 acres with 40.03 acres of water rights. The minimum lot size in DCC 18.16.065(C) is 35 acres of irrigated land. Staff finds that the remainder parcel meets this criterion.

      iii. **All standards established under 18.16.050(G) for the dwellings shall be met;**

      FINDING: The standards established under DCC 18.16.050(G) have been addressed in previous findings and are incorporated herein by reference.

      iv. **No minimum lot size shall be required for the nonfarm parcel;**
**FINDING:** Even though there is no minimum lot size for the nonfarm parcels the parcels need to be large enough to accommodate all proposed improvements and their setbacks. Based on the findings made previously, both nonfarm parcels are large enough at 3.25 and 5.31 acres to accommodate nonfarm dwelling development.

v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

**FINDING:** Staff has previously found that the parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops, livestock and merchantable tree species due to adverse soil conditions, terrain and vegetation.

5. Section 18.16.060, Dimensional Standards

The minimum parcel size for irrigated land divisions created subject to DCC Title 17 shall be as specified under DCC 18.16.065, “Subzones.”

**FINDING:** The minimum parcel size for irrigated land divisions in the Terrebonne subzone is 35 irrigated acres. (See: DCC 18.16.065(C)) The parent parcel in this application has 40.03 irrigated acres.

C. Each parcel shall have a minimum street frontage of 50 feet.

**FINDING:** Parcel 2 has 50 feet of frontage on Coyote Butte Road and Parcel 3 also has 50 feet of frontage on Coyote Butte Road. Parcel 1 has more than the minimum required street frontage and, thus, the proposal meets this criterion.

D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

**FINDING:** Building heights will be checked at the time a building permit is submitted.

6. Section 18.16.080, Stream Setbacks

To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:

A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the

Attachment 4: Split Zone, Flood Plain Decisions
County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.

B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

FINDING: The two new nonfarm parcels will not be within 1,000 feet of the Crooked River and any structures or septic systems on these two new parcels will be well beyond the 100-foot minimum standard above.

7. Section 18.16.090, Rimrock Setback

Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.

FINDING: This criterion is not applicable to the nonfarm parcels to be created. These new parcels will not be within 500 feet of the rimrock on the Ranch property.

C. CHAPTER 18.84. LANDSCAPE MANAGEMENT COMBINING ZONE


The provisions of this chapter shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of this chapter shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified a landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitation in this section shall not unduly restrict accepted agricultural practices.

FINDING: The Crooked River and Highway 97 are identified on the County Zoning Map as the landscape management features. Neither of the two nonfarm dwelling parcels fall within the landscape management combining zone. Therefore, the provisions of this chapter are not applicable to the proposed nonfarm dwellings.

D. CHAPTER 18.88. WILDLIFE AREA COMBINING ZONE.


In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

FINDING: Only the portion of proposed Parcel 1 east of the Crooked River falls within the Wildlife Area combining zone. No development is proposed on Parcel 1 under this application.
Therefore the provisions of DCC 18.88 do not apply.

2. **Section 18.88.050. Dimensional Standards.**

**FINDING:** Only the portion of proposed Parcel 1 east of the Crooked River falls within the Wildlife Area combining zone. No division of the portion of parcel 1 zoned Wildlife Area combining zone is proposed. These criteria do not apply.

3. **Section 18.88.060. Siting Standards.**

   **A.** *The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992...*

**FINDING:** This section is not applicable as no dwelling is proposed in the WA zone.

4. **Section 18.88.070. Fencing Standards.**

   **A.** *New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:*

   1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
   2. The height of the fence shall not exceed 48 inches above ground level.
   3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

   **B.** *Exemptions:*

   1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
   2. Corrals used for working livestock.

**FINDING:** The applicant has not proposed a fence in the WA zone thus, this section is not applicable.

**E. CHAPTER 18.96. FLOOD PLAIN ZONE**

1. **Section 18.96.010. Purposes.**

   *The purposes of the Flood Plain Zone are: To implement the Comprehensive Plan Flooding Section; to protect the public from the hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of the fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.*

2. **Section 18.96.020. Designated Areas.**

Attachment 4: Split Zone, Flood Plain Decisions
The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.

The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

FINDING: The Deschutes County Flood Plain zone includes all areas designated as “Special Flood Hazard Areas” on the Federal Flood Insurance Rate Maps (FIRM). Special Flood Hazards Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE). The flood map for this property is FIRM No. 41017C0150E, Effective Date: September 28, 2007. The Crooked River is within the property boundary but is located in the canyon below the home sites. Based on this information, all proposed development will be located completely outside of the 100-year flood plain. Therefore, the provisions of this chapter are not applicable.

TITLE 17 OF THE DESCHUTES COUNTY CODE.

A. Chapter 17.22, Approval of Tentative Plans for Partitions

1. 17.22.020 Requirements for Approval

No application for partition shall be approved unless the following requirements are met:

1. Proposal is in compliance with Oregon Revised Statutes Chapter 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 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;

FINDING: The proposed partition will be in compliance with ORS Chapter 92 if it is in conformance with Titles 17 and 18 of the County Code. The comprehensive plan and implementing zoning ordinance allow the subject property to be divided into the proposed parcels as prescribed under the applicable sections of DCC Chapter 18.16 listed above. The partition will not conflict with the terms of any previously issued land use approval or create a nonconforming use. The property contains one dwelling described above, the location of which on parcel 1 will not be impacted by the partition. This existing dwelling is located in the middle portion of the proposed parcel 1, and the new nonfarm parcels (and lot lines) are located in the western portion of the site.
2. Proposal does not conflict with existing public access easements within or adjacent to the partition.

FINDING: The applicant has submitted a title report in conjunction with this application. The title report identifies several easements appurtenant to the property but they are not shown on the preliminary partition plan. Based on a site visit, staff is aware of a road connection between Vineyard Way in the southeast portion of the property and Canyons Ranch Drive to the north, but it is not shown on the preliminary partition plan. The applicant asserts that the proposal does not conflict with any public access easements but, in order to ensure that this is the case, the applicant will be required to submit an updated title report prior to final plat approval and include all easements on the final plat.

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.

FINDING: All three parcels will be accessed from Coyote Butte Road. As indicated in the transmittal response from the County Road Department, right-of-way for this road to reach the proposed nonfarm dwelling parcels will need to be dedicated. This additional right-of-way to serve the proposed parcels must be improved to county standards as part of this proposal.

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

FINDING: The applicant will be required to obtain access permits for new access onto the extension of Coyote Butte Road in order to provide access to the parcels. Based on the comments received from the County Road Department, staff finds that it is possible to obtain those permits. As a condition of approval, the applicant will be required to obtain access permits for new access onto Coyote Butte Road prior to issuance of any building permits for all three parcels.

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

FINDING: As discussed above, Parcel 1 meets the minimum lot size for an irrigated land division in the Terrebonne Subzone and will contain the dwelling mentioned. Therefore, it is suitable for continued farm and residential use.

Parcels 2 and 3 are proposed for nonfarm dwelling use and, as discussed above, meet all requirements for nonfarm dwellings on nonfarm parcels. Therefore, staff finds that this criterion is satisfied.

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

FINDING: Utilities, public services and facilities necessary to serve the partition are discussed above. As discussed utilities, public services and facilities are adequate for the proposed use and, in the case of road access, will be provided by the applicant.
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.

FINDING: Water rights for the property are depicted on applicant’s tentative plat drawing. Parcel 1 will have 40.03 acres of water rights, and there will be no water rights on Parcels 2 and 3. As a condition of approval, the final plat shall contain a statement of water rights and be signed by the authorized representative of Central Oregon Irrigation District.

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 Title 18 of the Deschutes County Code, can be sited consistent with the requirements of Chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under Section 17.28.010 (C) of this chapter.

FINDING: There is no SM zone within one-half mile of the subject property; therefore this section is not applicable.

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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.

FINDING: The land use history of the property was discussed previously. The property has not been partitioned in the past so this partition does not constitute series partitioning.

2. Section 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.

FINDING: In order to serve this partition, the applicant is proposing to extend Coyote Butte Road to provide public access and frontage for all three parcels. As a condition of approval, the applicant will be required to dedicate 60 feet of right-of-way for the extension of Coyote Butte Road, and improve the travel surface to the standards listed in DCC 17.48.170(A). This means a minimum travel surface width of 20 feet with 5 inches of aggregate (cinder or gravel) surfacing.

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

Section 17.36.010, 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.

FINDING: The proposed partition requires the extension of Coyote Butte Road, which will be dedicated to the public and constructed to county standards.

2. 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.

FINDING: Except for the extension of Coyote Butte Road, discussed above, all other streets providing access to the partition are adequate for the increase in traffic expected from the partition.

3. 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.
FINDING: The applicant is proposing to extend Coyote Butte Road to provide necessary access to all three parcels. This extension must align with the existing section of the road.

4. **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.*

FINDING: Coyote Butte Road is classified as a rural local road. DCC 17.48, Table A, lists the standards for such roads as 60 feet of right-of-way and a 20-foot wide aggregate surface, with a base depth of 5 inches. These standards will be included as conditions of approval.

5. **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.*

FINDING: Pursuant to DCC 18.16.055, these properties will not be eligible for any future division.

6. **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.*

FINDING: It is not necessary to extend either Canyons Ranch Drive or Vineyard Way to permit a satisfactory future division of adjoining land. All adjoining properties have access.

7. **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.*

FINDING: The division does not abut or contain an existing or proposed collector or arterial street. Therefore, this section is not applicable.

8. **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.

FINDING: The subject property does not adjoin or contain a railroad, freeway or parkway. Therefore, this section is not applicable.

9. 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.

FINDING: The applicant is proposing to extend Coyote Butte Road, an existing street.

10. 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.

FINDING: No response was received from the utility companies indicating that additional easements are necessary. However, as a condition of approval, all existing easements must be shown on the final plat.

There are no natural drainage ways that traverse the tract, except for the Crooked River, located in a deep canyon below the proposed development.

11. 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.

FINDING: As discussed above, the parcels are appropriate for the proposed uses and are consistent with the parcel size provisions of Title 18.

12. 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.

FINDING: According to the preliminary plan, all three parcels will have at least 50 feet of frontage on the extension of Coyote Butte Road. Side parcel lines are generally at right angles to street lines. Staff finds that these criteria are met.

13. 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

Attachment 4: Split Zone, Flood Plain Decisions
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.

FINDING: There are no proposed parcels with double frontage.

14. 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.

FINDING: Given the sizes of the proposed parcels, staff finds that solar access is available and feasible.

15. 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.

FINDING: It is possible to access the partition from Vineyard Way or Good Pasture Loop, meeting this criterion.

16. 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.

FINDING: Water will be provided by individual wells and sewage disposal will be by on-site systems. The installation of water and sewer lines is not required for this partition.

17. Section 17.36.290, Individual Wells

Attachment 4: Split Zone, Flood Plain Decisions
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.

FINDING: The applicant provided copies of 4 well logs as Exhibit F to the application. The well logs generally show 20-30 gallons per minute flow at depths ranging from 190-250 feet.

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 the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDING: The property is located within the Redmond Area Park and Recreation District (formerly Central Oregon Park and Recreation District). It is thus not subject to the dedication of land for parks.

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 the Bend Metro Park and Recreation District or the Central Oregon Park and Recreation District.

FINDING: Since the subject property is within the Redmond Area Park and Recreation District, the partition is not subject to the fee in lieu of dedication.

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.

FINDING: As discussed previously, the extension of Coyote Butte Road must meet the standards for a rural local road including a 60-foot right-of-way, and a 20-foot wide travel surface consisting of five inches of aggregate. Additionally the applicant shall construct the cul-de-sac at the end of Coyote Butte Road with a minimum 5 inches of aggregate or otherwise meet the requirements of the Redmond Fire and Rescue. The fire department requires a turning radius of 30 feet inside radius and 50 feet outside radius, capable of supporting 70,000 lbs.

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.)

FINDING: As described above, the minimum right-of-way width for the extension of Coyote Butte Road must be 60 feet.

3. Section 17.48.120, Partial Width Roads

Partial width roads or half streets shall not be allowed.

FINDING: No partial width roads are proposed.

4. Section 17.48.130, Road Names

Attachment 4: Split Zone, Flood Plain Decisions
All roads shall be named in conformance with the provisions of the Deschutes County uniform road naming system set forth in DCC Title 16.

FINDING: The proposed road will be extension of Coyote Butte Road; no new roads or road names are proposed.

5. Section 17.48.160, Road Development Requirements – Standards

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

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

B. Improvements of Public Rights of Way.

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

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

FINDING: As discussed previously, the extension of Coyote Butte Road shall be required to meet the standards for a rural local road including a 60-foot right-of-way, and a 20-foot wide travel surface consisting of 5 inches of aggregate.

C. Primary Access Roads. The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A. The applicable standard shall be determined with reference to the road's classification under the relevant transportation plan. For the purposes of DCC 17.48.160 a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: The proposed partition is not a subdivision. This criterion does not apply.

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

FINDING: The proposed extension of Coyote Butte Road terminates at a development boundary and will be constructed with a paved cul-de-sac bulb.
F. Cul-de-sacs. Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road. The maximum grade on the bulb shall be four percent.

FINDING: The proposed extension of Coyote Butte Road terminates at a development boundary and will be constructed with a cul-de-sac bulb. This bulb is located over 600 feet from the intersection with the main road. Staff includes a condition of approval requiring that the length of the cul-de-sac be approved by the fire protection district prior to final plat approval.

G. Frontage Roads. Right of way widths shall be 40 feet when immediately adjacent to a main highway/arterial; 60 feet when the frontage road is separated from the highway or arterial by private land or as set forth for a particular zone in the zoning ordinance.

FINDING: No frontage roads are proposed or required.

6. 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.

FINDING: The County acknowledges that the average parcel size is greater than 10 acres and, thus, (A) is applicable. These road standards will be imposed as conditions of approval.

7. 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.

FINDING: As a condition of approval, the applicant will be required to obtain access permits for access onto the extension of Coyote Butte Road prior to obtaining a building permit on Parcels 2 or 3.

IV. CONCLUSIONS:

The proposed conditional use and partition applications can meet the requirements of Titles 17 and 18 of the Deschutes County Code. The following conditions apply.

V. DECISION:

APPROVAL.

VI. CONDITIONS OF APPROVAL:

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application. An updated title report shall be required as part of final plat review.

2. A septic site evaluation for each nonfarm parcel shall be obtained, prior to final approval of the plat.

3. The applicant shall have a licensed land surveyor prepare a partition plat which conforms with Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code.

4. The final plat shall contain a statement of water rights and be signed by the authorized representative of Central Oregon Irrigation District. No water rights shall be associated with the nonfarm parcels (Parcels 2 and 3); the remainder parcel (Parcel 1) shall have at least 35 acres of water rights.

5. 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 Tax Collector.

6. All easements of record and rights-of-way shall be shown on the final plat.

7. The applicant shall disqualify the nonfarm parcels from farm tax deferral and all other penalties or fees imposed by the County Assessor as a result of disqualification shall be paid. Evidence that all taxes due have been paid shall be submitted to the Planning Division prior to final plat approval.

8. An access permit for any new access to Coyote Butte Road shall be applied for and approved by the County prior to obtaining a building permit for either Parcels 2 or 3.

9. Prior to final plat approval, the applicant/owner shall sign and record with the County Clerk a document binding the landowner, and the landowner’s successors in interest, prohibiting 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 under ORS 30.936 to 90.937.

10. The applicant shall meet all applicable requirements of the Redmond Fire and Rescue.
11. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in the relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily need to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights-of-way. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County standard.

12. Prior to final plat approval, the applicant shall construct the extension of Coyote Butte Road with a travel surface consisting of at least 5 inches of aggregate surfacing with an inside radius of 30 feet and an outside radius of 50 feet. The travel surface shall be constructed and maintained to support the imposed loads of 70,000 lbs.

13. The extension of Coyote Butte Road, terminating with cul-de-sac bulb, shall be approved by the fire protection district prior to final plat approval.

14. The dedications and road improvements required on MP-11-7 (Conditions of Approval No. 16 and 17, Findings and Decision) must be finalized prior to the recording a final plat under this approval.

VII. DURATION OF APPROVAL:

All conditions of tentative approval and submission of an application for final plat review for the partition must occur within two (2) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

The applicant shall also apply for building permits for the proposed nonfarm dwellings within four (4) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

DESHUTES COUNTY PLANNING DIVISION

Written by: Paul Blikstad, Senior Planner

Reviewed by: Kevin M. Harrison, Principal Planner

Dated this ____ day of May, 2012
Mailed this ____ day of May, 2012
DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBERS: MP-99-24 and CU-99-169

APPLICANT/PROPERTY OWNER: Joy D. Russo
51965 Pine Forest Drive
La Pine, Oregon 97739

REQUEST: The applicant is requesting approval to partition a 190-acre parcel zoned EFU-LA into three non-farm parcels and conditional use approval to establish two nonfarm dwellings on two of the parcels.

STAFF REVIEWER: Steve Miller, Assistant Planner

HEARING DATES: March 28 and April 25, 2000

RECORD CLOSED: April 25, 2000

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 17.08, Definitions and Interpretation of Language
   * Section 17.08.290, Definition-Frontage
   * Section 17.08.620, Definition-Road or Street

2. Chapter 17.22, Approval of Tentative Plans for Partitions
   * Section 17.22.020, Requirements for Approval

3. Chapter 17.36, Design Standards
   * Section 17.36.020, Streets
   * Section 17.36.040, Existing Streets
   * Section 17.36.160, Easements
   * Section 17.36.170, Lots-Size and Shape
   * Section 17.36.180, Frontage
   * Section 17.36.210, Solar Access Performance
   * Section 17.36.260, Fire Hazards
   * Section 17.36.290, Individual Wells

4. Chapter 17.44, Park Development
   * Section 17.44.010, Dedication of Land
   * Section 17.44.020, Fee in Lieu of Dedication

5. Chapter 17.48, Design and Construction Specifications
   * Section 17.48.170, Road Development Requirements-Partitions

Attachment 4: Split Zone, Flood Plain Decisions
B. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance

1. Chapter 18.16, Exclusive Farm Use (EFU) Zones
   - Section 18.16.030, Conditional Uses Permitted-High Value and Nonhigh Value Farmland
   - Section 18.16.040, Limitations on Conditional Uses
   - Section 18.16.050, Standards for Dwellings in the EFU Zones
   - Section 18.16.055, Land Divisions
   - Section 18.16.060, Dimensional Standards
   - Section 18.16.070, Yards

2. Chapter 18.84, Landscape Management Combining -- LM Zone
   - Section 18.84.020, Application of Provisions

3. Chapter 18.88, Wildlife Area (WA) Combining Zone
   - Section 18.88.060, Siting Standards
   - Section 18.88.070, Fence Standards

4. Chapter 18.96, Flood Plain – FP Zone
   - Section 18.96.020, Designated Areas

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

1. Chapter 22.24, Land Use Action Hearings
   - Section 22.24.140, Continuances or Record Extensions

D. Oregon Revised Statutes, Chapter 215

1. ORS 215.780, Minimum Lot or Parcel Sizes

E. Oregon Administrative Rules (OAR)

1. Chapter 660-033, Agricultural Land
   - OAR 660-033-0130, Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

II. FINDINGS OF FACT:

A. Location: The subject property is located at 51965 Pine Forest Drive, La Pine, west of U.S. Highway 97 and north of the Little Deschutes River and the La Pine core area. The property is further identified as Tax Lot 1600 on Deschutes County Assessor's Map 22-10-00.

B. Zoning and Plan Designation: The subject property is zoned Exclusive Farm Use–La Pine Subzone (EFU-LA) and Wildlife Area Combining Zone (WA) and a portion of the
property is zoned Flood Plain (FP) and Landscape Management Combining Zone (LM). The property is designated Agriculture on the Deschutes County Comprehensive Plan.

C. **Site Description:** The subject property is 190 acres in size and consists of 160-acre square and a 30-acre rectangle abutting the square near its northeast corner. The property has no irrigation water rights, is generally level and has been logged and replanted with thousands of pine seedlings including ponderosa and lodgepole pine. Four public road rights-of-way dead-end at the subject property’s boundaries. In addition, there is an existing 12-foot-wide dirt road that crosses the property east to west. The property is developed with a manufactured home approved as a nonfarm dwelling in 1999 (CU-99-9) and located near the more southerly southeastern corner of the property.

D. **Surrounding Zoning and Land Uses:** The subject property is surrounded on three sides by land zoned Rural Residential (RR-10) and developed with rural subdivisions. On the south and east the property abuts large parcels zoned EFU-LA, most of which have dwellings.

E. **Soils:** According to Natural Resources Conservation Service (NRCS) maps of the area, there are two soil units mapped on the subject property:

1. **115 A, Shanahan loamy coarse sand, low, 0 to 3 percent slopes.** This soil complex is composed 90% of Shanahan soil and similar inclusions. It is also composed 10% of contrasting inclusions. The soil depth is typically 60 inches deep or more to bedrock. The drainage is somewhat excessive with a moderately rapid permeability and available water capacity of about 7 inches. The NRCS rates this soil complex as 6E with irrigation and no rating without irrigation. This soil complex is not considered high value soil for agriculture and typically is considered a woodland soil. Soil Unit 115A is mapped on most of the subject property.

2. **144A, Sunriver sandy loam, 0-3 percent slopes.** This soil complex is composed 85% of Sunriver soil and similar inclusions and 15% contrasting inclusions. This soil depth is 60 inches or more to bedrock. It is somewhat poorly drained because the water table is 2 to 4 inches below the surface from April to June. It has moderately rapid permeability with available water capacity of about 7 inches. The NRCS rates this soil complex as 6C when irrigated and no rating without irrigation. This soil complex is mapped in a few places along the southeast edge of the property corresponding to the Little Deschutes River flood plain.

F. **Procedural History:** On January 28, 1999, the applicant submitted an application for a conditional use permit to establish a nonfarm dwelling on the subject property. By an administrative decision dated March 5, 1999, the county approved the application (CU-99-9). The subject partition and conditional use permit applications were submitted on December 30, 1999, and were accepted by the county as complete on February 7, 2000. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.428 would have expired July 5, 2000. The initial public hearing on the applications was held on March 28, 2000. At the hearing, the Hearings Officer received testimony and evidence, included the record of CU-99-9 in the record of the subject applications, and at the applicant’s request continued the hearing to April 25, 2000. Under Section 22.24.140(E) the 150-day period was tolled during the period of the continuance and now expires on August 2, 2000. At the continued public hearing the Hearings Officer again received testimony and evidence and closed the written record. The applicant waived her right to submit final argument under ORS 197.763. The record closed on April 25, 2000.
As of the date of this decision there remain 57 days in the 150-day period.

G. **Proposal:** The applicant submitted concurrent applications for a partition to divide the subject property into three parcels and conditional use permits to establish two nonfarm dwellings on two of the three nonfarm parcels. Parcel 1 would consist of the southern half of the 160-acre square and the 30-acre rectangle, would be 108.77 acres in size and would be developed with the existing nonfarm dwelling approved in CU-99-9. Parcels 2 and 3 would be approximately 40-acre squares consisting of the northwest and northeast quarters of the 160-acre square, and each would be developed with one of the proposed nonfarm dwellings. The proposed nonfarm dwelling on Parcel 2 would have the following setbacks from the parcel boundaries: 455.5 feet from the north; 765.7 feet from the south; 605.4 feet from the west; and 613.1 feet from the east. The proposed nonfarm dwelling on Parcel 3 would have the following setbacks from the parcel boundaries: 548.1 feet from the north; 700.9 feet from the south; 1,020.1 feet from the west; and 200 feet from the east.

H. **Public/Private Agency Comments:** The Planning Division provided written notice of the subject applications to a number of public and private agencies and received responses from: the Deschutes County Road Department (hereafter “road department”), Environmental Health Division and Property Address Coordinator; the United States Bureau of Land Management (BLM); the Oregon Department of Forestry (hereafter “Forestry”); and Midstate Electric Cooperative. These comments are set forth verbatim at pages 3-4 of the Staff Report. The following agencies either had no comment or did not respond to the notice: the Deschutes County Building Division and Assessor; the La Pine Rural Fire Protection District; the La Pine Sanitary and Sewer District; the Oregon Department of Fish and Wildlife; and the Oregon Department of Water Resources, Watermaster–District 11.

I. **Public Notice and Comments:** The Planning Division mailed individual written notice of the public hearing to the owners of record of all property located within 750 feet of the subject property. In addition, notice of the hearing was published in the “Bend Bulletin” newspaper and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed the county had received 11 letters in response to these notices. In addition, three members of the public testified at the public hearings. Public comments are addressed in the findings below.

J. **Lot of Record:** The Staff Report states the subject property is a legal lot of record based upon a 1996 lot-of-record determination (LR-96-3).

III. **SUMMARY:**

The Hearings Officer finds the proposed partition must be denied because it does not comply with all applicable approval criteria. Specifically, the proposed parcels will not have the required access from a road dedicated to the public and the proposed parcels are not suitable for their intended residential use because they will not have adequate access for fire apparatus. Because the partition cannot be approved I cannot approve the two proposed nonfarm dwellings. In addition, I have found the nonfarm dwellings cannot be approved because their approval will materially alter the stability of the land use pattern in the area, the subject property is not generally unsuitable for the production of merchantable tree species and the proposed dwellings will not have adequate access.
IV. CONCLUSIONS OF LAW:

PARTITION STANDARDS

A. Oregon Revised Statutes, Chapter 215, County Planning; Zoning; Housing Codes

1. ORS 215.780, Minimum Lot or Parcel Sizes

(1) Except as provided in subsection (2) of this section, the following minimum lot or parcel sizes apply to all counties:

(a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres; . . .

(2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1) of this section in any of the following circumstances:

(a) By demonstrating to the Land Conservation and Development Commission that it can do so while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning goals adopted under ORS 197.230. . .

(3) A county with a minimum lot or parcel size acknowledged by the Commission pursuant to ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under ORS 197.628 to 197.636 that is smaller than those prescribed in subsection (1) of this section need not comply with subsection (2) of this section.

FINDINGS: The subject property is 190 acres in size with no irrigation water rights. The applicant is proposing to divide it into three nonfarm parcels -- one 108-acre parcel and two 40-acre parcels. All three parcels would meet the county’s minimum parcel size of 20 acres for nonfarm land divisions under Section 18.16.060 of the zoning ordinance.

ORS 215.780(1) establishes an 80-acre minimum lot size in the EFU Zones subject to certain exceptions. The provisions of this statute were interpreted in Dorvinen v. Crook County, 153 Or App 391, 957 P2d 180, rev den 327 Or 620 (1998). There, the Court of Appeals affirmed a decision of the Land Use Board of Appeals (LUBA) reversing a Crook County decision approving a partition to divide a 40-acre parcel into a 20-acre parcel and two 10-acre parcels. LUBA held the 80-acre minimum lot size applies to nonfarm land divisions and that under ORS 215.780 the proposed partition was prohibited because it failed “to leave a remainder parcel, whether or not suitable for farm use, that meets the minimum parcel size.” (Emphasis added.) LUBA held that because the parcel to be partitioned was less than the 80-acre minimum lot size it could not qualify for a nonfarm land division.

On Crook County’s appeal, the Court of Appeals affirmed LUBA’s decision, stating in part:

“As respondents contend, the text of ORS 215.780(1) supports the conclusion that it applies under these circumstances. It provides that, in the absence of qualifying
circumstances that are described in ORS 215.780(2) and that are not present here, the 80-acre minimum parcel size is an across-the-board requirement in EFU zones. . . . (Emphasis added.)

Subsequently, in two county decisions -- Craig (MP-98-20/CU-98-54/CU-98-63) and Scott (MP-98-22/CU-98-60/CU-98-61) -- this Hearings Officer applied Dorvinen to applications to partition 40-acre parcels into two 20-acre nonfarm parcels. I found the county’s 20-acre minimum lot size for nonfarm land divisions had not been adopted or acknowledged under any of the circumstances listed in ORS 215.780(2) or (3) and therefore the proposed partitions could not be approved under ORS 215.780(1) as interpreted in Dorvinen. The Deschutes County Board of Commissioners (hereafter “board”) reversed my decisions in Craig and Scott, holding that Dorvinen was wrongly decided. The board’s decisions were appealed to and remanded by LUBA, which held that Dorvinen was controlling. LUBA stated in a footnote:

“These consolidated cases do not present an occasion to determine how much, if any, of LUBA’s Dorvinen decision survives the Court of Appeals’ analysis. LUBA concluded, based on legislative history, that ORS 215.780(1) does not apply to parcels that are partitioned from farm parcels in order to site nonfarm dwellings as long as a remainder parcel meets the minimum lot size. That conclusion, arguably, is inconsistent with the Court of Appeals’ broader and textually-based conclusion that ORS 215.780(1) applies across the board to all EFU partitions, unless a specific exception applies. However, we express no opinion in this regard.” (LUBA Nos. 99-027/99-028), page 8, note 7; emphasis added.)

On the county’s appeal, the Court of Appeals affirmed LUBA’s decision in Scott/Craig. The Hearings Officer understands the county has filed a petition seeking Supreme Court review of the Court of Appeals’ decision.

The inconsistency between the language in the court’s and LUBA’s Dorvinen decisions, coupled with LUBA’s election not to address it, has created uncertainty as to how large an EFU-zoned parcel must be in order to qualify for a partition. However, in two post-Craig/Scott decisions -- Watkins (MP-99-18/CU-99-119) and Cook (MP-00-3/CU-00-11) -- this Hearings Officer held proposed farm partitions were not prohibited by ORS 215.780(1) as interpreted in Dorvinen because each would leave a remainder parcel meeting the applicable minimum lot size – i.e., 23 irrigated acres, the county’s acknowledged minimum lot size for farm divisions in the EFU-TRB subzone.1 The applicant’s proposal here is to create two new 40-acre nonfarm parcels leaving a 108-acre remainder nonfarm parcel. I find the proposed remainder parcel meets the 80-acre minimum lot size established in ORS 215.780(1) and held by LUBA and the Court of Appeals to be applicable to nonfarm land divisions in Deschutes County. Therefore, I find the proposed nonfarm partition is not prohibited by ORS 215.780(1) as interpreted in Dorvinen.

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

1. Chapter 17.22, Approval of Tentative Plans for Partitions

1 In Watkins the applicant proposed to partition a 39-acre parcel into a 36-acre farm parcel with 29.5 irrigated acres and a 3-acre nonfarm parcel with no irrigation. In Cook, the applicant proposed to partition a 77-acre parcel into a 39.2 acre farm parcel with 33 irrigated acres, a 34.8-acre farm parcel with 24 irrigated acres and a 3.2-acre nonfarm parcel with no irrigation.
a. Section 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 Oregon Revised Statutes Chapter 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 land use on the property or would otherwise create a non-conforming use on any of the newly described parcels with respect to an existing structure or use.

FINDINGS: The Hearings Officer finds the provisions of ORS Chapter 92 are implemented through Title 17 of the Deschutes County Code. Therefore, if the proposed partition complies with Title 17 it will comply with ORS Chapter 92. The proposal’s compliance with the applicable provisions of Title 17 is discussed in the findings below.

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

FINDINGS: The record includes a preliminary title report dated May 11, 1998, that does not identify any easements. The tentative partition plat shows an overhead powerline running north-south through the subject property. In comments on the applicant’s proposal, Bill Heigh of Midstate Electric Cooperative stated there are existing easements for this powerline. However, the Hearings Officer finds any such easements do not constitute “public access easements” and therefore this criterion does not apply.

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 the 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.

FINDINGS: The tentative partition plat shows that four roads dedicated to the public dead-end at the subject property -- Pine Forest Drive and Stearn Road on the north, Paulina Avenue on the west and O.H. Talbot Road on the south. However, the tentative plat shows only Pine Forest Drive is improved. The record indicates it is maintained by the county. The applicant proposes that all three parcels take access from an existing 12-foot-wide private dirt road connecting to Pine Forest Drive at the property’s northern boundary. The existing nonfarm dwelling on the property was approved in CU-99-9 with access via this dirt road. The 1999 administrative decision expressly found this dirt road was a private “road” – not a driveway -- in existence as of August 5, 1992, so as to allow the placement of the existing dwelling within 300 feet of this road in accordance with the WA Zone siting standards discussed in detail in the findings below. Thus, the tentative partition plat indicates the applicant is proposing that all three parcels take access from a private road rather than from a dedicated public, Forest Service or BLM road as required by this criterion. The existence of public road rights-of-way adjacent to the subject property suggests that each proposed parcel could take access from a dedicated public road. However, the applicant has not proposed to improve these roads to provide such access. Therefore, the Hearings Officer finds the applicant’s proposal does not satisfy this criterion.
4. An access permit can be obtained from either the County Public Works Department, the City Public Works Department or the State Highway Division.

FINDINGS: In his comments on the applicant’s proposal, Dick Johnson of the road department stated the applicant would be required to obtain a county access permit for any new access from Pine Forest Drive. However, the Hearings Officer has found the partition proposes access from a private road and not from Pine Forest Drive for which the county could issue access permits. Therefore, I find the applicant’s proposal does not satisfy this criterion.

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

FINDINGS: The applicants’ proposal would create three nonfarm parcels with nonfarm dwellings. Therefore, the question presented by this criterion is whether the proposed parcels are suitable for residential use considering their size, natural hazards, topography and access.

1. Parcel Size. All three parcels would be over 40 acres in size. The tentative partition plat shows the location of the existing dwelling, barn and well on proposed Parcel 1 and the locations of the proposed homesites for Parcels 2 and 3. The Hearings Officer finds all three proposed parcels are large enough to accommodate dwellings, driveways and septic systems. Therefore, I find the proposed nonfarm parcels are suitable for residential use considering their size.

2. Natural Hazards. The record indicates there are no natural hazards on the subject property that would present obstacles to developing dwellings on Parcels 2 and 3. The partition plat shows the boundary of the flood plain of the Little Deschutes River located near the more southerly southeastern corner of the subject property, approximately 200 feet from the existing dwelling on Parcel 1 and a much greater distance from the proposed homesites on Parcels 2 and 3. Therefore, the Hearings Officer finds the proposed parcels are suitable for residential use considering natural hazards.

3. Topography. The record indicates the subject property is relatively level. Therefore, the Hearings Officer finds the proposed parcels are suitable for residential use considering topography.

4. Access. The tentative partition plat shows access for each proposed parcel from an existing private dirt road connecting to Pine Forest Drive which dead-ends at the northern boundary of the subject property. Dick Johnson of the road department stated the county does not plow snow on dead-end county roads. He also noted the distance between the subject property’s northern boundary and the nearest street intersecting with Pine Forest Drive (Davis Avenue) is more than 660 feet and questioned whether the La Pine Rural Fire Protection District would be willing to serve parcels with such remote access. Mr. Johnson recommended that the applicant be required to construct a cul-de-sac bulb meeting county standards at the south end of Pine Forest Drive to allow an adequate area for vehicles to turn around.

The fire district did not comment on the applicant’s proposal. However, the Hearings Officer is aware the Oregon Uniform Fire Code, Section 902.2, requires that fire apparatus access roads have a minimum unobstructed width of 20 feet designed with an all-weather driving surface capable of supporting a gross vehicle weight of 60,000 pounds. The tentative partition plat shows the existing private dirt road is 12 feet wide, clearly not satisfying this standard. I find the substandard nature of this road, combined with the lack of county snowplowing of Pine Forest Drive, means that during the winter it is likely fire trucks and other large emergency vehicles...
could not reach dwellings on the subject property. In two previous decisions – *Cook* cited above and *Clouse/Acuff* (MP-99-11) – I have declined to approve partitions with similarly substandard access. I adhere to my holdings in those decisions and find the parcels proposed by the applicant are not suitable for residential use because of inadequate fire apparatus access.

For the foregoing reasons, the Hearings Officer finds the proposal does not satisfy this criterion.

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

**FINDINGS:** The record includes a “willing to serve” letters from Midstate Electric Cooperative and US West Communications. In its comments on the applicants’ proposal the Environmental Health Division stated a septic site evaluation would be required for each new parcel. The applicants’ burden of proof states domestic water for the proposed new parcels would come from new wells. The record indicates the proposed parcels would receive police protection from the Deschutes County Sheriff’s Department and fire protection from the La Pine Rural Fire Protection District. As discussed in the findings above, incorporated by reference herein, I have found the existing dirt road that is proposed to provide access to the parcels is not adequate for fire apparatus. Therefore, I find the applicant has failed to demonstrate fire protection for the proposed parcels and dwellings will be adequate, particularly during winter months. Therefore, I find the proposal does not satisfy this criterion.

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.**

**FINDINGS:** The record indicates the subject property has no irrigation water rights. Therefore, the Hearings Officer finds this criterion is not applicable.

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

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property is not located within one-half mile of a surface mining zone.

**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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.**

**FINDINGS:** The Hearings Officer finds the proposed partition does not constitute series partitioning because the subject property was not part of a previous partition or subdivision.
2. Chapter 17.36, Design Standards

a. Section 17.36.020, Streets

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

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

b. Section 17.36.040, Existing Streets

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

**FINDINGS:** As discussed above, the tentative partition plat shows dedicated rights-of-way for four public roads dead-ending at the subject property, one of which – Pine Forest Drive – is improved and maintained by the county with the exception of snowplowing. The tentative plat does not propose to extend Pine Forest Drive into the partition as required by Section 17.36.020 but instead proposes access for the partition parcels from an existing 12-foot-wide private dirt road connecting with Pine Forest Drive where it dead-ends at the property’s northern boundary. The Hearings Officer finds this road does not meet minimum standards for partition access because it is not dedicated to the public and does not meet the minimum width for a rural local road established in the subdivision ordinance or, as discussed above, the minimum fire code standards for emergency vehicle access.

The Hearings Officer finds neither Pine Forest Drive nor the private dirt road is of adequate width to accommodate the increased traffic expected from the partition under Section 17.36.040. I am aware that the Institute of Transportation Engineers Trip Generation Manual (ITE Manual) predicts each single-family dwelling will generate 9.55 average daily vehicle trips. Thus, the

Attachment 4: Split Zone, Flood Plain Decisions
applicants’ proposal would result in the addition of approximately 20 new daily vehicle trips on Pine Forest Drive and the private road. Dick Johnson of the road department stated the Pine Forest Drive has two lanes of pavement. Ordinarily I would conclude that improvement is sufficient to handle 20 additional daily vehicle trips. However, Mr. Johnson stated that without a cul-de-sac bulb at the southern terminus of Pine Forest Drive there is not sufficient area for vehicles including snowplows to turn around. The applicant has not proposed this improvement. The private road proposed for access is too narrow and its surface inadequate to allow emergency vehicle access and it is too narrow to allow normal two-way traffic for passenger vehicles. I noted in the Cook decision that the minimum standards established by the American Association of State Highway and Transportation Officials (AASHTO), with which the county’s road standards are intended to be consistent, prescribe a minimum width of 22 feet (18 feet of travel lanes and two 2-foot shoulders) for a rural local road in order to allow two-way traffic.

The remaining question, then, is whether the Hearings Officer can require the applicant to dedicate right-of-way for and to improve the terminus of Pine Forest Drive and the private dirt road consistent with the county’s or AASHTO’s minimum standards for a rural local road. I find I cannot do so under Dolan v. City of Tigard, 512 US 374, 114 S Ct 2309, 129 LEd 2d 304 (1994), and its progeny. These cases hold that road improvement exactions must have a rational nexus with and be roughly proportional to the anticipated traffic impacts from the proposed development. Clearly there is a rational nexus between road dedication and improvement requirements and the traffic impacts from two new dwellings. However, I find the size and expense of the proposed right-of-way dedication and improvements required to make Pine Forest Drive and the private dirt road minimally adequate for access are not roughly proportional to the impacts from the addition of only 20 new vehicle trips. Nevertheless, the applicant has the burden of demonstrating the proposed access meets the street standards for partitions in Sections 17.26.020 and 17.36.040. The applicant has failed to do so.

c.  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 twelve 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 ten feet in width.

FINDINGS: As discussed above, the tentative partition plat shows an overhead powerline on the property and comments from Midstate Electric Cooperative state it has an easement for this powerline. The Hearings Officer finds this easement should be shown on the final partition plat.

d.  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 Titles 18 through 21 of this code, with the following exceptions:
A. In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and county sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table related to sewage disposal by septic tank shall be addressed and resolved in the applicants' initial plan.

FINDINGS: The Hearings Officer has found the proposed parcels satisfy the minimum lot size for nonfarm land divisions and are suitable for their intended residential purpose considering their large size and generally level topography. The proposed parcels will not be served by a public sewer system and therefore must be large enough to accommodate an on-site sewage disposal system. I find all three parcels are of sufficient size to accommodate such a system. And as discussed above the Environmental Health Division has indicated septic site evaluations will be required for proposed Parcels 2 and 3. Therefore I find the proposal satisfies this criterion.

e. Section 17.36.180, Frontage

A. Each lot or parcel shall abut upon a public 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 Roads or Bureau of Land Management roads.

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

FINDINGS: Section 17.08.290 defines “frontage” as “that portion of a parcel which abuts a dedicated public street or highway or an approved private way (except an alley).” (Emphasis added.) Section 17.08.620 defines “road or street” in pertinent part as “a public or private way that is created to provide ingress and egress to one or more lots, parcels, areas or tracts of land.” The 60-foot right-of-way for at least one public road dead-ends at each proposed parcel. Thus, each parcel has frontage on at least 50 feet of dedicated right-of-way. However, only one improved public road -- Pine Forest Drive – abuts the subject property. The tentative plat indicates its pavement width where it abuts Parcels 1 and 3 at their common property line is approximately 30 feet. Therefore, the question presented is whether abutting 60 feet of dedicated right-of-way is sufficient for a partition parcel to satisfy this criterion.

The Hearings Officer finds the language of this section is ambiguous with respect to whether a parcel must abut 50 feet of right-of-way or an improved road. That is because the terms “road” and “street” do not expressly refer to improved facilities. I understand the county interprets the frontage requirement in this section to require only that each partition parcel abut at least 50 feet of dedicated right-of-way inasmuch as other criteria in Title 17 require access via an improved public road. In other words, the requirement of frontage on dedicated public road right-of-way makes possible the improvement of that right-of-way for adequate access. I find this is a reasonable reading of this provision. Based upon this interpretation, I find the applicant’s proposal satisfies the frontage requirement of this criterion. I also find all side lot lines for the proposed parcels are at right angles to the abutting dedicated public road rights-of-way.

f. Section 17.36.210 Solar Access Performance

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

**FINDINGS:** The Hearings Officer finds each proposed parcel would be of sufficient size to assure solar access for dwellings constructed on the proposed homesites.

**g. Section 17.36.260, Fire Hazards**

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

**FINDINGS:** As discussed above, although the rights-of-way for four public roads dead-end at the subject property, only one of those roads is improved. The applicant proposes that all three partition parcels take access from a 12-foot-wide private dirt road that connects with Pine Forest Drive where it dead-ends at the subject property’s northern boundary. This dirt road does not meet the minimum standards in the Uniform Fire Code for fire apparatus access. Neither is it wide enough to allow two-way traffic when needed for emergency ingress and egress during an evacuation. Although the tentative partition plat shows Parcels 2 and 3 could take access from one of more of the other public road rights-of-way dead-ending at the subject property, the applicant has not proposed such access nor has she proposed to improve any of these additional rights-of-way to permit such access.

As noted in the Findings of Fact above and discussed in detail in the findings below, the subject property has been logged and replanted with thousands of pine seedlings including ponderosa and lodgepole pine. Thus, the proposed nonfarm dwellings would be located within a woodland where fire hazards are high due to the proximity of fuels. The Hearings Officer is aware the county currently is undertaking a project to reduce fire hazards for rural residents in the La Pine in part by providing additional points of access to rural subdivisions. Given the additional fire hazard presented on the subject property, and because it is possible for the proposed partition to take access from a second public road if the applicant improves the dedicated right-of-way, I find the applicant should be required to provide a second point of access. Having failed to do so, I find her proposal does not satisfy this criterion.

**h. Section 17.36.290 Individual Wells**

In any subdivision or partition where individual wells are proposed, the applicants 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 Section 17.36.300, individual wells for subdivisions are allowed when parcels are larger than ten acres.
FINDINGS: The applicant proposes to provide domestic water to the nonfarm dwellings from new groundwater wells. The applicant submitted two well logs for wells drilled in the vicinity of the subject property, showing water available at depths of 12 to 17 feet. Therefore, the Hearings Officer finds the applicants’ proposal satisfies this criterion.

3. Chapter 17.44, Park Development
   a. Section 17.44.010, Dedication of Land
      B. For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to $350.00 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.

   b. Section 17.44.020, Fee in Lieu of Dedication
      A. In the event there is no suitable park or recreation area or site in the proposed subdivision or partition, or adjacent thereto, 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 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 deposited with the County Treasurer and be sued for acquisition of suitable are 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 of County Commissioners and/or applicable park district.

FINDINGS: The subject property is located outside any urban growth boundary. The record does not indicate whether the subject property is located in an area planned for parks. Therefore, the Hearings Officer finds that if the proposed nonfarm land division were approved the applicant would be required to pay the required fee in lieu of park dedication, consisting of $350 for each new parcel for a total of $1,050.

4. Chapter 17.48, Design and Construction Standards
   a. 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.

FINDINGS: The proposed new parcels would be larger than 10 acres in size and therefore the road improvement standards in paragraph (a)(A) apply. As discussed above, the applicant proposes that all three parcels take access from a 12-foot-wide private dirt road connecting to Pine Forest Drive. The applicant has not proposed to dedicate right-of-way for or to improve this dirt road to the minimum standards in this section. The Hearings Officer finds that without such right-of-way and improvements, the applicant’s proposal does not satisfy one of the minimum standards for a partition – i.e., adequate access for fire apparatus and emergency ingress and egress in the event of an evacuation.

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

1. Chapter 18.16, Exclusive Farm Use Zones
   a. Section 18.16.055, Land Divisions
   c. Section 18.16.060, Dimensional Standards

C. Non-farm Dwelling Division

1. A nonfarm dwelling land division shall be subject to the minimum lot size requirements of Section 18.16.060(B) and all applicable requirements of the partition ordinance, including the general partition standards set forth in Chapter 17.22 and the Section 18.16.050(G) standards for nonfarm dwellings. Each nonfarm dwelling land division application shall be accompanied by an application for a dwelling on each parcel to be created.

B. The minimum lot size for nonfarm land divisions is 20 acres.

FINDINGS: As discussed in detail in the findings above, incorporated by reference herein, the county’s 20-acre minimum lot size for nonfarm land divisions was found by LUBA and the Court of Appeals not to comply with the nonfarm land division standards in ORS 215.780(1) as interpreted in Dorvinen. Therefore, the Hearings Officer finds this criterion is not applicable to the proposed partition. However, as discussed in the findings above, also incorporated by reference herein, I have found that because the proposed partition would leave a remainder parcel at least 80 acres in size it satisfies the statutory nonfarm land division standards.

Because the Hearings Officer has concluded I cannot approve the proposed partition, and because the subject property previously was approved for a non-farm dwelling (CU-99-9), I find must deny the conditional use permit applications for the proposed new nonfarm dwellings. However, because the applicant may appeal this decision to the Deschutes County Board of Commissioners (board), I make the following findings concerning the nonfarm dwelling approval criteria.
**NONFARM DWELLING STANDARDS**

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

1. Chapter 18.16, Exclusive Farm Use Zones

   a. Section 18.16.030, Conditional Uses Permitted - High Value and Nonhigh Value Farmland

   C. Nonfarm dwelling and accessory uses thereto.

FINDINGS: The applicant has requested approval to establish two new non-farm dwellings on a parcel in the EFU-LA Zone. Therefore, the proposal constitutes a conditional use subject to the nonfarm dwelling approval criteria discussed in detail in the findings below.

b. Section 18.16.050, Standards for Dwellings in the EFU Zones

G. Nonfarm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

   a. The Planning Director or Hearings Body shall make findings that:

      i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

FINDINGS: The Staff Report states that for purposes of the nonfarm dwelling analyses the county uses a study area consisting of all EFU-zoned tax lots within a one-mile radius of the subject property. The county computer-generated maps in the record show the study area includes all or part of 46 EFU-zoned tax lots, 43 of which are in private ownership. The vast majority of the privately-owned EFU-zoned tax lots are 3 acres or less in size and are located near the southeastern boundary of the study area in a rural residential area. Fifteen of these small tax lots are in single ownership and total 35 acres with approximately 7 irrigated acres. The remainder of the privately-owned EFU-zoned tax lots constitute the vast majority of the EFU-zoned land in the study area and are in large tracts. They are located in the center of the study area adjacent to the subject property as well as in the northeast quadrant of the study area. This land includes two large farm tracts -- the Chandler farm consisting of approximately 530 acres on 4 tax lots with 29 irrigated acres, and the Young farm consisting of approximately 340 acres on two tax lots with approximately 142 irrigated acres. The Chandler farm abuts the subject property on the south and east. The majority of the privately-owned EFU-zoned tax lots (23 or 53%) are receiving farm tax deferral. Nine of these tax lots have some irrigated acreage and 14
tax lots do not. The remaining 20 privately-owned EFU-zoned tax lots (46%) are not receiving farm tax deferral and have no irrigation.

The record indicates the privately-owned EFU-zoned tax lots in the study area have been engaged in livestock grazing on irrigated pasture and growing grass hay. In addition, the record indicates portions of the Chandler farm have been logged. The record includes information from the Oregon State University (OSU) Extension Service describing the types of impacts the typical farming practices in the surrounding area could generate on nearby lands. Maintaining irrigated pasture can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing, and possible water runoff from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic and property damage if livestock escape. Growing grass and alfalfa hay can generate dust from re-seeding, drifting of herbicides from ground spraying, vehicle noise from harvesting equipment, manure odor from spreading manure for fertilizer and possible water runoff from irrigation. As discussed in the findings above, the tentative partition plat shows the following setbacks for the proposed nonfarm dwelling homesites. Parcel 2 would be set back 455.5 feet from the north parcel boundary, 765.7 feet from the southern parcel boundary, 605.4 feet from the western parcel boundary, and 613.1 feet from the eastern parcel boundary. The northern and western boundaries of Parcel 2 are also the northern and western boundaries of the subject property. Parcel 3 would be set back 548.1 feet from the northern parcel boundary, 700.9 feet from the southern parcel boundary, 1,020.1 feet from the western parcel boundary, and 200 feet from the eastern parcel boundary. The northern boundary of Parcel 3 is also the northern boundary of the subject property.

The tentative partition plat indicates the proposed nonfarm homesites would be located at least 350 feet from the nearest boundary of the Chandler farm. The Staff Report states the prevailing wind is from the west and the Chandler farm abuts the subject property on the south and east. Based upon the OSU information in the record, the Hearings Officer finds the livestock grazing and hay production on the Chandler farm are of relatively low intensity in terms of impacts on adjacent properties. Because of the size of proposed Parcels 2 and 3, the resulting distance from the farm uses on the Chandler farm and the direction of the prevailing wind I find there will be an adequate buffer between the proposed nonfarm dwelling and these low-intensity farm uses. Therefore, I find the nonfarm dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

ii. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

FINDINGS: In 1998, LCDC adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter 660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The new rules continue to apply the three-step
“stability” analysis first articulated in Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989), and provide as follows:

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a), (3)(d) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; . . .

The Hearings Officer finds the analysis required by these rules contains nine separate components concerning the study area: 1) its size and adequacy for analysis; 2) types of farm uses; 3) existing dwellings; 4) dwelling trends since 1993; 5) potential nonfarm parcels; 6) potential nonfarm dwellings; 7) potential lot-of-record dwellings; 8) existing land use pattern;
and 9) the effect on the land use pattern from approval of the proposed nonfarm dwelling. Each of these components is discussed in the findings below.

1. **Size and Adequacy of Study Area.** The county uses a study area consisting of all EFU-zoned tax lots located entirely or partly within a one-mile radius of the subject property’s boundaries. The record includes six computer-generated county maps showing the study area and including the following information for tax lots in the study area: a) tax lot numbers; b) tax lot sizes; c) zoning; d) soils; e) irrigated acres; f) tax-deferred status; and g) year built for existing dwellings. These maps show approximately two-thirds of the study area consists of land zoned RR-10 and developed with rural subdivisions. The remainder of the study area consists of land zoned EFU-LA. The majority of EFU-zoned tax lots are 3 acres or less in size. However, the vast majority of the 1,123 EFU-zoned acres in the study area — 902 acres or approximately 80% — constitute 9 large tax lots in the center and northeast quadrant of the study area. The record indicates the study area is not in an irrigation district and most of these large tax lots do not have irrigation.² However, the majority are receiving farm tax deferral and are engaged in farm use.

Although the study area includes a large amount of RR-10-zoned land developed with rural subdivisions the Hearings Officer finds it nevertheless is of appropriate size and is adequate for the required analysis because it includes at least 2,000 acres and 43 privately-owned EFU-zoned tax lots and it encompasses a distinct agricultural area.

1. **Types of Farm Uses.** The county map labeled “EFU Analysis-Size” shows 43 privately-owned EFU-zoned tax lots in the study area ranging in size from approximately one-half acre to 221 acres. The vast majority of these tax lots are 3 acres or smaller in size and are located at the southeast edge of the study area in what appears to be a rural subdivision. About half of these small tax lots are receiving farm tax deferral and a few have irrigation. As discussed above, 15 of these small tax lots comprise a single farm tract (Haselip) consisting of 35 acres with 7 irrigated acres. The Hearings Officer finds that the very small size of these tax lots indicates they are not engaged in farm use on a commercial scale. In contrast, all of the large EFU-zoned tax lots surrounding or near the subject property are receiving farm tax deferral. As discussed above, most of the acreage in these tax lots comprises two large farms — Chandler and Young. The record indicates both of these farms are engaged in farm use consisting of livestock grazing on irrigated pasture and hay production.

The record indicates the study area is not in an irrigation district. The county map labeled “EFU Analysis-Soils” shows there are three soils types mapped in the study area, none of which is considered high-value when irrigated. In fact, Soil Units 115A and 144A have a low NRCS agricultural production capability rating of 6E and 6C respectively. As discussed elsewhere in this decision, some of the EFU-zoned land in the study area, like the subject property, has been logged commercially. The record indicates the subject property is not currently in farm use. However, as discussed in the findings below, there is evidence in the record that the subject property has been used for livestock grazing in the past.

Based upon this evidence, the Hearings Officer finds that although the majority of the EFU-zoned tax lots in the area are not engaged in farm use, the vast majority of EFU-zoned acreage is engaged in farm use consisting of livestock grazing on irrigated or dry pasture and hay production.

3. **Existing Dwellings.** The county map labeled “EFU Analysis – Year Built” shows only 8 of the 43 privately-owned EFU-zoned tax lots in the study area have dwellings. These dwellings

² The Hearings Officer assumes the tax lots with irrigation are using groundwater wells.
were built in the following years: 5 before 1979; 2 from 1979 to 1992; and one since 1993 – the nonfarm dwelling approved in 1999 on the subject property. All but this latter dwelling were approved on the small EFU-zoned tax lots at the southeast edge of the study area. In addition, the Staff Report states the county issued a conditional use permit for a farm dwelling on the Chandler farm in 1990 (CU-90-168) but the Assessor’s records show the dwelling has not been built. The Hearings Officer finds it is likely this conditional use permit no longer is valid. I further find the dwellings built before 1979 predate the county’s EFU zone and therefore were not subject to EFU zoning requirements. The Staff Report states that of the 6 dwellings built since 1979 the record is incomplete with respect to whether and what type of land use approval was given.

4. Dwelling Trends Since 1993. As discussed above, the record indicates only one dwelling – the nonfarm dwelling approved in 1999 for the subject property – has been approved since 1993.

5. Potential Nonfarm Parcels. The “stability standard” requires the county to determine the “cumulative impact of nonfarm dwellings on other parcels in the area similarly situated” (emphasis added). The phrase “similarly situated” is not defined in the administrative rules although it has been used in several LUBA cases. In Blosser v. Yamhill County, 18 Or LUBA 253, 262 (1989), LUBA quoted with approval language in the county’s decision describing “similarly situated” parcels as those in the “same category of developability.” There, the county considered “similarly situated” parcels to be those vacant parcels in the study area that were the same size or smaller than the parcel in question and concluded approval of the proposed nonfarm dwelling could encourage nonfarm dwelling applications on the identified “similarly situated” parcels. In previous decisions, the Hearings Officer also has considered soils and irrigation in determining whether a parcel proposed for a nonfarm dwelling is “similarly situated” to other parcels in the study area for purposes of the “stability standard.” That is because in Deschutes County soil capability and irrigation are critical factors in a parcel’s agricultural productivity.

The record indicates that some or all of 35 vacant privately-owned EFU tax lots are located in the study area. These tax lots range in size from approximately one-half to 221 acres. However, all but six of these tax lots are 3 acres or smaller in size. The six larger tax lots range in size from 80 to 221 acres. Thus, the Hearings Officer finds only these six tax lots are “similarly situated” to the subject property in terms of size. None of these six tax lots has been approved for a dwelling and therefore they all are potential nonfarm parcels. Three of the six tax lots are larger than 80 acres in size with no irrigation and therefore are large enough to qualify for a nonfarm land division under Dorvinen because such a division could leave a remainder parcel at least 80 acres in size. Two of these tax lots are larger than 160 acres and therefore could qualify for a partition to create three nonfarm parcels. Combining the 8 potential new parcels with the 6 existing vacant tax lots results in 14 existing and potential nonfarm parcels. Finally, the record indicates there is one vacant tax lot that has at least 37 acres of irrigation, the minimum irrigated acreage required in the EFU-LA Subzone for a farm division to create an isolated unproductive parcel on which a nonfarm dwelling could be sited. Combining the new parcel that could be created on this tax lot with the 14 parcels described above results in 15 existing and potential nonfarm parcels in the study area.

As discussed in detail in the findings below, in order to qualify for a nonfarm dwelling the potential nonfarm parcel or a portion thereof must be found to meet the “generally unsuitable” standard. For this reason the “stability” and “generally unsuitable” standards are closely related. The more broadly the “generally unsuitable” standard is interpreted and applied the more likely approval of a nonfarm dwelling will affect the stability of the overall land use pattern in the area by setting a precedent for further nonfarm dwelling approvals. As discussed above, none of the soils in the study area is considered high value even when irrigated and two of the three soil types in the study area have very low NRCS agricultural capability ratings. The record indicates
neither the Chandler farm nor Young farm is included in the list of commercial farms in the county’s comprehensive plan agricultural lands element. However, as discussed in the findings below, the soil type that is predominant on the subject property and most of the large EFU-zoned tax lots in the study area is considered suitable for the production of merchantable tree species. Therefore, the Hearings Officer finds many of the existing and potential nonfarm parcels identified above may not qualify under the “generally unsuitable” standard.

6. Potential Nonfarm Dwellings. The “generally unsuitable” standard allows a nonfarm dwelling on a lot or portion thereof that is “generally unsuitable for the production of farm crops or livestock or merchantable tree species” considering its physical characteristics and whether it reasonably can be put to farm or forest use in conjunction with other land. In a recent appeal from a decision of this Hearings Officer, the board articulated a broad interpretation of the “generally unsuitable” standard. In Edwards (CU-98-120), the board approved a nonfarm dwelling on a 20-acre irrigated parcel consisting primarily of high value soils. The record indicated the proposed nonfarm dwelling homsite had been irrigated and had been used in a grazing operation. In approving the dwelling, the board found the proposed nonfarm dwelling site was generally unsuitable for the production of farm crops or livestock because it “is different from the balance of the property . . . is rocky and is higher in elevation.” (Edwards, p. 11; emphasis added.) The record in that case included testimony from the applicant’s consultant that virtually every parcel with the same soil type would have similar higher, rocky areas that look different from the rest of the parcel.

The Hearings Officer finds that with this broad interpretation of “generally unsuitable” the board has significantly broadened the pool of potential nonfarm parcels that can be considered “similarly situated” to a proposed nonfarm parcel and therefore can qualify for a nonfarm dwelling. In other words, under the board’s Edwards decision an applicant seeking nonfarm dwelling approval need only show that a portion of his/her parcel is rocky, higher in elevation and appears “different from the balance of the property,” regardless of the size of the parcel or its overall agricultural or tree production capability. It is far from clear that this result was contemplated by the nonfarm dwelling standards established by the administrative rule. However, I find the subject application does not require resolution of this issue because of the unique circumstances it presents. First, in approving the existing nonfarm dwelling in 1999 in CU-99-9, the county determined the entire subject property is generally unsuitable for the production of farm crops and livestock. Second, as discussed in detail in the findings below the record indicates the entire subject property is suitable for and in fact has been used for the production of merchantable tree species. Therefore I find this application presents significantly different facts than those in Edwards. Finally, as discussed above, because the existing and potential nonfarm parcels identified above have predominantly the same soil type as the subject property, I have found many of these parcels may not meet the “generally unsuitable” standard.

7. Potential Lot of Record Dwellings. Under Section 18.16.050(E) and OAR 660-033-130(3), a lot-of-record dwelling may be sited on an EFU-zoned parcel on nonhigh value farmland if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F) and OAR 660-033-130(3)(c), a lot-of-record dwelling may be sited on high value farmland if it meets the criteria for a lot-of-record dwelling on nonhigh value farmland and the Planning Director or Hearings Body finds the parcel cannot practically be managed for farm use “due to extraordinary circumstances inherent in the land or its physical setting,” such as “very steep slopes, deep ravines … or other similar natural or physical barriers.”

In the absence of a lot-of-record analysis on each existing vacant tax lot, it is not possible to
determine how many additional lot-of-record dwellings could be sited on tax lots in the study area. For this reason the county historically has evaluated the potential for lot-of-record dwellings on tax lots in the study area based upon the same factors reviewed for potential nonfarm dwellings – i.e., location, size, soil classification and irrigated acreage. However, in this Hearings Officer’s previous nonfarm dwelling decision in Balcom (CU-99-82), I found that only a small number of tax lots are likely to qualify for lot-of-record dwellings because of the creation and ownership requirements and because of the “extraordinary circumstances” approval criterion. I adhere to that analysis and find that few if any of the tax lots in the study area identified as potential nonfarm parcels are likely to qualify for a lot-of-record dwelling because of the very stringent approval criteria for such dwellings.

8. Existing Land Use Pattern. The Hearings Officer finds from this record that the existing land use pattern in the study area is a mixture of farm, forest and nonresource uses. Rural residential subdivisions on RR-10-zoned land predominate in the study area. However, approximately one-third of the study area consists of very large EFU-zoned tax lots engaged in farm use. The record also indicates some of the Chandler farm and the subject property have been logged in the past. There are few dwellings on EFU-zoned tax lots in the study area and all but one – the nonfarm dwelling approved on the subject property – are located on the very small EFU-zoned tax lots at the southeastern edge of the study area and were approved prior to 1993 when the county began enforcing stricter standards for farm and nonfarm dwellings. For these reasons I find the agricultural component of land use pattern in the study area has been very stable since 1993.

9. Effect on Stability from Proposed Nonfarm Dwelling. The Hearings Officer finds the “stability” analysis focuses on the cumulative impact on the stability of the land use pattern in the study area from approving the proposed nonfarm dwelling. In other words, it asks whether approval of the proposed nonfarm dwelling would “materially alter the stability of the land use pattern in the area” by setting a precedent for approval of additional nonfarm dwellings, thereby driving up the price of land and making it more difficult for the existing farms to operate due to diminished opportunities to expand, purchase or lease farmland and acquire water rights.

Only one nonfarm dwelling has been approved in the study area since 1993 – the existing dwelling on the subject property. Approval of the two proposed nonfarm dwellings would allow three nonfarm dwellings on the subject property in a period of slightly over one year. The subject property is similarly situated to the six large EFU-zoned tax lots surrounding it in terms of size, soil type and lack of significant irrigation. Consequently, the Hearings Officer finds approval of the proposed nonfarm dwellings will set a precedent for approval of nonfarm dwellings on many if not most of the 15 existing and potential nonfarm parcels on these surrounding tax lots.

The remaining issue is whether such approval would materially alter the stability of the agricultural pattern in the study area. The Staff Report argues it would not because of the lack of irrigation and the poor quality soils on the surrounding EFU-zoned tax lots. In other words, staff argues that even if additional nonfarm dwellings were approved based upon approval of the applicant’s proposal, it would not result in the conversion of productive agricultural land or the loss of irrigation water necessary for agricultural production. The Hearings Officer agrees. For this reason I find the applicant has demonstrated approval of the proposed nonfarm dwellings will not materially alter the stability of the land use pattern in the area.3

3 Interestingly, although the “generally unsuitable” nonfarm dwelling standard discussed below addresses the subject property’s suitability for the production of merchantable tree species, the “stability” standard does not address the cumulative impact of approving the proposed nonfarm dwellings considering their impact on forest use in the study area. It is unclear whether this omission was intentional or an oversight.
Based upon the foregoing findings, the Hearings Officer finds the applicant has demonstrated her proposal satisfies this criterion.

iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

2. For the purposes of this subsection only, unsuitability shall be determined with reference to the following:

   a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

   b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

   c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on
surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

FINDINGS: In its 1999 decision approving the existing nonfarm dwelling on the subject property (CU-99-9), the county concluded the entire subject property was generally unsuitable for the production of farm crops and livestock based upon findings that the property: 1) never has been engaged in farm use; 2) never has been irrigated; 3) has soil types which have no agricultural capability when not irrigated; and 4) cannot reasonably be put to productive farm use in conjunction with the adjacent Chandler farm because it has no irrigation or agricultural soils. No appeal was filed from this decision. Therefore, the Hearings Officer finds this decision cannot be collaterally attacked in this proceeding and therefore I am bound by the county’s conclusion that the subject property is generally unsuitable for the production of farm crops and livestock.

For reasons that are not apparent in this record, the 1999 administrative decision did not address the subject property’s suitability for the production of merchantable tree species. The NRCS soil capability data in the record indicates the predominant soil type on the property, Soil Unit 115A, is considered a woodland soil. The record indicates Soil Unit 115A is capable of producing 62-70 cubic feet of wood fiber per acre per year and Soil Unit 144A, present in small quantities on the subject property, is capable of producing 57-66 cubic feet of wood fiber per acre per year. In his comments on the applicant’s proposal, George Ponte, Forest Practices Forester for Forestry, stated the subject property is suitable both in size and productive capacity for commercial forest use. In addition, the Staff Report states the current Forestry reforestation regulations, a copy of which is included in the record, require reforestation following logging on lands capable of producing at least 20 cubic feet of wood fiber per acre per year – well below the capability of the subject property’s soils.4

The record indicates the property was logged for commercial timber between 1994 and 1999 and replanted with thousands of pine seedlings including both ponderosa and lodgepole pine. The record includes two aerial photographs taken in 1985 and 1994 showing that the subject property was covered with heavy timber before it was logged in 1994. At the March 28, 2000, public hearing Kim Russell, a property owner in the area and a potential purchaser of one of the proposed partition parcels, testified that both ponderosa and lodgepole pine are commercial tree species harvested and cut for the production of dimensional lumber.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected

4 If the subject property were under forest assessment its soil capability rating would be presumed suitable for the production of merchantable tree species because it is greater than 20 cubic feet of wood fiber per acre per year.
agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the neither the subject property nor the proposed nonfarm dwellings are not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm.

v. Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.

FINDINGS: The applicants submitted the following information to demonstrate that public services and utilities are adequate:

1. Electricity. The record includes a willing-to-serve letter from Midstate Electric Cooperative dated January 15, 1999, and provided in support of the previous nonfarm dwelling application stating it will provide electric service to the subject property. The Hearings Officer finds it reasonable to assume from this letter that Mid-State also will provide power to the two proposed nonfarm dwellings.

2. Telephone. The record includes a willing-to-serve letter from US West dated January 14, 1999, and provide in support of the previous nonfarm dwelling application stating the company will provide telephone service to the subject property. The Hearings Officer finds it reasonable to assume from this letter that US West Communications also will provide telephone service to the two proposed nonfarm dwellings.

3. Domestic Water. The applicant proposes to provide domestic water to the nonfarm dwellings from new groundwater wells. The applicant submitted two well logs for wells drilled in the vicinity of the subject property, showing water available at depths of 12 to 17 feet.

4. Sewage Disposal. The applicant proposes to provide sewage disposal for the nonfarm dwellings through on-site sewage disposal systems. As discussed above, the Environmental Health Division commented that a septic site evaluation will be required for each new nonfarm parcel and dwelling.

5. Police Protection. Police protection will be provided by the Deschutes County Sheriff’s Office.

6. Fire Protection. The subject property is within the boundaries of the La Pine Rural Fire Protection District. The district did not comment on the subject applications. However, for the reasons set forth in the findings above, incorporated by reference herein, the Hearings Officer finds fire protection services to the proposed nonfarm dwellings will not be adequate because the proposed access road is too narrow and its surface is inadequate to allow fire apparatus access and emergency ingress and egress.

7. Road Access. As discussed above, the applicant proposes access to the nonfarm dwellings from a 12-foot-wide private dirt road that connects with Pine Forest Drive at the subject property’s northern boundary. The county previously found in its 1999 approval of the existing
nonfarm dwelling on the subject property that this road is not a driveway. As discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found this road will not provide adequate access to the proposed nonfarm dwellings because of its substandard width and surface. The applicant has not proposed to improve this road to meet the minimum fire apparatus access standards under the Uniform Fire Code and two-way-traffic traffic standards established by AASHTO and the county.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal does not satisfy this criterion with respect to fire protection and road access.

3. Loss of tax deferral. Except as provided in DCC 18.16.050(I)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

FINDINGS: Although the record includes an Acknowledgment of Tax Consequence form signed by the applicant, the Hearings Officer finds this criterion is not applicable because the subject property is not receiving farm tax deferral.


FINDINGS: This section requires a minimum front yard setback of 40 feet from a local road, a minimum side yard setback of 25 feet and a minimum rear yard setback of 25 feet. The required rear and side yard setbacks increase to 100 feet when a proposed nonfarm dwelling would be built on a property abutting EFU-zoned land currently employed in farm use. As discussed in detail in the findings above, incorporated by reference herein, the proposed nonfarm dwelling homesites are set back more than 100 feet from Pine Forest Drive and from the adjacent Chandler farm boundary. Therefore, the Hearings Officer finds the applicant’s proposal satisfies these standards.

2. Chapter 18.88 Wildlife Area (WA) Combining Zone.

a. Section 18.88.060, Siting Standards

   B. The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992...

FINDINGS: The 1999 decision approving the existing nonfarm dwelling on the subject property (CU-99-9) concluded that the existing private dirt road on the subject property from which the applicant proposes the nonfarm dwellings take access was in existence on August 5, 1992, based
upon an uncontroverted affidavit Emmett Doseir included in the record. In addition, as discussed above the record of these applications includes an aerial photograph of the subject property taken in 1985 showing this road. Therefore, the Hearings Officer finds I am bound by the county’s prior determination concerning the status of this road. The tentative partition plat shows both proposed nonfarm dwelling homesites located within 300 feet of this road. Therefore, I find the proposed nonfarm dwellings can be sited on the property consistent with this criterion.

b. Section 18.88.070, Fencing Standards

A. New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design, which provides equivalent wildlife passage, is approved by the County after consultation with the Oregon Department of Fish and Wildlife:

1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.

2. The height of the fence shall not exceed 48 inches above ground level.

3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

B. Exemptions:

1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.

2. Corrals used for working livestock.

FINDINGS: The applicant has not indicated whether there will be any new fencing on the subject property in conjunction with the proposed nonfarm dwellings. The Hearings Officer finds that if the nonfarm partition and dwellings are approved any new fencing will be subject to these standards.

3. Chapter 18.96, Flood Plain – FP Zone

a. Section 18.96.020, Designated Areas

FINDINGS: This section identifies the areas covered by the FP Zone as those areas designated as “Special Flood Hazard Areas” by a Flood Insurance Study done for Deschutes County. Single-family dwellings are allowed as conditional uses in the FP Zone under specified circumstances. The tentative partition plat shows the approximate location of the FP Zone boundary on the subject property at least 200 feet from the existing dwelling on Proposed Parcel 1 and a much greater distance from the proposed homesites on Parcels 2 and 3. Therefore, the Hearings Officer finds the provisions of the FP Zone are not applicable to the proposed nonfarm dwellings.
IV. DECISION:

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby DENIES the applications for approval of a nonfarm partition and two conditional use permits for nonfarm dwellings.

Dated this ______________ day of June, 2000.

Mailed this ______________ day of June, 2000.

Karen H. Green, Hearings Officer

THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS TIMELY APPEALED.
FINDINGS & DECISION

FILE NUMBERS: MP-00-20 & CU-00-82

APPLICANTS/OWNERS: Lewis and Mary Anderson
PO Box 1498
Sisters, OR 97759

AGENT: David Evans and Associates, Inc
Brian Rankin, Planner
709 NW Wall St. Suite 102
Bend, OR 97701

REQUEST: The applicant is requesting approval of a farm division to create two parcels of 145.51 and 3.23 acres each, respectively, and a conditional use permit to establish a nonfarm dwelling on the new 3.23 acre parcel. The property is located in the Exclusive Farm Use-Sisters/Cloverdale (EFU-SC) subzone and the Floodplain (FP) zone.

STAFF REVIEWER: Chris Schmoyer, Associate Planner.

I. APPLICABLE CRITERIA:

A. Title 18 of the Deschutes County Code, County Zoning
   Chapter 18.16, Exclusive Farm Use (EFU) Zones,
   Sections 18.16.030-070.
   Chapter 18.96, Floodplain (FP) zone
   Chapter 18.84, Landscape Management Combining Zone
   Chapter 18.80, Airport Height Combining Zone

B. Title 17 of the Deschutes County Code, Subdivision and Partition Ordinance
   Chapter 17.22, Approval of Tentative Plans for Partitions
   Section 17.22.020.
   Chapter 17.36, Design Standards
   Sections 17.636.040, 17.36.160, 17.36.170, 17.36.180, 17.36.210, 17.36.260, and 17.36.290.
   Chapter 17.44, Park Development
   Sections 17.44.020 through 17.44.020

Attachment 4: Split Zone, Flood Plain Decisions
Chapter 17.48, Design and Construction Specifications
Section 17.48.170.

C. Oregon Administrative Rules, OAR 660-033-0010 through 0130

D. Title 22, Deschutes County Code, County Uniform Land Use Procedures Ordinance

II. BASIC FINDINGS:

A. LOCATION: The property has an assigned address of 69965 Camp Polk Road, Sisters, Oregon. The parent parcel (148.74-acre farm parcel) was recently reconfigured to its current size and shape by LL-00-30. The parent parcel is identified as tax lot 2800 on County Assessor map # 14-10.

B. ZONING: The property is zoned Exclusive Farm Use in the Sisters/Cloverdale Subzone (EFU-SC) and partially within the Flood Plain (FP) Zone. The entire property is within the Airport Height (AH) combining zone. The majority of the property is within the Landscape Management (LM) combining zone associated with Squaw Creek. The requested non-farm parcel is not in the Special Flood Hazard Area Inundated by the 100-Year Flood, as delineated by the Federal Emergency Management Agency (FEMA), Flood Insurance Rate Map (FIRM) Map # 4107C0040C Map for Deschutes County, Oregon, dated August 16, 1998.

C. SITE DESCRIPTION: The parent parcel has an irregular shape aligned diagonally in a northeast to southwest direction. The majority of the parent parcel is a flat, open, meadow and marshland fed by the meandering Squaw Creek. The highest ground is located in the southern and western portions of the parent parcel. Vegetation in the meadow includes marsh grasses and native sedges. Large ponderosas can be found periodically in the meadow area, but the densest stands are located at the base of a hill near the southern property boundary. As the hill rises the vegetation changes to an increasingly dense ponderosa pine forest that includes sagebrush and periodic western junipers. A dwelling unit (the green house) is located near the northern property boundary, but this dwelling unit will be moved to another parcel (see MH-14464). There are no improved roads on the parent parcel, but it has direct access to the improved Camp Polk Road, a paved rural collector road on the county’s transportation plan map.

The proposed non-farm parcel is in the southern portion of the parent parcel. The proposed non-farm parcel is at the base of a hill where the vegetation changes from wetland and marsh species to a ponderosa forest and then sagebrush and western juniper trees. There are no creeks or sub-irrigated areas on the subject property. This parcel has frontage on Camp Polk Road.

D. PROPOSAL: The applicant requests a farm division of a 148.74-acre parcel that would result in the creation of an isolated, unproductive non-farm parcel that is 3.23 acres and a farm parcel that is 145.51 acres in size. The 148.74-acre farm parcel has 44.64 acres of adjudicated water rights and 19.98 acres of sub-irrigated lands, totaling 64.62 acres of water. None of this water is located on the proposed non-farm parcel. The intended use for the 145.51-acre parcel is a nature preserve owned and managed by the Deschutes Basin Land Trust (DBLT). The 3.23-acre parcel would be a non-farm parcel with a non-farm residential dwelling.

E. SURROUNDING LAND USE: The study area (1 mile radius around a larger parcel containing the parent parcel, map 14-10-00 tax lot 2800 prior to LL-00-30) is comprised...
of a core of EFU-SC-zoned parcels surrounded by RR-10-zoned parcels. This area is a ponderosa pine forest and juniper woodland/range land punctuated with residences and non-farm tax lots in a range of sizes. The study area is bisected by Squaw Creek, which runs east/west then turns south on the parent parcel. The zoning has facilitated a mix of uses in the area, including rural residential uses as well as low intensity grazing and irrigation of pasture on EFU-zoned parcels. The largest block of farmland is to the south and is a total of 316 acres, with 140 irrigated acres. The Junipine Acres rural subdivision is to the north, Indian Ford subdivision is to the west, and Panoramic View Estates and Aspen Lakes Golf Course are to the south and southeast of the parent parcel. No adjacent properties are in farm use.

F. LOT OF RECORD: The 168.83-acre subject property is recognized as a lot of record (LR-99-12).

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

1. **Deschutes County Environmental Health:** A septic site evaluation is required.

2. **Deschutes County Road Department:** The applicant is to meet the following conditions if this land use request is approved:
   a. The partition plat is to be prepared by a licensed land surveyor. The plat must conform to Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code.
   b. All easements of record and existing rights-of-way shall be noted on the final mylar.
   c. The applicant shall obtain an access permit for each parcel taking direct access form Camp Polk Road. (I could not find an access permit for this property in our records.)
   d. The applicant could, as an alternative, obtain a single access permit to serve both parcels. This would require that an access easement be dedicated and recorded to provide permanent access to Camp Polk Road usable for both parcels.
   e. A third alternative would be for the two parcels to take access on Camp Polk road at the same location that the two parcels to the east created by MP-00-19 will take access onto Camp Polk Road. The access to the east was already approved under Access Permit Number A-9873, a copy of which is attached. Use of this existing access will require the dedication of an access easement serving these two parcels be placed on the driveway of the parcel created by MP-00-19 having frontage and access on Camp Polk Road.
   f. Any private driveway taking access from Camp Polk Road shall have a turnaround so that vehicles don’t have to back onto Camp Polk Road or a private driveway/roadway taking access to the county road.
   g. Whatever means of access is used to connect with Camp Polk Road shall receive the approval of the local fire department protecting the area as to accessibility for emergency vehicles.
h. The maintenance of the private road or driveway used to access Camp Polk road shall be the responsibility of the private parties utilizing the driveway.

i. Address numbers, once assigned, shall be located at the entrance to the private road/driveway serving said properties from Camp Polk Road.

Note: Camp Polk Road is classified as a rural collector road by the Deschutes County Transportation Plan. Camp Polk Road is a paved two lane wide road that is maintained by Deschutes County. Camp Polk Road is a paved two lane wide road that is maintained by Deschutes County. The average daily traffic volume (ADT) on Camp Polk Road was 788 at the Squaw Creek Bridge in 1999. The ADT at this same location was 391 in 1995, 492 in 1991 and 362 in 1980. The proposed land use adding two new dwelling will add some 16 to 20 additional motor vehicle trips to Camp Polk Road each day.

**STAFF COMMENT:** With the exception of items (d) and (e) above, a condition of approval will require that the items listed above be satisfied prior to signing of the final plat by the County Road Department.

3. **Property Address Coordinator:** The address of record for this property is: 69965 Camp Polk Road. This is subject to change. If this application is approved the applicants shall contact the property address coordinator for new addresses.

4. **Deschutes County Assessor:** The subject property is currently under deferral.

5. **Watermaster District - 11:** Water rights information should be coordinated through Kyle Gorman at the Watermaster’s office.

6. The following agencies either had no comment or did respond to the notice: Deschutes County Building Division, Cloverdale Fire Department, Sisters-Camp Sherman Fire Department and Squaw Creek Irrigation District.

H. **PUBLIC COMMENTS:** Staff did not receive any written comments from surrounding property owners who received notice regarding this application.

I. **REVIEW PERIOD:** This application was deemed technically complete on August 15, 2000.

The applicant has also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit dated July 31, 2000, that indicates that notice was posted where it can be clearly seen from Camp Polk Road on July 28, 2000.

III. **CONCLUSIONARY FINDINGS:**

A. **Chapter 17.22. Approval of Tentative Plans for Partitions.**

1. **Section 17.22.020. Requirements for Approval.**

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

Attachment 4: Split Zone, Flood Plain Decisions
1. Proposal is in compliance with Oregon Revised Statutes Chapter 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 land use on the property or would otherwise create a non-conforming use on any of the newly described parcels with respect to an existing structure or use.

FINDING: The provisions of ORS Chapter 92 are implemented through Title 17 of the Deschutes County Code. Therefore, if the proposed partition complies with Title 17 it will comply with ORS Chapter 92. There are no previous land use approvals on this property with which this partition will conflict.

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

FINDING: Easements affecting the subject property are shown on the minor partition map. The applicant has submitted a title report in support of this application. There are no public access easements of record on this property with which this proposal would conflict. Staff finds this criterion to be satisfied.

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.

FINDING: As shown on the Proposed Farm Division Map, each parcel would have 50 feet of frontage on Camp Polk Road, a public road. No structures or roads are proposed for the 145.51 acre DBLT parcel. The dwelling unit on the 3.23 acre non-farm parcel would be accessed via a driveway connecting with Camp Polk Road. The access to the partition would be from Camp Polk Road, a paved rural collector road. There are no internal roads or streets proposed. Staff finds that the proposal satisfies this criterion.

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

FINDING: The access to the partition would be from a driveway connecting with Camp Polk Road. In this case, the County Road Department is the appropriate agency. A condition of approval will require that access permits be secured from the County Road Department prior to signing of the final plat by the County Road Department.

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

FINDING: The farm division would create one new parcel. The applicant indicates that the dwelling unit currently on the subject property is being moved to another location (see permit #MH-14464). The subject parcel is intended to be used as a residence and the other for a nature preserve. The intended uses, sizes, natural hazards, and topography do not create barriers to developing the parcels for these uses.
1. **Parcel Size.** The proposed parcels meet the minimum lot size established for the EFU-SC subzone and are large enough to satisfy their intended purposes. One parcel would be 145.51 acres with 64.62 acres of water and the other would be 3.23 acres with no water. The intended use for the 145.51-acre parcel is a nature preserve. The intended use for the 3.23-acre subject property is for a non-farm dwelling. All parcels are of sufficient size to meet all setback requirements.

2. **Natural Hazards.** There are no natural hazards on or around the subject properties that will present obstacles to developing them into their intended uses.

3. **Topography.** The entire parent parcel of land is relatively level. The exceptions occur in the southern portion of the parcel where the non-farm parcel is proposed and in the western portion of the parent parcel where another water drainage is located. Topography would not present obstacles to using the parcels as proposed.

4. **Access.** Access to the non-farm parcel would be provided by one driveway connecting with Camp Polk Road. This parcel would have more than 50 feet of frontage on Camp Polk Road. The farm parcel would also have more than 50 feet of frontage on Camp Polk Road. The applicant’s burden of proof statement indicates that the farm parcel would not have any improved roads since the parcel is to be managed as a nature preserve.

Based on the above findings, staff finds that the proposal satisfies this criterion.

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

**FINDING:** Required utilities including electricity (Central Electric Cooperative), phone service (US West Communications), and fire protection (Sisters-Cloverdale Rural Fire Protection District) will be supplied to the non-farm parcel. Electricity and phone service are not required on the farm parcel. Letters from these utilities stating their ability to serve the properties are included in the record. The subject property is outside the Sisters city limits and therefore will receive police protection from the Deschutes County Sheriff’s Department. Domestic water on the non-farm parcel will be provided by a private well. No domestic water will be required on the farm parcel. Based on the information submitted with the application, staff finds that the proposal satisfies this criterion.

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.**

**FINDING:** The tentative partition map shows adjudicated water rights and sub-irrigated areas. Combined, there are 64.62 acres of water on the farm parcel. No adjudicated water or sub-irrigated areas are present on the non-farm parcel. The applicants will be required to meet all Oregon Water Resources Department Water Rights Division requirements for the platting of the new parcels. A condition of approval will require that an authorized representative signature from the office of the Watermater-District 11 appear along with the appropriate water certificate or permit number on the final plat. In addition, the 145.51 acre farm parcel needs to have a minimum of 63 irrigated acres prior to final plat approval.
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 Title 18 of the Deschutes County Code, can be sited consistent with the requirements of Chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under Section 17.28.010 (C) of this chapter.

FINDING: The subject property is not within one-half mile of a surface mining zone.

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 sections 17.36.300, Public Water Supply System, and 17.48.160, Road Development Requirements for Subdivisions.

FINDING: The proposed partition does not constitute series partitioning as the subject property has not been the part of a previous partition or subdivision. Staff finds this criterion does not apply.

B. Chapter 17.36. Design Standards.

1. 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.

FINDING: The non-farm dwelling would be accessed via a driveway connecting with Camp Polk Road, a paved, rural collector road. The farm parcel would have more than 50 feet of frontage on Camp Polk Road, but as previously explained it is not expected to have an improved access. Comments from the County Road Department did not identify any need for improvements or additional right-of-way for Camp Polk road. Staff believes that the non-farm dwelling would not create sufficient traffic to justify additional right of way or improvements to Camp Polk Road. Based on the above findings, staff finds that the proposal satisfies this criterion.

2. 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 twelve 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 ten feet in width.

**FINDING:** The applicant’s burden of proof statement states that electricity and phone service to the non-farm dwelling would be from an above-ground utility pole located on Camp Polk Road. These services would be located in a utility easement when the alignment is determined by the power and phone companies. There are no other utility easements on the property that would interfere with the new easements. No other utilities are required. Utility services exist to serve the land division as each proposed parcel adjoins Camp Polk Road where public utility lines are located. All utility easements shall be shown and recorded on the final plat.

3. **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 Titles 18 through 21 of this code, with the following exceptions:

   A. In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and 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.

**FINDING:** The orientation and width of the parcels are appropriate for the uses proposed in this application. Residential uses are not associated with severe visual, noise, and odor impacts, and in this case, none of these impacts are expected to be created by the proposed non-farm parcel. The sizes of, and soil types present on, the non-farm parcel are sufficient to permit adequate sewage disposal. A septic site evaluation will be completed for the non-farm parcel prior to finalizing the farm division.

The County Environmental Health Division has submitted comments, which indicate a septic site evaluation is required. A condition of approval will require that a septic site evaluation be completed for the 3.23 acre nonfarm parcel prior to signing of the final plat by the Deschutes County Environmental Health Director. Staff finds that the sizes of, and soil types present on, the non-farm parcels are sufficient to permit adequate sewage disposal.

4. **Section 17.36.180. Frontage.**

   A. Each lot or parcel shall abut upon a public 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 Roads or Bureau of Land Management roads.
   B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.
**FINDING:** The proposed configuration provides 50 feet of road frontage for each parcel. The proposed non-farm parcel boundary is nearly a right angle to Camp Polk Road. Based on the above findings, staff finds that the proposal satisfies this criterion.


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

**FINDING:** The tentative partition plat proposes two parcels of 145.51 and 3.23 acres respectively. The plat shows both parcels are oriented in an east-west direction. A dwelling is not proposed for the 145.51 acre farm parcel at this time, staff believes the large size of the parcel will provide adequate area for the placement of a dwelling in a location that would satisfy solar requirements. Based on size of the parcels, staff finds the proposal can satisfy this criterion. Since the proposed nonfarm dwelling on the nonfarm parcel is situated only 30 feet from the north property line, a condition of approval will require that the nonfarm dwelling meet solar setback requirements.

6. **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.

**FINDING:** The applicant’s burden of proof states that in the case of an emergency, emergency vehicles would be able to gain access via the driveway on the proposed non-farm parcel, from other neighboring driveways, or by cutting the barbed wire fence. As stated previously, each parcel will front on Camp Polk Road. Due to the topography, existing vegetation and the presence of Squaw Creek on the subject parcel and surrounding properties, it is not practicable to create additional accesses beyond those proposed herein. Based on the above findings, staff finds that the proposal satisfies this criterion.

7. **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 Section 17.36.300, individual wells for subdivisions are allowed when parcels are larger than ten acres.
FINDING: The applicant proposes to provide domestic water from a private well on the non-farm parcel. No wells are proposed for the farm parcel since it is intended for use as a nature preserve. The record includes two well logs documenting that potable water is available within one mile of the proposed land division. The well log reports provided with this application indicate that the depths of the completed wells on tax lot 600 on Assessor’s Map # 14-10-27D as 165 feet, tax lot 1200 on Assessor’s Map # 14-10-27 as 315 feet and tax lot 1600 on Assessor’s Map # 14-10-26B as 500 feet. Based on the record, staff finds this criterion is satisfied.

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 $350.00 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.

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, 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 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 deposited with the County Treasurer and be sued for acquisition of suitable are 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 of County Commissioners and/or applicable park district.

FINDING: The subject property is outside the Sisters UGB in an area that is not planned for parks. The applicant is willing to pay the required fee in lieu of park dedication. The applicant shall pay a parks fee of $350 for each new parcel. A total of $350 shall be paid to the county for park development prior to final plat approval.

D. Chapter 17.48. Design and Construction Standards.

1. 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.

FINDING: Both of the proposed parcels will be provided direct frontage along Camp Polk Road, a paved county rural collector road. No new roads are proposed as part of this application.

Title 18 of the Deschutes County Code, the County Zoning ordinance.

A. Chapter 18.16. Exclusive Farm Use (EFU) Zones.


C. Non-farm dwelling and accessory uses thereto.

FINDING: The applicant is seeking approval of a nonfarm dwelling on a 3.23 acre nonfarm parcel created by the concurrent application for partition. A non-farm dwelling is permitted as a conditional use in the EFU-SC zone subject to meeting all the criteria for approval contained in DCZO chapter 18.16.


G. Non-farm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

   a. The Planning Director or Hearings Body shall make findings that:

      i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

FINDING: This application proposes a farm division on a 148.74-acre farm parcel to establish a non-farm dwelling on a 3.23-acre non-farm parcel and create a 145.51-acre farm parcel to be used as a nature preserve. The parcel is zoned EFU-SC with AH, LM, and FP overlays, but the FP overlay does not apply to the proposed non-farm parcel.

The predominate land use (as defined as the majority of acres and parcels) in the study area consists of rural subdivisions and parcels zoned RR-10. Within the study area (defined as a one mile radius around map 14-10-00, tax lot 2800 prior to the boundary line adjustment LR-00-30), the EFU-zoned parcels are few in number (20 parcels), average 62 acres in size, and are used for low intensity cattle and horse grazing and pasture irrigation.

All parcels surrounding the subject property do not appear to be involved in farming activities. The applicant’s burden of proof statement indicates that the Deschutes Basin Land Trust (DBLT) parcel (the remaining farm parcel after subject property is divided from the parent parcel), is not, and will not be used for any type of farming activity. Adjacent parcels are either in low intensity agricultural uses such as grazing a small
number of livestock, or are not in any type of agricultural use. Prior to this application and the boundary line adjustment LL-00-30, the parent parcel was part of a 381-acre parcel (map number 14-10-00, tax lot 2800 prior to LL-00-30) used for a residence and to graze two horses. No significant farming or grazing has taken place on the parent parcel and the proposed non-farm parcel (subject property) is an area that has not been irrigated or intensively grazed due to poor soil conditions and topographic constraints.

There are very few EFU-zoned parcels in the study area, and therefore, there are few opportunities for the proposed non-farm dwelling to interfere with accepted local farming practices. The level of farming and grazing on EFU-zoned parcels in the study area is not intensive, and consists mostly of flood and sprinkler irrigation of pasture for horse grazing. There are a total of 20 EFU-zoned parcels within the study area (see the attached Table 1). Of these EFU-zoned parcels, 65 percent (13 parcels) have no tax deferral. Of these, three parcels are non-farm parcels (defined as having no water rights and having a dwelling), and the remaining 10 parcels have no water rights and no dwelling units. Twenty five percent (five parcels) of the 20 EFU-zoned parcels are farm parcels (defined as having tax deferral and water rights), and four of these have dwelling units. One new dwelling has been built on EFU-zoned land in the study area since 1990. There are also three parcels that have been subject to approved conditional use since 1995.

Within the study area, low intensity farming consisting of irrigating pasture grasses takes place on three parcels, irrigating pasture grasses combined with horse grazing takes place on two parcels, and what appear to be forestry operations have taken place on one parcel.

The significant distances between the farm uses and proposed non-farm dwelling suggest that the non-farm dwelling would not significantly conflict with farming practices in the area. The practices associated with seeding and irrigating pastures for horse and cattle grazing are relatively low impact compared with other farming activities. The farming and horse operations in the study area could best be described as small family or hobby operations and are not intensive commercial operations. Typical farming practices include disking and seeding fields, irrigating fields with sprinklers or flooding, transporting livestock to and from fields, and allowing livestock to graze on pastures. Of the six farm parcels (those with water rights and assumed/observed to be used as irrigated pasture), 67 percent (or four parcels) are greater than 0.5 miles away from the subject property. These distances would reduce any noise, dust, and odor impacts generated by farming and grazing operations observable at the subject property. Also, most of the parcels engaged in farming or forest operations (67 percent of the six parcels) include a dwelling unit. This suggests that the dwellings do not change or increase the cost of the farming practices associated with these land uses.

On tax lot 1700, map 14-10-00, the presence of cleared areas, aged tree stumps, slash piles, young trees, and primitive dirt roads were assumed to be associated with past forest operations. However, no equipment or recent signs of timber harvesting were observed during the inspection of the surrounding properties. The proposed homesite would be at least 30 feet the adjoining parcel to the north and more than 250 feet from all other adjoining parcels. Only one adjoining parcel (south across Camp Polk Road) is in farm deferral, but does not appear to be involved in farming activities. The applicant indicated this property is used for horse grazing.

There are no adjoining lands devoted to forest use. Based on this analysis, staff finds that the proposed dwelling and its associated activities will not force a significant change
in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

II. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a), (3)(d) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

FINDING: Rural Residential and non-farm uses are commonplace in the area surrounding the subject property, but this has not been a detriment to agriculture since the non-farm dwelling units are located on unproductive lands typically in wooded hilly
areas, and are located in lands zoned for rural residential usage. Within the study area, encompassing approximately three square miles, there are only twenty (20) EFU-zoned tax lots. Only approximately 45 percent of the land inside the study area is zoned EFU-SC (approximately 920 EFU acres and a total of 2,010 inside the study area). There are also hundreds of subdivision lots zoned RR-10. There are seven residences on the EFU-zoned parcels. The oldest residence was constructed in 1900 and most recent in 1996.

The EFU-zoned tax lots in the study area are categorized as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total tax lots</td>
<td>20</td>
<td>100%</td>
</tr>
<tr>
<td>Tax lots with dwelling units</td>
<td>7</td>
<td>35%</td>
</tr>
<tr>
<td>Tax lots with 63 acres of water rights</td>
<td>2</td>
<td>10%</td>
</tr>
<tr>
<td>Public lands</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Parcels below 20 acres</td>
<td>12</td>
<td>60%</td>
</tr>
<tr>
<td>Parcels in private ownership</td>
<td>19</td>
<td>95%</td>
</tr>
<tr>
<td>Vacant parcels in private ownership</td>
<td>6</td>
<td>30%</td>
</tr>
</tbody>
</table>

As shown, non-farm residences are common in the study area, but this is due to the large number of parcels zoned Rural Residential, not due to conversion of farmable land to non-farm uses. The potential for creating a large number of new farm and non-farm parcels is low within the study area. More than half of the tax lots in the area are less than 20 acres in size. Thirty five percent of the tax lots have dwelling units and the same percent are in farm tax deferral. Only two parcels satisfy the minimum water requirement of 63 acres for a farm parcel in the EFU-SC zone. Five percent of the EFU parcels are in public ownership. Thirty percent are vacant parcels in private ownership. A minority of parcels would meet the minimum size criteria for non-farm parcels and even fewer parcels are vacant and in private ownership.

As previously discussed, the predominant land use in the surrounding area is rural residential use on subdivision lots zoned RR-10. This land use pattern is stable and the low number of parcels capable of being partitioned or subject to a farm division would not create additional instability in the land use pattern.

Based on these findings, staff concludes that the approval of this application would not materially alter the stability of the overall land use pattern of the area, nor would it set a precedent that may lead to the creation of other non-farm dwellings or parcels to the detriment of agriculture in the area. For the foregoing reasons, staff finds approval of the proposed nonfarm dwellings will not destabilize the agricultural character of the surrounding area.

iii. The proposed non-farm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

2. For the purposes of this subsection only, unsuitability shall be determined with reference to the following:
   a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in
conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable." If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

FINDING: The applicant is proposing a farm division that would divide the most steep, rocky, and unproductive portion from the larger, flat, more agriculturally productive portion of the parent parcel. The proposed non-farm parcel consists of the relatively unproductive soil, would not include areas in the meadow, have no adjudicated water rights or sub-irrigated lands, and is one of the only portions of the parent parcel that has significant slopes.

The non-farm parcel would be located at the base of a hill that is above the meadow area of the parent parcel. The homesite is located in an moderately wooded ponderosa forest that blends into a sagebrush and juniper field to the south and east. This portion of the parcel has never been irrigated or cultivated. The current owners do not allow grazing on this portion of the property because it disturbs the soils and there is very little vegetation for grazing.

According to the Natural Resource Conservation Service maps, the proposed non-farm parcel is composed of soil mapping unit 155E, Wanoga Sandy Loam, 30-50 percent slopes. The NRCS capability rating is 6E. Unit 155E is best used for livestock grazing and woodland. DCZO 18.04.548 does not categorize this soil as a high value farmland if it is irrigated. This soil is not rated for agricultural production by the NRCS due to many limitations including cold climate and soil temperatures resulting in a short growing season, very slow reestablishment of native vegetation, high erosion potential, and difficulty in forming ponds for irrigation. Forest uses are also limited for similar reasons but also due to undesirable plant species competing with natives, low subsoil fertility, and moderate susceptibility to compaction.

Staff finds these findings to demonstrate that the proposed non-farm dwelling is situated on a proposed nonfarm parcel that is generally unsuitable for the production of farm...
crops, livestock, and merchantable tree species and that the portion of the parcel is also unsuitable due to the terrain surrounding the parcel.

**iv. The proposed non-farm dwelling is not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the non-farm dwelling or the agriculture of the area.**

**FINDING:** This criterion is not applicable because the subject property is not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm.

**v. Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.**

**FINDING:** The applicants submitted the following information to demonstrate that public services and utilities are adequate:

1. **Electricity:** Electricity in the area is provided by Central Electric Co-Op. An intent to serve letter has been submitted with this application.

2. **Road access:** Access would be taken by connecting a driveway on the non-farm parcel with Camp Polk Road. The farm parcel will be operated as a preserve and will not have developed roads. Both parcels would have 50 feet of road frontage along Camp Polk Road.

3. **Telephone:** Phone service in the area is provided by U.S. West. An intent to serve letter has been submitted with this application.

4. **Domestic water:** The applicant has indicated that water service for the nonfarm parcel will be provided through an individual private well. The record includes two well logs documenting that potable water is available within one mile of the proposed land division. The well log reports provided with this application indicate that the depths of the completed wells on tax lot 600 on Assessor’s Map # 14-10-27D as 165 feet, tax lot 1200 on Assessor’s Map # 14-10-27 as 315 feet and tax lot 1600 on Assessor’s Map # 14-10-26B as 500 feet.

5. **On-site sewage disposal:** The applicant proposes an on-site septic system for on site sewage disposal.

6. **Fire protection:** The subject property is in the Sisters-Camp Sherman Rural Fire Protection District and is currently served by a newly built station located at the end of Wilt Road (less than five miles from the subject property).

7. **Police protection:** Deschutes County Sheriff.

Based on these findings and the applicant’s ability to conform to the conditions of approval specified above, staff finds the proposal can meet this criterion.
3. Loss of tax deferral. Except as provided in DCC 18.16.050(I)(2), pursuant to ORS 215.236, a non-farm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

FINDING: Staff finds that these criteria are applicable because the site is receiving special assessment for farm use. The applicant has signed the Acknowledgement of Tax Consequences Form. As a condition of approval, the applicant will be required to submit documentation that the proposed 3.23 acre nonfarm parcel has been disqualified for special assessment for farm use and that any penalties have been paid and that the documentation be submitted to the Planning Division prior to receiving final approval of the partition.

A. The front yard 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 an arterial.

B. Each side yard shall be a minimum of 25 feet, except that for nonfarm dwellings proposed on parcels or lots with side yards adjacent to a property currently employed in farm use, the side yard shall be a minimum of 100 feet.

C. Rear yards shall be a minimum of 25 feet, except that for nonfarm dwellings proposed on parcels or lots with rear yards adjacent to a property currently employed in farm use, the rear yard shall be a minimum of 100 feet.

FINDING: This section of the DCZO requires a minimum front yard of 40 feet from a local road, 25 feet from side property lines, and 25 feet from a rear property line. These required yards may increase to 100 feet from the side and the rear property lines if a non-farm dwelling is proposed and the property on which it will be located abuts land currently employed in farm use. The proposed homesite on the non-farm parcel is 30 feet from the adjoining parcel to the north (DBLT parcel) and is more than 250 feet from the other adjoining parcels and Camp Polk Road, thus, meeting this standard. These setbacks will be adhered to as a condition of approval of the nonfarm dwelling conditional use permit for each parcel.

5. Section 18.16.080. Stream Setbacks.

FINDING: This section of the DZCO requires septic tanks and structures to be set back 100 feet from the ordinary high water mark along a stream or lake. The proposed setback for the structure and septic tank exceeds this standard, and is in excess of 400 feet from the Special Flood Hazard Area (100 year flood area), associated with Squaw Creek, designated in the FEMA, FIRM Map # 4107C0040C Map for Deschutes County, Oregon, dated August 16, 1998. Staff finds this criterion to be satisfied.


B. Farm divisions. A farm division shall be subject to the minimum lot size requirements of section 18.16.060(A) and all applicable requirements of Title 17. Notwithstanding the provisions of section 18.16.060(B), partitions establishing parcels less than the EFU minimum lot size in EFU areas may be permitted to create one new parcel for a non-farm dwelling that has been approved under subsection 18.16.050(G), provided that the remaining farm parcel meets the minimum established by the EFU subzones.

FINDING: The minimum lot size requirements of section 18.16.060(A) is as set forth in the various EFU subzones. Section 18.16.065(C) provides that a farm division in the Sisters/Cloverdale subzone must result in parcels, which have at least sixty-three (63) acres of irrigated land. The proposed parcel for a nonfarm dwelling would be approximately 3.23 acres in size. The remainder of the property, approximately 145.51 acres would remain as a farm parcel with 64.62 acres of irrigated land. Compliance with the applicable standards of Title 17 has been addressed above. A conditional use
permit for a nonfarm dwelling on the proposed farm parcel has been filed concurrent with
the partition application, with those approval standards addressed above. The applicant
is not seeking approval of a farm related dwelling on the proposed farm parcel with this
application.

B. Chapter 18.80 Airport Height Combining A-H Zone

FINDING: The applicant’s burden of proof statement indicates that no structures over
35 feet are proposed and other characteristics of the site, such as vegetation, would
remain in their current state. The nonfarm dwelling and future structures will be subject
to the requirements of this section.

C. Chapter 18.96 Flood Plain – FP Zone

FINDING: The proposed location for the non-farm dwelling and septic tank is in excess
of 200 feet horizontally, and approximately 30 feet vertically, from the Special Flood
Hazard Area (100 year flood area) designated on the FEMA, FIRM Map # 4107C0040C
Map for Deschutes County, Oregon, dated August 16, 1998. Staff finds this section is
not applicable to this matter, thus, does not apply to this request.

D. Chapter 18.84 Landscape Management Combining Zone:

1. Section 18.84.040. Uses permitted conditionally.

Use permitted conditionally in the underlying zone with which the LM
Zone is combined shall be permitted as conditional uses in the LM Zone,
subject to the provision of this chapter.

FINDING: The proposed nonfarm dwelling, File CU-00-82, is located within the
Landscape Management Combining Zone. Therefore, a condition of approval will
require that approval of a Landscape Management Site Plan Review be obtained prior to
issuance of building and septic permits for the nonfarm dwelling associated with file CU-
00-82.

Conformance With The Comprehensive Plan:

The applicant has demonstrated conformance with the applicable zoning standards,
which must, as a matter of law, implement the adopted comprehensive plan. The
applicant does not believe, and staff concur, that there are any comprehensive plan
policies, which are directly applicable to this application.

IV. CONCLUSION:

Based upon the above Findings of Fact and Conclusionary Findings, staff concludes the
proposed partition plat and conditional use permit for the establishment of a nonfarm
dwelling on the new nonfarm parcel can meet all applicable criteria for approval. Staff
finds compliance with the following conditions of approval will ensure the proposed
partition satisfies the applicable standards and criteria for approval and recording of a
partition plat.

Other permits may be required. The applicant is responsible for obtaining any necessary
permits from the Deschutes County Building Division, the Deschutes County
Environmental Health Division and the Deschutes County Road Department, as well as any required state and federal permits.

V. DECISION:

APPROVAL, subject to the following Conditions of Approval.

VI. CONDITIONS OF APPROVAL:

1. This approval is based upon the plan submitted. Any substantial changes in the plan submitted for final approval will require a new application.

2. The final plat shall be prepared in accordance with Title 17 of the County Code. The plat must be prepared by a licensed land surveyor. All property corners and public rights-of-way must be located and monumented, and a final map submitted to the County Surveyor. The final plat shall include the exact lot sizes for each of the parcels. In addition, the 145.51 acre farm parcel needs to have a minimum of 63 irrigated acres prior to final plat approval.

3. The applicant shall disqualify the 3.23 acre nonfarm parcel from farm tax deferral and all other penalties or fees imposed by the County Assessor as a result of disqualification shall be paid. Evidence that all taxes due have been paid shall be submitted to the Planning Division prior to finalization of the plat.

4. Prior to signing of the final plat by the County Road Department, the following must be satisfied:

   a. The partition plat is to be prepared by a licensed land surveyor. The plat must conform to Oregon Revised Statutes Chapter 92 and Title 17 of the Deschutes County Code.
   b. All easements of record and existing rights-of-way shall be noted on the final mylar.
   c. The applicant shall obtain an access permit for each parcel taking direct access form Camp Polk Road.
   d. Any private driveway taking access from Camp Polk Road shall have a turnaround so that vehicles don’t have to back onto Camp Polk Road or a private driveway/roadway taking access to the county road.
   e. Whatever means of access is used to connect with Camp Polk Road shall receive the approval of the local fire department protecting the area as to accessibility for emergency vehicles.
   f. The maintenance of the private road or driveway used to access Camp Polk road shall be the responsibility of the private parties utilizing the driveway.
   g. Address numbers, once assigned, shall be located at the entrance to the private road/driveway serving said properties from Camp Polk Road.

5. Prior to signing of the final plat by the Deschutes County Environmental Health Director, a septic site evaluation is required for the 3.23 nonfarm parcel.

6. The applicant will be required to meet all Oregon Water Resources Department Water Rights Division requirements for the platting of the new parcels. An authorized representative signature from the office of the Watermater-District 11 shall appear along with the appropriate water certificate or permit number on the final plat.
7. The applicant shall pay to the County Treasurer the sum of $350 for the parks dedication fee as required by Chapter 17.44 of Title 17. Documentation that this has occurred shall be submitted to the planning Division prior to signing of the final plat.

8. All advalorem 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 the County Treasurer.

9. Prior to the issuance of building and septic permits for the nonfarm dwelling (CU-00-82), approval of an application for Landscape Management Site Plan Review shall be obtained.

10. A new address for the nonfarm parcel shall be obtained from the Deschutes County Property Address Coordinator for the 3.23 nonfarm parcel.

11. The nonfarm dwelling shall comply with the solar setback requirements of DCC Section 18.116.

VII. DURATION OF APPROVAL:

The applicant shall meet all conditions of this approval and submit an application for final plat approval and obtain building permits for the nonfarm dwelling within two (2) years from the date this decision become final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest.

DESHUTES COUNTY PLANNING DIVISION

Written By: Chris Schmoyer, Associate Planner

Reviewed By: Kevin M. Harrison, Principal Planner
DECISION OF DESCHUTES COUNTY HEARINGS OFFICER


APPLICANT/PROPERTY OWNER: Lower Bridge Road, LLC
205 E. 11th Street, Suite 200
Vancouver, Washington 98660

APPLICANT'S ATTORNEY: Tia M. Lewis
Schwabe, Williamson & Wyatt
360 S.W. Bond Street, Suite 500
Bend, Oregon 97702

APPLICANT'S ENGINEER: Keith D'Agostino, P.E.
D'Agostino Parker LLC
185 S.W. Shevlin-Hixon Drive, #101
Bend, Oregon 97702

PROPOSAL: The applicant requests conditional use, tentative subdivision plan, and SMIA site plan approval to establish a 19-lot residential planned development on three parcels totaling 157 acres, zoned RR-10, EFU, FP, LM, and SMIA, and located between the Deschutes River and Lower Bridge Way west of Terrebonne.

STAFF REVIEWER: Will Groves, Senior Planner

HEARING DATES: May 21 and June 23, 2015

RECORD CLOSED: July 28, 2015

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 17.08, Definitions and Interpretation of Language
   * Section 17.08.030, Definitions Generally

2. Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans
   * Section 17.16.100, Required Findings for Approval
   * Section 17.16.105, Access to Subdivisions

3. Chapter 17.24, Final Plat
   * Section 17.24.105, Final Plat Review
   * Section 17.24.110, Conditions of Approval

Attachment 4: Split Zone, Flood Plain Decisions
4. Chapter 17.36, Design Standards

* Section 17.36.020, Streets
* Section 17.36.040, Existing Streets
* Section 17.36.050, Continuation of Streets
* Section 17.36.060, Minimum Right of Way and Roadway Width
* Section 17.36.070, Future Resubdivision
* Section 17.36.080, Future Extension of Streets
* Section 17.36.100, Frontage Roads
* Section 17.36.110, Streets Adjacent to Railroads, Freeways and Parkways
* Section 17.36.120, Street Names
* Section 17.36.130, Sidewalks
* Section 17.36.140, Bicycle, Pedestrian and Transit Requirements
* Section 17.36.150, Blocks
* Section 17.36.160, Easements
* Section 17.36.170, Lots – Size and Shape
* Section 17.36.180, Frontage
* Section 17.36.190, Through Lots
* Section 17.36.200, Corner Lots
* Section 17.36.210, Solar Access Performance
* Section 17.36.220, Underground Facilities
* Section 17.36.230, Grading of Building Sites
* Section 17.36.250, Lighting
* Section 17.36.260, Fire Hazards
* Section 17.36.270, Street Tree Planning
* Section 17.36.280, Water and Sewer Lines
* Section 17.36.290, Individual Wells
* Section 17.36.300, Public Water System

4. Chapter 17.44, Park Development

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

5. Chapter 17.48, Design and Construction Specifications

* Section 17.48.160, Road Development Requirements – Standards
* Section 17.48.180, Private Roads

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

1. Chapter 18.04, Title, Purpose and Definitions

* Section 18.04.030, Definitions

2. Chapter 18.16, Exclusive Farm Use (EFU) Zone

* Section 18.16.020, Uses Permitted Outright
* Section 18.16.025, Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 or DCC Section 18.16.042 and a Review Under DCC Chapter 18.124 Where Applicable
* Section 18.16.030, Conditional Uses Permitted – High Value and Nonhigh Value Farmland
* Section 18.16.031, Conditional Uses On Nonhigh Value Farmland Only

3. Chapter 18.52, Surface Mining (SM) Zone
* Section 18.52.030, Uses Permitted Outright
* Section 18.52.060, Dimensional Standards

4. Chapter 18.56, Surface Mining Impact Area Combining (SMIA) Zone
* Section 18.56.010, Purpose
* Section 18.56.030, Application of Provisions
* Section 18.56.050, Conditional Uses Permitted
* Section 18.56.060, Dimensional Standards
* Section 18.56.070, Setbacks
* Section 18.56.080, Use Limitations
* Section 18.56.100, Site Plan Review and Approval Criteria
* Section 18.56.120, Waiver of Remonstrance
* Section 18.56.140, Exemptions

5. Chapter 18.60, Rural Residential (RR-10) Zone
* Section 18.60.030, Conditional Uses Permitted
* Section 18.60.040, Yard and Setback Requirements
* Section 18.60.050, Stream Setback
* Section 18.60.060, Dimensional Standards
* Section 18.60.070, Limitations on Conditional Uses
* Section 18.60.080, Rimrock Setback

6. Chapter 18.84, Landscape Management (LM) Combining Zone
* Section 18.84.020, Application of Provisions
* Section 18.84.030, Uses Permitted Outright
* Section 18.84.040, Uses Permitted Conditionally
* Section 18.84.050, Use Limitations
* Section 18.84.060, Dimensional Standards
* Section 18.84.080, Design Review Standards
* Section 18.84.090, Setbacks
* Section 18.84.095, Scenic Waterways

7. Chapter 18.96, Flood Plain (FP)
* Section 18.96.010, Purpose
* Section 18.96.020, Designated Areas
* Section 18.96.030, Uses Permitted Outright
* Section 18.96.040, Conditional Uses Permitted
* Section 18.96.060, Limitations on Conditional Uses

Attachment 4: Split Zone, Flood Plain Decisions
* Section 18.96.070, Application for Conditional Use
* Section 18.96.090, Yard and Setback Requirements
* Section 18.96.100, Stream Setback
* Section 18.96.110, Dimensional Standards

* Section 18.116.160, Rimrock Setbacks Outside of LM Combining Zone
* Section 18.116.310, Traffic Impact Studies

9. Chapter 18.128, Conditional Uses
* Section 18.128.015, General Standards Governing Conditional Uses
* Section 18.128.210, Planned Development

C. Title 22 of the Deschutes County Code, the Development Procedures Ordinance
1. Chapter 22.04, Introduction and Definitions
   * Section 22.04.030, Definitions
2. Chapter 22.16, Development Action Procedures
   * Section 22.16.010, Review of Development Action Applications
3. Chapter 22.20, Review of Land Use Action Applications
   * Section 22.20.055, Modification of Application
3. Chapter 22.24, Land Use Action Hearings
   * Section 22.24.030, Notice of Hearing or Administrative Action
   * Section 22.24.140, Continuances and Record Extensions

D. Deschutes County Comprehensive Plan
1. Chapter 3, Rural Growth Management
   * Section 3.3, Rural Housing
   * Section 3.6, Public Facilities and Services Policies

E. Oregon Administrative Rules (OAR), Chapter 660, Land Conservation and Development Commission
1. Division 4, Goal 2 Exception Process
   a. OAR 660-004-0040, Application of Goal 14 to Rural Residential Areas

F. PA-08-1/ZC-08-1 Conditions of Approval
II. FINDINGS OF FACT:

A. Location: The subject property is identified as Tax Lot 500 on Deschutes County Assessor’s Map 14-12-15, and Tax Lots 1502, 1505, and 1600 on Assessor’s Map 14-12 (index). Each of these tax lots has an assigned address in Terrebonne as follows:

- Tax Lot 500: 704 N.W. 96th Court;
- Tax Lot 1502: 70300 N.W. Lower Bridge Way;
- Tax Lot 1505: 10000 NW Lower Bridge Way; and
- Tax Lot 1606: 70350 N.W. Lower Bridge Way.

B. Zoning and Plan Designation: The majority of the subject property is zoned Rural Residential (RR-10), and Landscape Management (LM) because of its proximity to the Deschutes River. The portion of the property adjacent to the Deschutes River also is zoned Flood Plain (FP). Portions of the property are zoned Surface Mining Impact Area (SMIA) associated with Surface Mining (SM) sites to the west (Site 461) and north (Site 322). The majority of the property is designated Rural Residential Exception Area (RREA) on the Comprehensive Plan map. Approximately ten acres of the subject property, located east of Lower Bridge Way and north of Teater Road, are designated Agriculture and zoned Exclusive Farm Use-Lower Bridge Subzone (EFU-LB).

C. Site Description: The subject property is approximately 157 acres in size and irregular in shape. It has a varied topography consisting of a large, relatively level bench/plateau above the Deschutes River, steep slopes and rocky outcrops leading from the plateau to the river, and areas within and at the bottom of the river canyon. The property abuts Lower Bridge Way along most of its western border. The property is undeveloped except for a small wooden pump house along the south bank of the Deschutes River in the northwest quadrant of the property, the remains of a small former scale house in the west-central portion of the property, several gravel and dirt roads, and a power pole and overhead power line in the north-central portion of the property. The property has been mined for aggregate that overlays diatomaceous earth (diatomite) which has a chalky white appearance. As a result of historic mining, much of the existing ground surface has been disturbed and is comprised of piles and berms of earth, some exposed diatomite, and some vegetative cover consisting of scattered juniper trees and native shrubs and grasses along the perimeter of the property and within the upper portions of the river canyon.

The portion of the property located at the bottom of the river canyon is mapped flood plain according to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). This area of the subject property also has intact riparian vegetation and mapped wetlands shown on the Nation Wetlands Inventory (NWI) “Cline Falls” map. The property has existing access from Lower Bridge Way.

Near the northwest corner of the subject property is the historic Lynch and Roberts Store Advertisement sign which is painted on rock adjacent to Lower Bridge Way.

D. Surrounding Zoning and Land Uses: Part of the land north across the Deschutes River consists of the 26-acre Borden Beck Wildlife Preserve. Near the northwest corner of the subject property adjacent to Lower Bridge Way is the historic Lynch and Roberts Store advertisement sign. Farther north is SM Site 322 which is engaged in farm use consisting of irrigated pasture and hay production. Also to the north is land zoned EFU-
LB. Land to the south and southeast is zoned EFU-LB and EFU-Terrebonne Subzone (EFU-TE) and is engaged in irrigated agriculture. Land to the west is SM Site 461. Farther to the west is a mixture of large and small agricultural enterprises. Land to the east and southeast is zoned RR-10 and developed with rural residences. The abutting segment of the Deschutes River is a designated state Scenic Waterway.

E. Land Use History: The property has been the subject of several previous land use actions/decisions described below.

CU-74-156. The staff report states the record for this conditional use application contains plan information for a solid and liquid waste disposal site on the subject property. According to the staff report, it appears this application was approved because the record indicates solid and liquid waste, including hazardous waste, was stored on the portion of the subject property west of Lower Bridge Way.

MP-80-96. This minor partition created three parcels. Parcel 2 comprises modern Tax Lots 500 and 1505 east of Lower Bridge Way, and Parcel 3 comprises modern Tax Lots 1501 and 1502 west of Lower Bridge Way.

ZC-85-3. This decision approved a zone change on Tax Lots 1501, 1502, 1600, and 704 from surface mining reserve (SMR) to SM. Condition of Approval 3 required a mine reclamation plan.

SP-85-23. This site plan approval allowed surface mining, aggregate mining, and rock crushing on Tax Lots 1501, 1502, 1600, and 704. Condition of Approval 1 of this decision required an updated reclamation plan and set forth specifications therefor in Exhibit “C” to the decision. The staff report states materials are missing from the record for this decision, including a map of the area subject to the site plan approval and an updated reclamation plan. However, the record includes testimony and evidence demonstrating the area covered by the updated reclamation plan encompasses an 18-acre area north and west of Lower Bridge Way.

1989 ESEE Analysis for SM Site 461. On October 24, 1989, the Board of County Commissioners (hereafter “board”) approved an ordinance rezoning modern Tax Lots 1501, 1502, 1503, and 1507 from SMR to SM. The decision contains findings on the quality and quantity of aggregate resources on the property, placed SM Site 461 on the county’s Goal 5 inventory of significant mineral and aggregate resources, and included a site-specific ESEE (economic, social, energy and environmental) analysis for Site 461.

MP-90-74. This minor partition divided Tax Lot 1507 from Tax Lot 1501.

ZC-08-1/PA-08-1. This decision approved a plan amendment to change the comprehensive plan designation of a 566-acre area including SM Site 461 and most of the subject property from Agriculture and Surface Mining to RREA, and an amendment to the zoning map to change the zoning from SM to RR-10. The board’s decision, effective September 25, 2011 (Ordinance Nos. 2011-014 and 2011-015), contained separate approvals for portions of the property: the “East Area,” the property subject to the proposed planned unit development (PUD),¹ and the “West Area” consisting of SM

¹ Section 18.04.030 defines “planned unit development” and “planned development” as the same type of development. These terms, and PUD, are used interchangeably throughout this decision.

Attachment 4: Split Zone, Flood Plain Decisions
Site 461. The decision stated the board’s intent that the rezoned property includes 160 acres in order to accommodate future development of a 20-lot residential cluster/PUD. The staff report states that because there was not enough land east of Lower Bridge Way to create 160 acres of developable property, the board included in the rezoned area approximately 30 acres on the west side of Lower Bridge Way with the understanding that such acreage would be maintained as open space within a future residential PUD. That staff report states that a survey of the rezoned property revealed the acreage was sufficient only for a 19-lot cluster/PUD.

The board’s decision also approved for the “West Area” a plan amendment, zone change, and removal of SM Site 461 from the Goal 5 mineral and aggregate inventory on the basis that the mineral and aggregate resource had been fully extracted. However, that approval was made subject to a Resolution of Intent to Rezone requiring the property owner to complete a number of prerequisites addressing environmental assessment and remediation of the mine site. The record indicates that as of the date of this decision, these prerequisites had not yet been completed. Therefore, the re-designation and rezoning of the “West Area” has not taken effect and Site 461 remains zoned SM and included in the county’s mineral and aggregate inventory.

MC-09-3/MA-10-5/MA-11-2. In this decision, this Hearings Officer approved modifications to the 1985 site plan approval (SP-85-23) to revise the reclamation requirements for Site 461. The property subject to the PUD application constitutes a small portion of the tract subject to the approved modifications.

E-14-6. This decision granted a one-year extension of the Intent to Rezone decision approved in PA-08-1/ZC-08-01 to April 8, 2015.

E-15-247. This application requests an additional one-year extension, to April 9, 2016, of the Intent to Rezone decision approved in PA/08-1/ZC-08-01. The record indicates that as of the date of this decision this application was pending.

F. Procedural History: The conditional use and tentative subdivision plan applications were submitted on April 10, 2015, and were deemed complete by the Planning Division on May 11, 2015. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.427 would have expired on October 8, 2015. A public hearing

2 The board’s decision in ZC-08-1/PA-08-1 described the property subject to the plan amendment and zone change -- i.e., the “East Area” and “West Area” -- as follows:

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| Tax Lot 1501: | 249.1 acres zoned Surface Mining (SM), including 9.8 acres in Landscape Management Combining Zone (LM) |
| Tax Lot 1502: | 188.1 acres zoned SM, including 82.3 acres zoned LM |
| Tax Lot 1503: | 64.4 acres zoned SM, including 64.4 acres zoned LM |
| Tax Lot 1505: | Only 42.1 acres of this 72.47 acre tax lot are subject to this application. The most southerly portion of this lot adjacent to Teater Road and zoned EFU is not subject to the proposed zone change. |
| Tax Lot 1600: | 10.6 acres total including 9.6 acres of Exclusive Farm Use 1.0 acre zoned Flood Plain, 10.6 acres zoned LM, and 10.6 acres zoned SMIA. |
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3 The Hearings Officer understands the county considers the extension granted by E-14-6 to remain in effect until the county acts on this second extension application.
on the applications was scheduled for May 21, 2015. On April 22, 2015, the Planning Division mailed written notice of the public hearing to the owners of record of all property located within 250 feet of the boundaries of Tax Lots 500 and 1505.

On May 15, 2015, the Planning Division determined that Tax Lots 1502 and 1600 were inadvertently omitted from the notice of hearing, and the owners of record of property located within 250 feet of those tax lots did not receive notice of the hearing. On May 15, 2015, the Planning Division mailed a revised notice of public hearing with a revised description of the subject property including Tax Lots 500, 1502, 1505, and 1600, and 1606. This notice was mailed to the owners of record of all property located within 750 feet of the five listed tax lots. The staff report also was issued on that date. The staff report concluded that an application for SMIA site plan review must be submitted concurrently with the PUD applications.

On May 18, 2015, the Hearings Officer conducted a site visit to the subject property and vicinity accompanied by Senior Planner Will Groves. At the initial public hearing on May 21, 2015, the Hearings Officer disclosed her observations and impressions from the site visit. Several interested parties requested a continuance of the hearing because the revised notice of hearing was mailed less than a week before the public hearing. The Hearings Officer continued the public hearing to June 23, 2015. However, because two members of the public requested the opportunity to testify at the initial public hearing, the Hearings Officer requested and received an abbreviated staff report and an abbreviated presentation by the applicant, and received testimony from two members of the public.

At the continued public hearing on June 23, 2015, the Hearings Officer received testimony and evidence, left the written evidentiary record open through July 7, 2015 for the opening round of evidence and through July 21, 2015 for the rebuttal round of evidence, and allowed the applicant through July 28, 2015 to submit final argument pursuant to ORS 197.763. On July 7, 2015, the applicant submitted an application for SMIA site plan review for the PUD. On July 28, 2015, the applicant submitted final argument and the record closed on that date.

Because the applicant agreed to extend the written record from the continued hearing on June 23, 2015 through the record closure on July 28, 2015, pursuant to Section 22.24.140 of the county’s land use procedures ordinance, the 150-day period was tolled for 35 days and now expires on November 12, 2015. As of the date of this decision, there remain 63 days in the extended 150-day period.

G. Proposal: The applicant requests conditional use, tentative subdivision plan, and LM and SMIA site plan approval to establish a 19-lot residential PUD on the subject property. The residential lots would range in size from 2 to 4.4 acres,4 would comprise a total of 41.3 acres, and would have access from Lower Bridge Way via four private roads. The subdivision would include two common area tracts comprising 0.9 acres, five open space tracts comprising 105.7 acres (including 10.4 acres of EFU-zoned land), 4.4 acres of private road, and 4.7 acres of right-of-way dedication for the abutting segment of Lower Bridge Way. No development would occur within the Deschutes River Canyon.

4 Proposed Lot 19 would be 4.4 acres. As discussed in the findings above, the applicant determined from a survey of the “East Area” rezoned in 2008 that it was not large enough to provide sufficient open space acreage for 20 residential lots. The applicant’s burden of proof states the size of Lot 19 was intended to allow it to be further divided if additional open space acreage could be added to the PUD in the future.
Dwellings on the residential lots would be served by individual wells and individual on-site septic systems. No dwellings are proposed concurrent with the PUD application.

H. Public Notice and Comments: The Planning Division mailed two individual written notices of the initial public hearing. The first notice, mailed April 22, 2015, was sent to the owners of record of all property located within 250 feet of the Tax Lots 500 and 1505. The second, revised, notice was mailed May 15, 2015, and sent to the owners of record of all property located within 750 feet of Tax Lots 500, 1502, 1505 and 1600. In addition, notice of the initial public hearing was published in the Bend “Bulletin” newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the county had received 39 letters in response to these notices. In addition, two members of the public testified at the initial public hearing and eleven members of the public testified at the continued public hearing. Public comments are addressed in the findings below.

I. Public/Private Agency Comments: The Planning Division sent written notice of the applicant’s proposal to a number of public and private agencies and received responses from: the Deschutes County Senior Transportation Planner, Road Department (road department), and Environmental Soils Division; Redmond Fire and Rescue; Redmond Area Parks and Recreation District (RAPRD); Oregon Department of Fish and Wildlife (ODFW); Oregon Parks and Recreation Department (OPRD); Oregon Department of Environmental Quality (DEQ); and Oregon Health Authority (OHA). These comments are set forth at pages 4-5 of the staff report and/or are included in the record. The following agencies did not respond to the request for comments or submitted a “no comment” response: Deschutes County Assessor, Surveyor, and Property Address Coordinator; Redmond School District; and Oregon Department of Geology and Mineral Industries (DOGAMI).

J. Lot of Record: The applicant submitted into the record as Hearing Exhibit 1 the plat for Minor Partition (MP) 80-96, showing the subject property consists of Parcel 2 and most of Parcel 3 of that partition. The applicant’s burden of proof states the subject property also includes Parcel 1 of the partition. However, the Hearings Officer finds Parcel 1 is located south of Teater Road which forms the southern boundary of the proposed PUD, and therefore the PUD does not include Parcel 1. The staff report notes that because the proposed PUD would not include all of Parcel 3, it would create a remainder lot or parcel within Parcel 3. The status of that remainder area is discussed in the findings below.

III. CONCLUSIONS OF LAW:

A. SUMMARY:

The Hearings Officer finds the applicant’s proposed PUD cannot be approved because: (1) it includes land zoned EFU and FP in which PUDs are not permitted outright or conditionally; (2) it reconfigures and reduces the size of Parcel 3 of MP-80-96 without a partition or lot line adjustment; (3) the portion of the subject property remaining after the EFU- and FP-zoned land is subtracted is not large enough to permit 19 residential lots; and (4) the applicant failed to demonstrate the proposed PUD complies with all applicable conditional use, site plan, and subdivision approval criteria. However, because I anticipate this decision will be appealed to the board, and the board may elect to hear the appeal, I include in this decision recommended findings and conclusions on applicable approval criteria to assist planning staff and the board.
B. PRELIMINARY ISSUES:

1. Adequacy of Notice. Several opponents argue the county’s notices to property owners were inadequate. As discussed in the Findings of Fact above, the original notice of public hearing was deficient in failing to list all tax lots included within the subject property and in failing to provide notice to all property owners entitled to notice. The Planning Division issued a revised notice of hearing that listed all affected tax lots and was mailed to all property owners entitled to notice. However, the revised notice was mailed less than a week before the initial public hearing. Opponents requested, and the Hearings Officer granted, a continuance of the initial public hearing because of the notice deficiencies.

Opponents argue the notice was insufficient because it did not include enough potentially affected property owners. The notice area is prescribed in Section 22.24.030 of the county’s procedures ordinance. That section provides that individual mailed notice shall be sent to the owners of record of all property located within 250 feet of the subject property where it is outside an urban growth boundary (UGB) and not within a farm or forest zone, and 750 feet of the subject property when it is within a farm or forest zone. The subject property is outside any UGB, and the majority of the subject property is zoned RR-10 and FP, requiring a 250-foot notice area. However, a portion of the subject property is zoned EFU-LB, requiring a 750-foot notice area. The record indicates the revised notice was mailed to the owners of record of all property located within 750 feet of the entire subject property. The Hearings Officer finds the notice area used by the Planning Division was adequate.

The county also published notice of the public hearing in a newspaper of general circulation and the subject property was posted with a notice of proposed land use action sign. Opponents argue the posted notice was not adequate because it was not visible and was not posted for a sufficient period of time prior to the initial public hearing. The Hearings Officer disagrees. Section 22.24.030(B) of the procedures ordinance states posted notice must be in place for at least 10 continuous days prior to any date set for receipt of comments – e.g., the public hearing -- and that it shall “where practical, be visible from any adjacent public way.” The record includes a “Land Use Action Sign Affidavit” signed by the applicant’s engineer Keith D’Agostino stating the posted notice was placed on May 11, 2015, ten days prior to the initial public hearing. In addition, as the Hearings Officer disclosed at the initial public hearing, during my May 18, 2015 site visit I observed the posted notice, and I found it to be clearly visible and legible from Lower Bridge Way which is a county road. For these reasons, I find the posted notice also was adequate.

2. Property Included in Proposed PUD. The Hearings Officer has found the proposed PUD consists of Parcel 2 and the majority of Parcel 3 of MP-80-96. The staff report questions the status and disposition of the part of Parcel 3 not included in the PUD. This “remainder” area consists of land zoned SM within Site 461 and Tax Lot 1502, and land zoned EFU-LB in Tax Lot 1600, all located west of Lower Bridge Way. As discussed above, the record indicates the portion of Parcel 3 included in the subject property was rezoned to RR-10 in 2008 in order to provide sufficient acreage for the open space required for a 20-lot PUD.

The Hearings Officer finds the board’s 2008 rezoning decision did not have the effect of reconfiguring Parcel 3 of MP-80-96. Rather, it merely “split-zoned” Parcel 3 and Tax Lots 1502 and 1600. That is because in 2008 rezoning was not a recognized means of creating a legal lot or parcel. In 2008, as now, Section 18.04.030 defined “lot” and “parcel” as units of land created by subdividing or partitioning, respectively – i.e., created as a unit of land within a subdivision or

Attachment 4: Split Zone, Flood Plain Decisions
partition. In addition, that section defined “lot” or “parcel” as a lot of record, defined in DCC 18.04.030 as follows:

“Lot of Record” means:

A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:

1. By partitioning land as defined in ORS 92;

2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;

3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;

4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or

5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel. (Emphasis added.)

Paragraph (5) of this section authorizes the county to recognize as a lot of record a lot or parcel created as a remainder following the subdividing or partitioning of adjacent or surrounding land. However, the Hearings Officer finds this definition does not provide a means for the applicant to establish a new parcel through the creation of a “remainder” in Parcel 3 outside the PUD. That is because the text of the “lot of record” definition makes clear it addresses circumstances that created a lot or parcel in the past. The operative language of the definition expressly refers to past circumstances and events – i.e., a lot or parcel that conformed to all zoning and subdivision or partition requirements, if any, “in effect on the date the lot or parcel was created,” and which “was created” by any of the listed methods. Moreover, this definition authorizes the after-the-fact recognition of a lot or parcel that was created by a recorded deed although a lot or parcel could not presently be created by that method. I find the lot-of-record definition was adopted to provide a means of recognizing as a legal lot certain types of lots and parcels that were lawfully created in the past but do not qualify as lawful parcels under current code provisions.

The staff report suggests the applicant could reconfigure the remainder of Parcel 3 by including it as a lot in the PUD. The Hearings Officer disagrees. As noted in the findings above, the northern portion of the remainder area is zoned EFU-LB, and the rest of the remainder area is still zoned SM because the prerequisites established in the 2008 Intent to Rezone have not been met. Subdivisions and PUDs are not permitted outright or conditionally in either the EFU or SM Zone. Therefore, I find none of the remainder of Parcel 3 can be included as a lot in the
PUD. However, I find the applicant potentially could establish the remainder of Parcel 3 as a legal lot or parcel through a lot line adjustment, a replat of MP 80-96, or a partition of Parcel 3.\(^5\)

Based on the foregoing discussion, the Hearings Officer finds I cannot approve the proposed PUD because it improperly reconfigures Parcel 3 of MP 80-96 by subdividing a part of the parcel without establishing the remainder area as a legal lot or parcel.

3. Modification. The applicant submitted an application for SMIA site plan approval on July 7, 2015 while the written evidentiary record was open. The Hearings Officer finds this application raises the question of whether it is a “modification” of the applicant’s proposal, and if so, whether I may consider it.

Section 22.20.055 allows an applicant to modify an application at any time during the approval process up until the close of the record. However, the Hearings Officer cannot consider any evidence submitted by the applicant that would constitute a modification unless the applicant submits a modification application and agrees in writing to toll the 150-day period.\(^6\)

Section 22.04.020 defines “modification” as:

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

The Hearings Officer finds the applicant’s SMIA application and burden of proof contain legal argument and information concerning the status of SM Sites 322 and 461 for which the applicable SMIA Zones were established. However, I find this new information does not constitute a modification of the PUD application because it would not change any of the components of the proposed PUD. Rather, the information supports the pending PUD application and was submitted specifically in response to staff’s conclusion that a SMIA site plan application is required as part of the PUD application. Therefore, I find I can consider the SMIA application and information therein concurrent with the PUD application.

4. Previous Bankruptcies of Applicant’s Principals. Opponent David Jenkins submitted into the record information concerning previous bankruptcies and other civil litigation filed by Greg Daniels, Frank Nolan, and Robert Riemenschneider, who Mr. Jenkins states are owners of SM

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\(^5\) The Hearings Officer finds that as long as any lot line adjustment or partition of the remainder of Parcel 3 does not divide the SM- or EFU-zoned land, the prohibition against creating new lots in the SM Zone in Section 18.52.060 and the land division provisions in the EFU Zone in Section 18.16.055 are not applicable.

\(^6\) This section gives exclusive authority to the Hearings Officer to determine whether the applicant has submitted a modification once the hearing has opened.
Site 461. Mr. Jenkins did not identify, nor has the Hearings Officer found, any applicable approval criteria to which this evidence is relevant. Therefore, I will not consider it.

C. TITLE 18 OF THE DESCHUTES COUNTY CODE, THE DESCHUTES COUNTY ZONING ORDINANCE

EFU ZONE STANDARDS

1. Chapter 18.16, Exclusive Farm Use Zones (EFU)

FINDINGS: The proposed PUD includes a 10.4-acre area zoned EFU-LB located at the southern boundary of the subject property. This area is part of Parcel 3 of MP 80-96 and Tax Lot 1505 which is split-zoned between RR-10 and EFU-LB. It was not included in the land rezoned to RR-10 in 2008. The applicant proposes to include the EFU-zoned area as part of PUD open space Tract B.

The Hearings Officer finds subdivisions and PUDs are not uses permitted outright or conditionally in the EFU Zone. The applicant appears to argue that because the EFU-zoned area will be included in an open space tract and may be engaged in agricultural use, it can be included in the PUD. I disagree. While agricultural use is consistent with this area’s zoning, including it within a subdivision is not.7

Based on the foregoing discussion, the Hearings Officer finds I cannot approve the proposed PUD because it includes EFU-zoned land in which subdivisions and PUDs are not permitted.

FLOOD PLAIN ZONE STANDARDS

2. Chapter 18.96, Flood Plain Zone (FP)

a. Section 18.96.010, Purpose

The purposes of the Flood Plain Zone are: To implement the Comprehensive Plan Flooding Section; to protect the public from hazards associated with flood plains; to conserve important riparian areas along rivers and streams for the maintenance of fish and wildlife resources; and to preserve significant scenic and natural resources while balancing the public interests with those of individual property owners in the designated areas.

FINDINGS: The Hearings Officer finds the FP Zone purpose statement does not establish approval criteria for the applicant’s proposed PUD, but can provide context for interpreting ambiguous provisions in Chapter 18.96.

b. Section 18.96.020, Designated Areas

7 The Hearings Officer finds that as long as the EFU-zoned portion of Parcel 3 is not divided if/when the applicant lawfully reconfigures Parcel 3 of MP-80-96, the EFU Zone land division standards restrictions in Section 18.16.055 are not applicable.
The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.

The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.

**FINDINGS:** The FP Zone includes all areas designated as "Special Flood Hazard Areas" on the FIRM. These are lands that would be inundated by a 100-year flood event and that are at or below the base flood elevation (BFE). The FIRM for the section of the Deschutes River adjacent to the subject property is Map No. 41017C0300E, revised September 28, 2007. The FIRM indicates portions of the land below the river canyon rim are designated “Special Flood Hazard Areas.” In addition, the staff report notes the riparian habitats along the river contain mapped wetlands on the NWI “Cline Falls” map. The submitted tentative plan shows the areas mapped as Flood Plain and wetlands would be located in PUD open space Tracts C and E. Therefore, the provisions of the FP Zone are applicable to the proposed PUD.

b. **Section 18.96.030, Uses Permitted Outright**

The following uses and their accessory uses are permitted outright

* * *

C. Open space.

**FINDINGS:** Section 18.04.030 defines “open space” as follows:

“Open space” means lands used for agricultural or forest uses and any land area that would, if preserved and continued in its present use:

A. Conserve and enhance natural or scenic resources;

B. Protect air, streams or water supply;

C. Promote conservation of soils, wetlands, beaches, or marshes;

D. Conserve landscaped area such as public or private golf courses, that reduce pollution and enhance the value of adjoining or neighboring property;
E. Enhance the value to the public of adjoining or neighboring parks, forest, wildlife preserves, nature reservations or other open space;

F. Enhance recreation opportunities;

G. Preserve historic, geological and archaeological sites;

H. Promote orderly urban development; and

I. Minimize conflicts between farm and nonfarm uses.

The tentative plan shows all FP-zoned portions of the proposed PUD would be located within open space Tracts C and E. The proposed residential lots would not include any FP-zoned land.

The applicant’s proposed PUD covenants, conditions and restrictions (CC&Rs), included in the record as Exhibit “H” to the applicant’s original burden of proof, treat Tracts C and E as “open space” and treat Tract C as “common area” within the PUD. The CC&Rs expressly address the open space and common areas in detail. Exhibit “C” to the CC&Rs lists as “common areas” Tracts A, B, C and D and all private roads. The CC&Rs include provisions protecting and restricting or prohibiting development in riparian areas (described as open space Tracts C and E), common areas, and scenic river areas described as the “area along the Deschutes River.”

The Hearings Officer finds that although “open space” is listed as an outright permitted use in the FP Zone, and the proposed CC&Rs provide protection for such areas consistent with the purpose of the FP Zone, the applicant’s proposed open space is not a stand-alone use. Rather, it consists of open space lots and uses within a PUD which is not a use permitted outright in the FP Zone. In other words, the open space use is dependent upon the rest of the PUD use.

c. Section 18.96.040, Conditional Uses Permitted.

The following uses and their accessory uses may be allowed subject to applicable sections of this title:

* * *

H. Subdividing or partitioning of land, any portion of which is located in a flood plain, subject to the provisions of DCC Title 18 and DCC Title 17, the Subdivision/Partition Ordinance.

FINDINGS: Proposed open space Tracts C and E include the FP-zoned portion of the subject property. The staff report states, and the Hearings Officer agrees, the applicant’s proposal constitutes “subdividing * * * land, any portion of which is located in a flood plain,” because Tracts C and E would be subdivision lots.

Title 18 permits three types of land divisions relevant here: (1) subdivision; (2) “cluster development;” and (3) “planned development.” Subdivision is defined in Section 18.04.030 as dividing an area or tract of land into four or more lots within a calendar year, and is subject to all applicable requirements in Title 17 and in the underlying zone(s) in Title 18. “Cluster development” is defined in Section 18.04.030 as:

. . . a development permitting the clustering of single or multi-family residences on part of the property, with individual lots of not less than two acres in size and
not exceeding three acres in size. No commercial or industrial uses not allowed by the applicable zoning ordinance are permitted.

“Planned development” is defined in Section 18.04.030 as:

. . . the development of an area of land at least 40 acres in size for a number of dwelling units, commercial or industrial uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage, or required open space to the standard regulations otherwise required by DCC Title 18, and usually featuring a clustering of residential units. (Emphasis added.)

“Cluster development” and “planned development” are subject to distinct special conditional use approval criteria set forth in Sections 18.128.200 and 18.128.210, respectively. These land divisions share some characteristics. Both require a minimum of 65 percent open space, and both contemplate the clustering of dwellings to maximize open space. There also are significant differences. “Cluster development” is limited to residential uses, can have no more than 10 new lots or parcels (which must be contiguous) and no more than 10 clustered dwelling units, and is not subject to a minimum area size for the overall development. In contrast, planned development may include commercial and industrial uses, must be a minimum of 40 acres in size, may have as many dwelling units as are permitted in the applicable zone(s), and may qualify for exceptions to the standards in the applicable zone(s).

Neither “cluster development” nor “planned development” is a use permitted outright or conditionally in the FP Zone. The Hearings Officer finds the text and context of the provisions of Title 18 defining and governing the three types of subdivisions make clear they have different characteristics and are intended to be reviewed and approved under different substantive standards. While it may seem counterintuitive not to permit use of FP-zoned land for open space within a planned development where such use would protect these areas consistent with the purpose of the FP Zone, I find the plain language of the FP Zone does not allow such development.

The drafters of the FP Zone standards may have intended to preclude clustered residential development on FP-zoned land, but may not have intended to preclude the scenario contemplated by the applicant’s proposal in which the clustered residential development would occur on land in another adjacent zone and the FP-zoned land would be used for the required open space. If this decision is appealed to the board and the board agrees to hear the appeal, the board will have an opportunity to address this question.

d. Section 18.96.060, Limitations on Conditional Uses

The following limitations shall apply to all uses allowed by DCC 18.96.040:

8 “Planned development” is a use permitted in three zones: MUA-10 (Section 18.32.030(O)); RR-10 (Section 18.60.030(E)); and Urban Unincorporated Community (UUC) – Sunriver, RM District (Section 18.108.040(4). “Cluster development” is permitted in five zones: MUA-10 (Section 18.32.030(P)); RR-10 (Section 18.60.030(F)); Urban Unincorporated Community (UUC) – La Pine Residential District (Section 18.61.030(2)(j)); UUC – Wickiup Junction (Section 18.61.040(c)(5)); and Terrebonne Rural Community (Section 18.66.020(B)(4)).
A. No new construction of a dwelling (including manufactured housing), accessory structure or farm use structure shall be allowed in the floodway of any river or stream except for replacement in conformance with the applicable provisions of DCC 18.96 of a dwelling lawfully in existence as of the effective date of Ordinance 88 030.

B. No new construction of a dwelling (including manufactured housing), accessory structure or farm use structure shall be located in the flood plain unless it can be demonstrated by the applicant that no alternative exists on the subject property which would allow the structure to be placed outside of the flood plain.

**FINDINGS:** The applicant does not propose any dwellings or other structures in the floodway or flood plain.

C. No subdivision or partition shall be allowed which creates the potential for additional residential dwellings in the flood plain.

**FINDINGS:** The proposed PUD would not allow dwellings in the flood plain because all FP-zoned land would be in open space Tracts C and E.

D. All necessary federal, state and local government agency permits shall be obtained.

**FINDINGS:** The applicant does not propose any development in the FP Zone requiring agency permits.

**e. Section 18.96.070, Application for Conditional Use**

All records of any application for a conditional use permit and all certification of elevations shall be maintained in the records of the Community Development Department for public inspection. An application for a conditional use permit in the Flood Plain Zone shall, at a minimum, contain the following information:

A. A detailed explanation of why it is necessary to conduct the proposed use in the Flood Plain Zone. Where base flood elevation data is not available from the Flood Insurance Study or from another authoritative source, it shall be generated and submitted with the application for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

**FINDINGS:** The applicant doesn’t address this criterion. As to the first sentence, the applicant does not identify the reason for including the FP-zoned land in the proposed PUD. However, as discussed in the RR-10 Zone findings below, at least 65 percent of the proposed PUD must be open space. The applicant did not include the 10.4-acre EFU-zoned parcel in its open space calculations, leaving 146.6 acres of the subject property for PUD development, of which 65 percent is 95.29 acres. The proposed open space Tracts A, B, C, E and F (without EFU-zoned land but including FP-zoned land) total 95.3 acres. Therefore, the Hearings Officer finds I may
infer from the applicant’s materials that the FP-zoned land was included in the PUD in order to provide sufficient open space acreage to gain approval for 19 residential lots.

With respect to the remainder of this paragraph, it appears to require a detailed flood study because the BFE for the subject property is not available from the Flood Insurance Study, and the proposed PUD contains at least five acres. However, the staff report states the county understands that FEMA policy does not require this detailed study where, as here, the FP-zoned portion of the property is located entirely within open space tracts that would not be developable. The staff report recommends, and the Hearings Officer agrees, that if the proposed PUD is approved on appeal, it should be subject to a condition of approval prohibiting the development of any structure in the FP-zoned portion of the subject property.

B. A site plan, drawn to scale and accompanied by drawings, sketches and descriptions which describe and illustrate the proposed use. This site plan shall include, at a minimum, existing and proposed site contours in relation to the base flood elevation, existing and proposed structures, drainage facilities, and an explanation of how erosion will be dealt with during and after construction of the use.

C. The location of the property relative to the channel of the river or stream.

D. The location of existing and proposed diking or abutments, if any.

FINDINGS: The Hearings Officer finds the applicant’s submitted tentative plan includes all information required in these paragraphs.

E. The elevation of the lowest habitable floor and of any basement floor for any dwelling unit or structure.

F. The elevation to which the structure is to be floodproofed, if applicable.

G. Elevations on the site plan shall be established by a licensed surveyor or engineer, and shall be in relation to mean sea level.

H. Certification by a registered professional engineer or architect that the floodproofing methods for any structure meet the floodproofing criteria established by the Federal Emergency Management Agency and the applicable standards in DCC 18.96.

FINDINGS: The applicant does not propose any structures in the FP Zone, and did not provide the BFE for the subject property. Therefore, the Hearings Officer finds these criteria are not applicable to the proposed PUD.
I. All other elements or information which will assist in the evaluation of the proposed development and conformance with the applicable criteria.

FINDINGS: The Hearings Officer finds the applicant’s tentative plan and burden of proof statements provide all information necessary to evaluate the proposed PUD for compliance with the FP Zone standards.

f. Section 18.96.080, Criteria to Evaluate Conditional Uses

A. A conditional use permit in a Flood Plain Zone shall not be approved unless all standards established by the Federal Emergency Management Agency and DCC Title 18 are addressed and findings are made by the Hearings Body or Planning Director that each of the standards and criteria are satisfied.

C. A conditional use permit shall be based upon findings which relate to the property and existing and proposed structure(s). They shall not pertain to the property owner, inhabitants, economic or financial circumstances.

* * *

E. Subdivision and Partition Proposals.

1. All subdivision and partition proposals shall be consistent with the need to minimize flood damage.

2. All subdivision and partition proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

3. All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.

FINDINGS: The applicant does not propose any utilities or structures in the FP-zoned portion of the PUD, and therefore the Hearings Officer finds the criteria in Subparagraphs (1) and (2) of this paragraph are not applicable. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that all surface water drainage be maintained on-site on the upper bench/plateau of the subject property and outside the FP Zone.

g. Section 18.96.090, Yard and Setback Requirements

In an FP Zone, the following yard and setback requirements shall be maintained:
A. The front setback shall be a minimum of 20 feet from a property line fronting on a local street, 30 feet from a property line fronting on a collector and 50 feet from an arterial.

B. There shall be a minimum side yard of 10 feet for all uses.

C. The minimum rear yard shall be 20 feet.

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

E. The minimum yard setback for a nonfarm use from the property line adjacent to a farm use not owned by the applicant shall be 100 feet.

F. 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.

FINDINGS: The Hearings Officer finds that because the applicant does not propose any structures or utilities in the FP-zoned portion of the PUD, these criteria are not applicable. However, as discussed in the findings below concerning the size and configuration of the proposed residential lots, incorporated by reference herein, I find the proposed residential lots are of sufficient size to accommodate the siting of dwellings satisfying these yard and setback requirements.

h. Section 18.96.100. Stream Setback
To permit better light, air, vision, stream and pollution control, to protect fish and wildlife areas and to preserve the natural scenic amenities along streams and lakes, the following setbacks shall apply:

A. All sewage disposal installations such as septic tanks or septic drain fields shall be setback from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet, and the County Sanitarian finds that a closer location will not endanger public health or safety, a setback exception may be permitted to locate these facilities closer to the stream or lake, but in no case closer than 25 feet.

B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles from the ordinary high water mark.

FINDINGS: The Hearings Officer finds these criteria are not applicable because the applicant does not propose any structures, utilities or septic systems in the FP Zone. However, as discussed in the findings below concerning the size and configuration of the proposed residential

Attachment 4: Split Zone, Flood Plain Decisions
lots, incorporated by reference herein, I find the proposed residential lots are of sufficient size to accommodate the siting of dwellings satisfying these river setback requirements.

i. Section 18.96.110, Dimensional Standards

In an FP Zone, the following dimensional standards shall apply:

A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.

B. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

FINDINGS: The Hearings Officer finds that because the applicant does not propose any structures or development in the FP-zoned portion of the PUD, these criteria are not applicable. However, as discussed in the findings below concerning the size and configuration of the proposed residential lots, incorporated by reference herein, I find the proposed residential lots are of sufficient size to accommodate the siting of dwellings satisfying the lot coverage requirements in this section.

C. Minimum lot size shall be 10 acres for all areas which have received an exception to the Statewide Planning Goals for resource uses. Areas which have not received an exception to the Statewide Planning Goals shall have a minimum lot size of 80 acres.

FINDINGS: The FP-zoned portion of the subject property is not considered a “resource zone” under the county’s comprehensive plan and Title 18. The board’s 2008 plan amendment and zone change decision did not include any FP-zoned land. Because the FP Zone was not modified and it is not considered a “resource” zone, the Hearings Officer finds no goal exception was or is required, and therefore the creation of new lots in the FP-zoned portions of property is subject to a 10-acre minimum lot size.9

The staff report questions whether in order to comply with the 10-acre minimum lot size in this paragraph, Tracts C and E must each have at least 10 total acres or at least 10 FP-zoned acres. Neither the tentative plan nor the applicant’s burden of proof states how many FP-zoned acres are in each tract. However, based on the Hearings Officer’s comparison of the tentative plan and the large-scale aerial photo/zoning map submitted into the record by staff, I find approximately 30 acres of the land in Tracts C and E – i.e., approximately 16 acres in Tract C and approximately 14 acres in Tract E – are zoned FP. Therefore, because Tract C and Tract E each include at least 10 acres of FP-zoned land, I find I need not address staff’s question.10

9 As discussed elsewhere in this decision, the applicant has proposed a PUD with clustered residential lots to increase the overall density to one dwelling per 7.5 acres.
10 In this Hearings Officer’s decision in Tree Farm 4 (247-14-000248-CU, 247-14-000249-TP), I adhered to my previous holding in Taylor (MP-05-31, CU-05-106, SMA-05-41, MA-06-1, MA-0608) that the minimum lot size required for a new lot or parcel in the pertinent zone must be met entirely within that zone.
For the foregoing reasons, the Hearings Officer finds I cannot approve the proposed PUD because it is not a use permitted outright or conditionally in the FP Zone.

**RURAL RESIDENTIAL ZONE STANDARDS**

3. Chapter 18.60, Rural Residential Zone (RR-10)
   a. Section 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.

**FINDINGS:** The Hearings Officer finds this purpose statement does not establish approval criteria for the RR-10 Zone, but can provide context for interpreting ambiguous provisions in this chapter.

b. Section 18.60.030, Conditional Uses Permitted

   The following uses may be allowed subject to DCC 18.128:

   * * *

   E. Planned development.

**FINDINGS:** The applicant proposes a PUD on the 157-acre subject property including 19 residential lots, two common areas, five open space tracts, a private road system, and dedication of additional right-of-way for the abutting segment of Lower Bridge Way. The proposed residential lots would be clustered along the northern and eastern property boundaries east of Lower Bridge Way and adjacent to the Deschutes River canyon. As discussed above, the Hearings Officer has found I cannot approve the proposed PUD because it includes land zoned EFU and FP in which PUDs are not permitted. However, because I anticipate there will be an appeal of my decision and the board may hear the appeal, I include recommended findings and conclusions on the approval criteria in the RR-10 Zone.

c. Section 18.60.040, Yard and Setback Requirement.

   In an RR-10 Zone, the following yard and setbacks shall be maintained.

   A. The front setback shall be a minimum of 20 feet from a property line fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way and 50 feet from an arterial right of way.
B. There shall be a minimum side yard of 10 feet for all uses, except on the street side of a corner lot where the side yard shall be 20 feet.

C. The minimum rear yard shall be 20 feet.

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

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.

FINDINGS: Because the applicant does not propose any dwellings concurrent with the PUD application, the Hearings Officer finds these criteria are not applicable. However, I find that in order to approve the proposed PUD, I must determine whether the size and configuration of the proposed PUD residential lots will allow the future siting of dwellings meeting the setbacks in this section. I find the two-acre size and the configuration and dimensions of the proposed residential lots will accommodate the siting of dwellings complying with the RR-10 Zone setbacks. I also find the record does not indicate any greater setbacks established by building or structural codes.

d. Section 18.60.050, Stream Setback

To permit better light, air, vision, stream or pollution control, protect fish and wildlife areas and to preserve the natural scenic amenities and vistas along streams and lakes, the following setback shall apply:

A. All sewage disposal installations, such as septic tanks or septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.

B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

FINDINGS: The tentative plan does not show the ordinary high water mark (OHWM) of the abutting stretch of the Deschutes River. However, the Hearings Officer finds the OHWM is located at the bottom of the river canyon well below the upper bench/plateau on which the proposed residential lots would be located. The question presented under this section is whether there is sufficient room on the residential lots to site dwellings and septic systems at least 100 back from the OHWM. The tentative plan shows the riverside boundaries of the...
residential lots are located well above the river and part way up the river canyon walls. The tentative plan also shows the distance between those riverside lot lines and the edge of the upper bench/plateau ranges from 50 feet to nearly 200 feet. For these reasons, I find the size and configuration of the proposed residential lots will allow the siting of septic systems and dwellings at least 100 feet from the OHWM of the Deschutes River.

e. Section 18.60.060, Dimensional Standards

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

A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.

B. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

FINDINGS: The applicant does not propose any dwellings concurrent with the PUD and therefore the Hearings Officer finds these criteria do not apply. The question presented under this section is whether size and configuration of the proposed PUD residential lots will allow the future siting of dwellings satisfying the lot coverage limitations in this section. I find that they do. I further find that if the PUD is approved on appeal, it should be subject to a condition of approval requiring all dwellings to satisfy the lot coverage and building height limitations in this section.

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

FINDINGS: The subject property is not within one mile of an acknowledged UGB, and no arterial rights-of-way separate any proposed parcels. The applicant requests approval to develop a PUD with a density greater than one dwelling per 10 acres by clustering the 19 dwellings adjacent to the river and preserving the majority of the subject property as open space.

The property is approximately 157 acres in size. The applicant’s density calculation does not include the 10.4 acres of EFU-zoned land, leaving 146.6 developable acres and resulting in a density of one dwelling per 7.7 acres, less than the maximum density allowed by this paragraph. However, as discussed in the findings above under the FP Zone, the Hearings Officer has found the proposed PUD is not a use permitted outright or conditionally in that zone. Therefore, I find the approximately 30 acres of FP-zoned land included in the subject property cannot be included in the density calculation, leaving approximately 116 acres of developable land for the PUD. At the maximum allowed density of one dwelling per 7.5 acres, there would be sufficient
developable land for only 15 dwellings and the required 65 percent open space. Therefore, I find I cannot approve the proposed PUD with 19 dwellings.\textsuperscript{11}

\textbf{f. Section 18.60.070, Dimensional Standards}

The following limitations shall apply to uses allowed by DCC 18.60.030:

\begin{itemize}
  \item[A.] The Planning Director or Hearings Body may require establishment and maintenance of fire breaks, the use of fire resistant materials in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce fire hazards or prevent the spread of fire to surrounding areas.
\end{itemize}

\textbf{FINDINGS:} The Hearings Officer finds that because the proposed dwellings would be constructed on the upper bench/plateau of the subject property on which mining previously occurred, and where there remain few trees and little other vegetation, the upper portion of the property effectively creates a natural fire break, and therefore no additional fire break is necessary. I further find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that all dwellings be constructed of fire resistant materials. Additional fire protection measures are discussed in the subdivision findings below.

\begin{itemize}
  \item[B.] The Planning Director or Hearings Body may limit changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation in order to prevent or minimize erosion or pollution.
\end{itemize}

\textbf{FINDINGS:} The staff report states, and the Hearings Officer agrees, that any changes to the natural grade, or the alteration, removal or destruction of natural vegetation in the riparian habitat along the Deschutes River or within NWI mapped wetlands or on the adjacent canyon walls, likely would result in erosion and increased sediment delivery to the river. Based on my site visit observations, I find that alteration of the existing grade and removal of vegetation on the upper plateau at the upper edge of the river canyon – such as removing the existing vegetated berms along the riverside of the proposed PUD residential lots -- could have similar negative impacts on the river and its canyon. Therefore, I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval prohibiting such actions unless they are part of an ODFW approved habitat enhancement project.

\textbf{g. Section 18.60.080, Rimrock Setback}

Setbacks from rimrock shall be as provided in DCC 18.116.160.

\textbf{FINDINGS:} Compliance with the provisions of Section 18.116.160 is addressed in the findings below.

\textsuperscript{11} Opponents argue the applicant also cannot include in its density calculations the acreage proposed to be dedicated for Lower Bridge Way. However, opponents have not cited, nor has the Hearings Officer found, any provision in Title 18 prohibiting the inclusion of the dedication in the density calculations.
Based on the foregoing discussion, the Hearings Officer finds I cannot approve the proposed PUD because the 19-lot density exceeds that allowed on the subject property without including the FP-zoned land in which PUDs are not permitted.

**SM ZONE STANDARDS**

4. Chapter 18.52, Surface Mining Zone (SM)

**FINDINGS:** No part of the proposed PUD is zoned SM. Therefore, the Hearings Officer finds the provisions of this chapter are not applicable. However, as discussed in the findings above, I have found the applicant’s proposal cannot be approved because it separates the SM-zoned portion of Parcel 3 of MP-80-96 from the subject property without making that remainder area a legal lot.  

**SMIA ZONE STANDARDS**

5. Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

**FINDINGS:** The applicant does not propose any dwellings in conjunction with the PUD. Nevertheless, staff concluded the provisions of Chapter 18.56 require SMIA site plan review concurrent with tentative plan and conditional use permit review for the proposed PUD. At staff’s suggestion the applicant submitted an application for SMIA site plan review on July 7, 2015. The Hearings Officer understands staff to argue the applicant must demonstrate through concurrent SMIA site plan review that the proposed PUD would allow dwellings to be sited on the PUD residential lots in conformance with all applicable SMIA site plan approval criteria. Staff’s position is based on Section 18.56.100B) which provides:

B. Site plan review and approval, pursuant to the County Uniform Land Use Action Procedures Ordinance, shall be required for all uses in the SMIA Zone prior to commencement of any construction or use. (Emphasis added.)

The Hearings Officer finds the above-underscored language supports staff’s interpretation because it applies to “all uses” in the SMIA Zone and requires site plan approval prior to commencement of any such use, and the proposed PUD is a “use.” However, because no dwellings have been proposed in conjunction with the PUD, I find SMIA site plan review of the dwellings is premature. Therefore, I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring SMIA site plan review for each dwelling prior to construction.

a. Section 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 mine site reasonable use of their property.

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12 As also discussed above, the Hearings Officer has found that if the applicant does not further divide the SM-zoned portion of Parcel 3, the provisions of Section 18.52.060 prohibiting the creation or reduction in size of SM parcels do not apply.
FINDINGS: The Hearings Officer finds the SMIA Zone purpose statement is not an approval criterion for the applicant’s proposal, but can provide context for interpreting ambiguous provisions in this chapter.

b. Section 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.

FINDINGS: The subject property is not located within a UGB. The property abuts SM Site 461 along its western boundary, and is located south across the Deschutes River from SM Site 322. The applicant’s SMIA burden of proof indicates, and based on the Hearings Officer’ review of the tentative plan I agree, that some or all of the proposed PUD residential lots are within the SMIA Zones for these surface mining sites, and therefore the SMIA Zone is applicable to the proposed PUD.

c. Section 18.56.030, Application of Provisions

The standards set forth in DCC 18.56 shall apply in addition to those specified in DCC Title 18 for the underlying zone. If a conflict in regulations or standards occurs, the provisions of DCC 18.56 shall govern.

d. Section 18.56.050, Conditional Uses Permitted

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone(s) with which the SMIA Zone is combined and shall be subject to all conditions of the underlying zone(s) as well as the conditions of the SMIA Zone.

FINDINGS: The proposed PUD is a use permitted conditionally in the RR-10 Zone. Therefore, the Hearings Officer finds the PUD also is permitted conditionally in the SMIA Zone that overlays the RR-10 Zone. However, as discussed in the findings above, I have found the proposed PUD is not permitted in the FP Zone and therefore it is not permitted in the SMIA Zone that overlays the FP Zone.

e. Section 18.56.060, Dimensional Standards

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

FINDINGS: The Hearings Officer assumes the term “lot size” in this section means the minimum lot size prescribed in the underlying zone for the proposed use. As discussed in the conditional use findings below, the minimum lot size for a PUD is 40 acres and therefore 40 acres also is the minimum lot size for a PUD in the SMIA Zone. The subject property is 157 acres in size. As discussed above, I have found the applicant cannot include in the PUD either the 10.4 acres of EFU-zoned land or the approximately 30 acres of FP-zoned land because PUDs are not
allowed in these zones. The remaining approximately 116 acres in the proposed PUD are zoned RR-10, therefore satisfying the 40-acre minimum lot size for a PUD in both the RR-10 Zone and the SMIA Zone overlaying the RR-10 Zone.

f.  Section 18.56.070, Setbacks

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

A.  No noise-sensitive or dust-sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within 250 feet of any surface mining zone, except as provided in DCC 18.56.140.

B.  No noise-sensitive or dust-sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within one-quarter mile of any existing or proposed surface mining processing or storage site, unless the applicant demonstrates that the proposed use will not prevent the adjacent surface mining operation from meeting the setbacks, standards and conditions set forth in DCC 18.52.090, 18.52.110 and 18.52.140, respectively.

C.  Additional setbacks in the SMIA Zone may be required as part of the site plan review under DCC 18.56.100.

D.  An exception to the 250-foot setback in DCC 18.56.070(A) shall be allowed 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.

FINDINGS: Compliance with the setbacks in the FP and SMIA Zones is discussed in the findings above.

Section 18.04.030 defines “noise-sensitive” and “dust-sensitive” uses or structures as real property normally and structures thereon used for sleeping, such as dwellings. The applicant does not propose any dwellings in conjunction with the PUD. Therefore, the Hearings Officer finds the question under this section is whether the size and configuration of the proposed PUD residential lots will permit future siting of dwellings in a manner satisfying the prescribed setbacks.

The applicant’s SMIA burden of proof states both SM Sites 322 and 461 “are inactive, closed mining sites with no existing or proposed mining uses,” and therefore the siting of dwellings on the proposed PUD lots will not prevent any existing or proposed surface mining on these sites from meeting applicable SM Zone standards. In support of this argument, the applicant submitted as Exhibits “A,” “B” and “C” to its SMIA burden of proof copies of correspondence
from DOGAMI stating the agency has closed its file for SM Site 461. However, as discussed in the findings above, the Hearings Officer has found that because the prerequisites for rezoning SM Site 461 under the 2008 Intent to Rezone have not been met, Site 461 is still zoned SM and remains on the county’s Goal 5 inventory of significant mineral and aggregate sites. And although the record indicates SM Site 322 is being used for agricultural purposes, it also is zoned SM and remains on the county’s Goal 5 inventory of significant mineral and aggregate sites. Therefore, I find both SM Sites 461 and 322 have the potential to be mined in the future. Nevertheless, the record does not indicate whether or where storage or processing uses are permitted on either Site 461 or 322. For this reason, I find the quarter-mile setback from processing and storage areas is not applicable to the proposed PUD. However, the 250-foot setback is applicable.

The tentative plan shows none of the proposed PUD residential lots is located in whole or in part within 250 feet of the boundaries of either SM Site 322 or 461. Therefore, the Hearings Officer finds noise- and dust-sensitive uses – i.e., dwellings – can be sited on all proposed PUD residential lots consistent with the applicable SMIA Zone setbacks.

f. Section 18.56.080, Use Limitations

No dwellings or additions to dwellings or other noise-sensitive or dust-sensitive uses or structures shall be erected in any SMIA Zone without first obtaining site plan approval under the standards and criteria set forth in DCC 18.56.090 through 18.56.120.

FINDINGS: The Hearings Officer has found the location, size and configuration of the proposed PUD residential lots will allow the siting of noise- and dust-sensitive use – i.e., dwellings – at least 250 feet from the boundaries of SM Sites 461 and 322. The siting standards in Sections 18.56.090 through 18.56.120 are discussed in the findings below.

g. Section 18.56.090, Specific Use Standards

The following standards shall apply in the SMIA Zone:

New dwellings, new noise-sensitive and dust-sensitive uses or structures, and additions to dwellings or noise- and dust-sensitive uses or structures in existence on the effective date of Ordinance No. 90-014 which exceed 10 percent of the size of the existing dwelling or use, shall be subject to the criteria established in DCC 18.56.100.

FINDINGS: The record indicates there are no existing dwellings on the subject property that could be expanded. The applicant does not propose any dwellings concurrent with the PUD application. However, the applicant proposes 19 residential lots in the PUD, each of which would be developed with new dwelling. Therefore, the Hearings Officer finds I must determine whether the proposed PUD will permit the future siting of dwellings on the residential lots in compliance with the criteria in Section 18.56.100, discussed in the findings below.

h. Section 18.56.100, Site Plan Review and Approval Criteria

A. Elements of Site Plan. A site plan shall be submitted in a form prescribed by the Planning Director or Hearings Body.
detailing the location of the proposed noise-sensitive use, the location of the nearby surface mine zone and operation, if any, and other information necessary to evaluate the approval criteria contained in DCC 18.56.100.

**FINDINGS:** The applicant submitted a county land use application form and fee for SMIA site plan review. The materials included in the SMIA application, as well as the conditional use and tentative plan applications and burden of proof statements, detail the location of the nearby SM sites as well as the proposed residential lots on which dwellings would be sited in the future, therefore complying with these requirements.

**B. Site plan review and approval, pursuant to the County Uniform Land Use Action Procedures Ordinance, shall be required for all uses in the SMIA Zone prior to commencement of any construction or use.**

**FINDINGS:** As discussed above, the Hearings Officer has found the language in this paragraph is sufficiently broad to require SMIA site plan review concurrent with conditional use and tentative plan review for the applicant’s proposed residential PUD.

**C. The Planning Director or Hearings Body may grant or deny site plan approval and may require such modifications to the site plan as are determined to be necessary to meet the setbacks, standards and conditions described above.**

**FINDINGS:** The Hearings Officer has found that because of the location, size and configuration of the proposed PUD residential lots, dwellings can be sited on those lots in a manner that satisfies the setbacks, standards and conditions in the SMIA Zone. I also have found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring SMIA site plan review for each PUD dwelling before construction thereof.

**D. The site plan shall be approved if the Planning Director or Hearings Body finds that the site plan is consistent with the site-specific ESEE analysis in the surface mining element of the Comprehensive Plan and that the proposed use will not prevent the adjacent surface mining operation from meeting setbacks, standards and conditions set forth in DCC 18.52.090, 18.52.110 and 18.56.140, respectively.**

**FINDINGS:** Included in the record as Exhibits “D” and “E” to the applicant’s SMIA site plan burden of proof are copies of the county’s ESEE analyses for SM Sites 461 and 322, respectively. The Hearings Officer finds that both ESEE analyses identify land uses potentially conflicting with mining of the sites, including residential uses on surrounding land. However, both ESEE analyses state that although the intensity of such future residential uses could not be predicted, the surrounding low-density – i.e., RR-10 – zoning would minimize such conflicts.

As discussed above, in 2008 the board approved a zone change for the subject property to RR-10 consistent with the zoning of other nearby rural residential areas. The applicant proposes to develop a PUD at a density of one dwelling per 7.7 acres. The Hearings Officer cannot determine from this record whether the board contemplated this higher density when it adopted the ESEE analyses for SM Sites 461 and 322. Nevertheless, I have found the location, size and

Attachment 4: Split Zone, Flood Plain Decisions
configuration of the proposed PUD residential lots will allow dwellings to be sited on those lots in compliance with the SMIA Zone setbacks adopted to protect surface mining activities. For these reasons, I find the SMIA site plan approval can be granted for the proposed PUD consistent with the ESEE analyses for SM Site 461 and 322.

E. Public notice shall be as set forth in DCC Title 22, the Uniform Development Procedures Ordinance, except that in all cases notice of the receipt of a SMIA application shall be sent to the mine owners and/or operators whose SM-Zoned site triggered the SMIA review.

FINDINGS: The Planning Division mailed individual written notice of the initial public hearing on the applicant’s proposal to the owners of record of all property located within 750 feet of the subject property, including the owners of SM Sites 461 and 322, and published notice of the initial public hearing in a newspaper of general circulation. In addition, the applicant posted a notice of proposed land use action sign on the subject property. All of these notices were provided in accordance with Title 22, therefore satisfying the requirements in this paragraph.

i. Section 18.56.120, Waiver of Remonstrance

The applicant for site plan approval in the SMIA Zone shall sign and record in the Deschutes County Book of Records a statement declaring that the applicant and his successors will not now or in the future complain about the allowed surface mining activities on the adjacent surface mining site.

FINDINGS: The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition requiring the applicant to execute and record with the Deschutes County Clerk a waiver of remonstrance as required by this section.

j. Section 18.56.140, Exemptions

The following shall be exempt from the provisions of DCC 18.56:

A. Uses in the SMIA Zone which are not within one-half mile of any identified resource in the SM Zone after all reclamation has occurred.

* * *.

FINDINGS: The record indicates the DOGAMI files for SM Sites 461 and 322 have been closed. Nevertheless, both sites remain zoned SM and are included on the county’s Goal 5 inventory of significant mineral and aggregate resources. Therefore, both sites have the potential to be mined in the future with all necessary permits from the county and DOGAMI. Moreover, as discussed in the Findings of Fact above, only a portion of Site 461 was subject to a DOGAMI and/or county-approved reclamation plan. Therefore, the Hearings Officer finds it cannot be said of either Site 461 or 322 that “all reclamation has occurred,” and consequently I find the applicant’s proposed PUD is not exempt from SMIA site plan review under this section.

Based on the foregoing findings, the Hearings Officer finds that if the proposed PUD is approved on appeal, the board should adopt a finding that the PUD satisfies, or with imposition
of the recommended conditions of approval set forth above can satisfy, all applicable provisions of the SMIA Zone.

**LANDSCAPE MANAGEMENT ZONE STANDARDS**

6. Chapter 18.84, Landscape Management Combining Zone (LM)

**FINDINGS:** The applicant did not propose dwellings concurrent with its PUD application, and did not submit an application for LM site plan review. However, staff concluded, and the Hearings Officer agrees, that review of the proposed PUD should include findings as to whether the location, size and configuration of the PUD residential lots will permit the future siting of dwellings in compliance with LM site plan approval criteria. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring LM site plan review and approval for all future dwellings or additions to dwellings in the PUD prior to construction thereof.

a. Section 18.84.020, Application of Provisions

The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. This distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.

**FINDINGS:** The tentative plan shows all proposed residential lots are located within the quarter-mile LM corridor for the Deschutes River, and that the abutting stretch of the river is a designated state scenic waterway. Therefore, the Hearings Officer finds the LM Zone applies to the proposed PUD.

b. Section 18.84.030, Uses Permitted Outright

Uses permitted in the underlying zone with which the LM Zone is combined shall be permitted in the LM Zone, subject to the provisions in DCC 18.84.

**FINDINGS:** The LM Zone overlays land within the proposed PUD zoned RR-10, EFU, and FP. As discussed above, the Hearings Officer has found the proposed PUD is not a use permitted in the EFU and FP Zones, and therefore I also have found it is not permitted in the LM Zone overlaying those two zones. However, because as discussed in the findings immediately below I have found the PUD is a use permitted conditionally in the RR-10 Zone, I also find it is a use permitted conditionally in the LM Zone overlaying the RR-10 zoned land within the PUD.

b. Section 18.84.040, Uses Permitted Conditionally
Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.

**FINDINGS:** As discussed in the findings below, the Hearings Officer has found the proposed PUD is a use permitted conditionally in the RR-10 Zone, and therefore I find it is permitted conditionally in the LM Zone overlaying the RR-10 zoned land in the PUD.

c. Section 18.84.050, Use Limitations

A. Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.

B. Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.

**FINDINGS:** There are no existing dwellings or other structures on the subject property. Because the applicant did not propose new dwellings in conjunction with the PUD, the Hearings Officer finds I cannot determine whether such dwellings will be sited so that they are visible from the Deschutes River. However, because of the location, size and configuration of the proposed PUD residential lots, I find it is feasible for dwellings to be sited on those lots so they are not visible from the river. To assure that future dwellings that are visible from the river receive LM site plan approval, I find that if the proposed PUD is approved on appeal, it should be subject to conditions of approval requiring the applicant or its successor to demonstrate whether the dwelling would be visible from the river, and if it is visible from the river, to obtain LM site plan approval for such dwelling prior to construction thereof.

d. Section 18.84.060, Dimensional Standards

In an LM Zone, the minimum lot size shall be as established in the underlying zone with which the LM Zone is combined.

**FINDINGS:** As discussed in the RR-10 Zone findings above, the minimum lot size for a PUD is 40 acres, and individual residential lots in the PUD must be at least 2 acres in size. Therefore, the Hearings Officer finds these minimum lot sizes are applicable to the LM Zone overlaying the RR-10 Zone. The subject property is 157 acres in size. I have found that after subtracting the 10.4 acres of EFU-zoned land and the approximately 30 acres of FP-zoned land, approximately
116 acres of the property are developable as a PUD. The proposed tentative plan shows all proposed PUD residential lots will be at least two acres in size. For these reasons, I find the proposed PUD satisfies the 40-acre minimum PUD size and the two-acre minimum residential lots size.

e. **Section 18.84.080, Design Review Standards**

The following standards will be used to evaluate the proposed site plan:

A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.

B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.

C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. This subsection shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.

D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.84.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.

E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flagpoles or other projections.
from the roof of the structure. DCC 18.84.080 shall not apply to agricultural structures located at least 50 feet from a rimrock.

F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.

G. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.

H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged.

I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.,) are permitted.

J. A conservation easement as defined in DCC 18.04.030 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Whychus Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.

FINDINGS: The applicant did not propose dwellings in conjunction with the PUD. Based on the location, size and configuration of the proposed PUD residential lots, the Hearings Officer finds it is feasible to site future dwellings in compliance with these criteria. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring compliance with the criteria in this section, including the execution and recording of a conservation easement.

Section 18.84.090, Setbacks

A. Except as provided in DCC 18.84.090, minimum setbacks shall be those established in the underlying zone with which the LM Zone is combined.

FINDINGS: The applicable setbacks in the FP, SMIA and RR-10 Zones are discussed in the findings above and below. The Hearings Officer has found that with the possible exception of rimrock setbacks, the location, size and configuration of the proposed PUD residential lots will
allow the future siting of dwellings on the PUD residential lots in conformance with the setbacks in those zones. Rimrock setbacks are addressed in the findings below.

B. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road right-of-way unless the Planning Director or Hearings Body finds that:

1. A location closer to the designated road would more effectively screen the building from the road; or protect a distant vista; or

2. The depth of the lot makes a 100 foot setback not feasible; or

3. Buildings on both lots abutting the subject lot have front yard setbacks of less than 100 feet and the adjacent buildings are within 100 feet of the lot line of the subject property, and the depth of the front yard is not less than the average depth of the front yards of the abutting lots.

If the above findings are made, the Planning Director or Hearings Body may approve a less restrictive front yard setback which will be appropriate to carry out the purpose of the zone.

FINDINGS: The Hearings Officer finds these criteria are not applicable because the LM Zone on the subject property is associated with the Deschutes River and not with a designated landscape management road.

C. River and Stream Setbacks. All new structures or additions to existing structures shall be set back 100 feet from the ordinary high water mark of designated streams and rivers or obtain a setback exception in accordance with DCC 18.120.030. For the purpose of DCC 18.84.090, decks are considered part of a structure and must conform with the setback requirement.

The placement of on site sewage disposal systems shall be subject to joint review by the Planning Director or Hearings Body and the Deschutes County Environmental Health Division. The placement of such systems shall minimize the impact on the vegetation along the river and shall allow a dwelling to be constructed on the site as far from the stream or lake as possible. Sand filter systems may be required as replacement systems when this will allow a dwelling to be located further from the stream or to meet the 100 foot setback requirement.
FINDINGS: The Hearings Officer has found the location, size and configuration of the proposed PUD residential lots will permit future siting of dwellings and on-site septic systems thereon at least 100 feet from the OHWM of the Deschutes River, and in a manner minimizing impact to vegetation along the river.

D. Rimrock Setback. New structures (including decks or additions to existing structures) shall be set back 50 feet from the rimrock in an LM Zone. An exception to this setback may be granted pursuant to the provisions of DCC 18.84.090(E).

E. Rimrock Setback Exceptions. An exception to the 50 foot rimrock setback may be granted by the Planning Director or Hearings Body, subject to the following standards and criteria:

1. An exception shall be granted when the Planning Director or Hearings Body finds that:
   a. A lesser setback will make the structure less visible or completely screened from the river or stream; or
   b. The subject lot or parcel was a lot of record prior to the adoption of this ordinance; or
   c. Dwellings (including decks) on both lots or parcels abutting the subject lot within 50 feet of the rimrock and the adjacent buildings are within 100 feet of the lot line of the subject property; or
   d. Adherence to the 50-foot setback would prevent the structure from being sited on the lot.

   * * *

FINDINGS: Staff and the parties disagree as to whether and where there is rimrock in the proposed PUD. Section 18.04.030 includes the following definition:

“Rimrock” means any ledge, outcropping or top or overlying stratum of rock, which forms a face in excess of 45 degrees, and which creates or is within the canyon of the following rivers and streams: (1) Deschutes River . . . For the purpose of DCC Title 18, the edge of the rimrock is the uppermost rock ledge or outcrop of rimrock. (Emphasis added.)

The Hearings Officer finds the above-underscored language signifies a rock outcrop or face in excess of 45 degrees constitutes “rimrock” even if it does not form the highest point on the canyon wall. In other words, rimrock may be located on the canyon wall below the top of the canyon. In light of this definition, and based on my site visit observations and the photos of the subject property and the river canyon submitted into the record by opponents, I find there may be rimrock within open space Tracts C and E as well as on some or all of the proposed PUD residential lots.

Attachment 4: Split Zone, Flood Plain Decisions
The staff report questions whether all of the proposed residential lots are configured so that dwellings cannot be sited on them without the need for a rimrock setback exception. Staff suggests that because of the proximity of the proposed PUD residential lots to the Deschutes River -- a designated state scenic waterway -- lots requiring rimrock setback exceptions should not be permitted. Staff also notes it may not be possible for future owners of PUD residential lots to obtain rimrock setback exceptions in light of the strict standards therefor. Accordingly, the staff report recommends the applicant be required to submit into this record a figure showing the location and dimensions of the developable area of each lot in order to demonstrate it is feasible to site a dwelling without a rimrock setback exception.

The applicant did not submit the recommended information concerning rimrock on each lot. Rather, it submitted as Exhibit “PH-14” to its original burden of proof a memorandum dated June 30, 2015 from the applicant’s engineer Keith D’Agostino listing proposed setbacks for each residential lot and stating in relevant part:

“\[I\]n accordance with your request, we have compiled the following proposed setbacks for lots/yard setbacks related to lot boundaries that abut the Deschutes River/open space tracts within the planned development. The proposed setbacks are based on the Tentative Subdivision Plan, April 2, 2015, and are generally coincident with the location of the existing top of slope, relative to the particular lot lines.

Note for lots 2-18, the subject setback is likely to be clearly recognized as a REAR yard setback. On lots 1 and 19 the subject setback to the “River” may be viewed as a SIDE or REAR yard setback.” (Underscored emphasis added.)

The applicant’s July 28, 2015 final argument explains these “special setbacks” in relevant part as follows:

“\[T\]he Applicant conducted an on-site investigation to create setbacks for each individual lot to demonstrate the proximity of each proposed dwelling to the river and avoid the need for any conditions or exceptions to rimrock setbacks. The memo submitted as Exhibit PH-14 contains the proposed minimum rear yard setbacks for each individual lot based on the Applicant’s on-site investigation. The proposed setbacks are designed to minimize visibility from the river and meet County and State requirements for preservation of scenic resources. These are minimum rear yard setbacks and, as discussed, each structure will be required to seek approval from State Parks which could result in a greater setback to meet State scene waterway requirements.” (Bold emphasis added.)

The Hearings Officer finds the above-underscored language in Mr. D’Agostino’s memorandum is less than clear in describing how the “special setbacks” were determined and where they are located. Reading that language in the context of the applicant’s final argument, it could be interpreted to mean the “special setbacks” represent the minimum distance between the existing “top of slope” on each lot and a future dwelling. However, scaling each “special setback” on the tentative plan suggests they instead represent the distance between the riverside lot line of each lot – located on the canyon wall -- and the “top of slope.” I find that under either interpretation, the proposed “special setbacks” are not an acceptable means of demonstrating compliance with required rimrock setbacks.
If the “special setbacks” represent the distance between a future house and the “top of slope,” it may not be feasible to develop some lots. For example, the distance from the “top of slope” to the private road on Lots 5 and 6 is less than 200 feet, raising the question of whether the proposed “special setbacks” of 130 and 110 feet, respectively, for these lots could be achieved while still allowing the siting of a dwelling, on-site septic system, and individual well meeting the minimum front-yard setbacks from the road and from each other. Similarly, the long-narrow configuration of Lot 9 likely would preclude any type of development with the proposed 190-foot “special setback” measured back from the “top of slope.”

If, on the other hand, the “special setbacks” represent the distance between the riverside lot line and the “top of slope” on each lot, dwellings could be sited on the rim of each lot regardless of where any rimrock is located. The Hearings Officer finds that without the lot-specific rimrock survey recommended by staff, the applicant has not demonstrated that each lot can be developed with a dwelling, on-site septic system and individual well in a manner that assures the dwelling is at least 50 feet from any rimrock, and that all other yard and setback requirements in the LM Zone can be met.

**Based on the foregoing discussion, the Hearings Officer finds the applicant has not demonstrated it is feasible to site a dwelling, on-site septic system and individual well on each PUD residential lot without the need for a rimrock setback exception, or that it is feasible for future dwellings to qualify for rimrock setback exceptions.**

### h. Section 18.84.095, Scenic Waterways

Approval of all structures in a State Scenic Waterway shall be conditional upon receipt of approval of the Oregon Department of Parks and Recreation.

**FINDINGS:** The section of the Deschutes River adjacent to the subject property is a designated scenic waterway – i.e., the Middle Deschutes Scenic Waterway -- administered by OPRD. By a letter dated February 24, 2015, and signed by Greg Cianella, Scenic Waterway Program Coordinator, OPRD granted approval for the “subdivision framework (road and underground utilities)” for the applicant’s proposed PUD. The letter states the approval does not include any structures within the PUD.

In his July 7, 2015 comments on the applicant’s proposal, Mr. Cianella stated in relevant part:

> “When current or future property owner(s) propose to construct new structures on their lots created by this decision, they will need to notify OPRD as prescribed by the Scenic Waterways Act, ORS 390.845(3); OAR 736-040-0030, and meet criteria provided in OAR 736-040-0035(&) and OAR 736-040-0072(5)(b). OPRD requests that Deschutes County consider these criteria when evaluating the Lower Bridge Road LLC application so that property owner(s) will have the opportunity to develop their lot(s) in the future in a manner consistent with the Scenic Waterways Act.”

The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that each dwelling on a PUD residential lot receives OPRD scenic waterway approval prior to construction thereof.
For the foregoing reasons, the Hearings Officer finds the applicant has not demonstrated its proposed PUD complies with all applicable approval criteria in the LM Zone.

SUPPLEMENTARY PROVISIONS


a. Section 18.116.160, Rimrock Setbacks Outside of LM Combining Zone

FINDINGS: The Hearings Officer finds the criteria in this section are not applicable to the proposed PUD because all residential lots and rimrock, if any, are located within the LM Zone. Nevertheless, the staff report recommends that I find the provisions of this section apply to any structures that are exempt from LM site plan review, such as structures that do not require building permits. Staff argues that if this section does not apply to such structures, a PUD lot owner potentially could place a structure not requiring a building permit – such as an accessory structure less than 200 square feet in size and less than 10 feet in height -- immediately adjacent to or projecting over rimrock.

The Hearings Officer understands staff’s concern. However, I find the plain language of this section makes clear it does not apply within the LM Zone. Alternatively, staff recommends, and I agree, that it is appropriate to prohibit the development of any structure within the LM Zone rimrock setback as a condition of approval to assure compliance with conditional use approval criteria. As discussed in the conditional use findings below, I have recommended imposition of such a condition of approval to assure the natural resources on the subject property are protected.

b. Section 18.116.310, Traffic Impact Studies

A. For purposes of DCC 18.116.310, the transportation system includes public and private roads, intersections, sidewalks, bike facilities, trails, and transit systems.

B. The applicant shall meet with County staff in a pre-application conference to discuss study requirements, then generate the traffic study and submit it concurrently with the land use application.

C. Guidelines for Traffic Impact Studies

* * *

FINDINGS: The applicant submitted a traffic impact study (hereafter “traffic study”) dated November 6, 2014, prepared by Kittelson & Associates, and included in the record as Exhibit “I” to the applicant’s original burden of proof. The traffic study concluded that because of low existing traffic volumes on Lower Bridge Way, the addition of the 190 additional average daily vehicle trips (ADTs) and 20 weekday p.m. peak hour trips predicted to be generated by the proposed PUD will not cause Lower Bridge Way to function below acceptable levels of service as defined by the road department. The traffic study also concluded there is adequate sight distance at the intersection of Lower Bridge Way and the proposed PUD access road.
In his April 28, 2015 comments on the applicant’s proposal, the county’s Senior Transportation Planner Peter Russell stated in relevant part:

“Staff agrees with the submitted traffic study’s methodology and LOS conclusions. Planning and Road Department staff visited the site and are concerned about the sight visibility from the proposed access to both the north and south of Lower Bridge Way. There are slight vertical curves and vegetation in both directions and it appears the access will not meet sight distance requirements. The applicant might wish to consider whether to replace the direct access to Lower Bridge Way with a direct access onto Teater at the south edge of the property, thus funneling site traffic to the existing Lower Bridge Way/Teater Avenue intersection.

In their May 11, 2015 comments on the applicant’s proposal, George Kolb, County Engineer, and Michael Martin, County Utility Coordinator/Surveyor, stated:

“Access onto Lower Bridge Road will have to meet AASHTO [American Association of State Highway and Transportation Officials] standards for sight distance. Staff from the Road Department has met with the applicant’s engineer and it appears that the necessary sight distance can be met at a location that was agreed upon in the field. Another option would be to move the access from Lower Bridge Way south to NW Teater Avenue which is classified as a rural local road if sight distance requirements can’t be met on Lower Bridge Road.”

The record indicates the agreed-upon access location referred to in these comments is the applicant’s proposed access road intersection with Lower Bridge Way.

For the foregoing reasons, the Hearings Officer finds the applicant’s proposal satisfies the requirements for traffic studies in this section.

CONDITIONAL USE APPROVAL CRITERIA

8. Chapter 18.128, Conditional Use

a. Section 18.128.015, General Standards Governing Conditional Uses

Except for those conditional uses permitting individual single family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:

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

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

FINDINGS: The Hearings Officer finds the general conditional use approval criteria apply because the applicant’s proposal is for a PUD and not for an individual single-family dwelling. Each of the factors in this paragraph is addressed in the findings below.
**Design and Operating Characteristics.** The Hearings Officer finds these two factors require an evaluation of the suitability of the subject property for PUD development considering the proposed PUD’s characteristics, such as its size, configuration, density, uses, transportation access, and services and utilities.

1. **Size.** The proposed PUD would include 157 acres, far exceeding the 40-acre minimum lot size for a PUD in the RR-10 Zone.

2. **Configuration.** The proposed PUD would include 19 residential lots, two common areas, five open space tracts, a private road system including bicycle lanes, and the dedication of right-of-way for the abutting segment of Lower Bridge Way. All residential lots would be clustered adjacent to the Deschutes River, and open space Tracts C and E would include the river and its associated flood plain, wetlands and riparian areas as well as much of the river canyon. Open space Tracts C, E and F would include the EFU-zoned area, and the portions of SM Site 461 zoned RR-10 and located on the west side of Lower Bridge Way. The open space tracts would not be developed. The PUD residential lots would be at least two acres in size. As discussed in the findings above, the applicant has proposed “special setbacks” for dwellings that the Hearings Officer has found are not adequate to assure each proposed dwelling would meet the 50-foot rimrock setback, or that each residential lot is large enough, or has the configuration necessary, to permit the future siting of a dwelling, on-site septic system and individual well and still comply with all yard and setback requirements. And because the proposed 157-acre PUD has only the minimum required open space acreage, I find it may not be feasible to reconfigure the residential lots and open space tracts to increase the size or dimensions of the residential lots in order to assure dwellings can be sited thereon consistent with all required yards and setbacks.

3. **Density.** The proposed density is one dwelling per 7.7 acres which is less than the maximum density of one dwelling per 7.5 acres permitted for a planned/cluster development in the RR-10 Zone.

4. **Uses.** Proposed uses in the PUD would include single-family dwellings and residential uses as well as passive use of the open space tracts by residents and their guests.

5. **Transportation Access.** The proposed PUD would have access from Lower Bridge Way via a system of private PUD roads including a main access road and three cul-de-sac roads. As discussed above, the Hearings Officer has found traffic generated by the proposed PUD would not exceed the capacity of Lower Bridge Way nor create traffic hazards at the proposed intersection with the PUD access road. The applicant proposes to dedicate additional right-of-way for, and to improve to the county’s standards for rural collector roads, the abutting segment of Lower Bridge Way.

6. **Services and Utilities.** Each dwelling in the proposed PUD would be served by an individual well and on-site septic system. As discussed in the subdivision findings below, the record indicates water is available in the area. In addition, the Hearings Officer has recommended that if the proposed PUD is approved on appeal, such approval should be subject to conditions of approval requiring that each residential lot receive an approved septic site evaluation. As also discussed below, the record indicates all necessary utility services are available to the subject property.

Based on the foregoing findings, the Hearings Officer finds the subject property is not suitable for the proposed PUD considering the development’s design and operating characteristics.
because the applicant has failed to demonstrate the proposed PUD residential lots are of adequate size and dimensions to accommodate single-family dwellings, on-site septic systems and individual wells while complying with all yard and setback requirements including rimrock setbacks.

Site. The Hearings Officer finds this factor requires evaluation of the suitability of the subject property for PUD development considering the property’s characteristics such as its location, size, configuration, topography, and natural and man-made hazards.

a. Location. The majority of the subject property is located in the RR-10 Zone in which residential PUDs are permitted conditionally. However, as discussed above, the Hearings Officer has found the proposed PUD cannot include land zoned EFU-LB and FP because these zones do not permit PUDs outright or conditionally. The property is located across the Deschutes River from the Borden Beck Wildlife Preserve and includes within its boundaries the Lynch and Roberts Advertisement sign, a designated historic site. The property has access from a designated county collector road.

b. Size. The Hearings Officer has found the subject property is of sufficient size to accommodate the proposed PUD because it is larger than 40 acres, even after subtracting the EFU- and FP-zoned acreage.

c. Configuration. The subject property is irregular in shape, generally following the course of the Deschutes River on the east and Lower Bridge Way on the west. The shape of the subject property effectively precludes more than a single road access. However, as discussed in the subdivision findings below, the Hearings Officer has found a secondary access is not required.

d. Topography. The subject property’s topography varies from the large, generally level upper plateau on which most of the PUD, all of the residential lots, and the private PUD roads would be located. This location would preclude the need for significant grading for dwellings or roads. The Deschutes River and most of its canyon would be included in the PUD’s open space tracts which would not be developed with dwellings or other structures or roads.

e. Natural and Man-Made Hazards. As discussed in the Findings of Fact above, the subject property was part of an approximately 557-acre property (hereafter “parent parcel”) that was mined for aggregate and diatomite. Because mining on the parent parcel began as early as the 1920’s, long before county land use regulations and state mining regulations became effective, most of the parent parcel is exempt from state or county mine reclamation requirements. The record indicates that after 1980, DOGAMI began regulating some mining activity on the parent parcel, and that although multiple mining permits were issued by DOGAMI over the years, various companies were cited for violating environmental laws, mining permits, or operating without permits. The record indicates, and the Hearings Officer’s site visit observations confirmed, that due to past mining activity, diatomaceous earth is exposed on much of the parent parcel west of Lower Bridge Way and on the subject property. The record also indicates the parent parcel on the west side of Lower Bridge Way was used for the storage of hazardous/radioactive waste and some of the parent parcel was subject to a DEQ-approved cleanup program. However, there is no evidence in this record that any part of the subject property located west of Lower Bridge Way was utilized for waste storage.

In its 2008 plan amendment/zone change decision, the board made the following relevant findings concerning environmental conditions on the parent parcel:
“The record indicates that the processing of diatomaceous earth can create cristobalite, classified by the International Agency for Research on Cancer as carcinogenic to humans. There is no evidence in the record that the property has been tested or evaluated for potential hazard from this carcinogen. The site has also been used for hazardous and radioactive waste disposal and has been subject to numerous violations of environmental quality regulations.

* * *

As noted above, the majority of the site, primarily west of Lower Bridge Way, has a long history of industrial use, and some of those uses have resulted in significant environmental impacts. Those impacts include dust from diatomite, hazardous and radioactive waste disposal and remediation, and violations of environmental quality regulations. Neighbors expressed concerns regarding the impact of the proposal on water quantity and quality, arguing that the water needed to reclaim the site will adversely affect the area’s water supply.”

After considering the evidence before it in 2008, the board made the following findings concerning each of the identified adverse environmental impacts:

“Diatomite dust. . . . The applicant supplied testimony and evidence that shows that fresh-water diatomite contains a smaller percentage of crystalline silica, the type of silica that has been identified as a health hazard if inhaled in quantity. The applicant argues that this type of diatomite poses no more risk than other dust in the area. The applicant also argues that before this site is redeveloped for residential uses, the diatomite will be graded and seeded to prevent dust from blowing from the site to neighboring properties. The neighbors expressed reservations about this assertion, arguing that the cost and feasibility of that type of reclamation is unlikely to be recouped as part of development on this site. 5

The evidence shows that blowing dust has been an issue for many years, although recent grading activities exacerbated the situation. The recent activities led the Department of Environmental Quality (DEQ) to issue a notice of violation. In response to the notice, the owners obtained a temporary water permit, purchased mitigation credits, installed a pivot and began using an existing well to water a portion of the site to minimize dust. The applicant is also proposing to implement best management practices to ensure that blowing dust during development is minimized. These measures are adequate to assure that local air quality is maintained.

5 The opponents argue that the diatomite has been converted to crystalline silica during through [sic] an on-site manufacturing process. They cited evidence showing that crystalline silica is hazardous to worker health, and argued that until the diatomite at the site has been removed or covered with top soil, there is no guarantee that existing or future residents’ health will not be affected. They further argue that diatomite doesn’t grow much, and unless the applicant plans to import a significant amount of top soil, it is unlikely that the reseeding efforts will be successful. While the former evidence tends to support a finding that processing of diatomite at the site needs to be regulated, the evidence of the health effects of freshwater diatomite on neighboring property owners is not sufficient to undermine the applicant’s evidence that such effects are limited, and consistent with the effects of blowing dust in general.”
Water quality/quantity. . . The applicant proposes to develop individual, shared or group wells (serving up to three lots) as part of its residential development. . . Neighbors expressed concerns regarding potential water contamination from past industrial uses, and also argue that the introduction of 17 or more new wells (assuming 72 dwelling units, and at least one well per three dwelling units minus the seven existing wells) could significantly affect their water quality and quantity. . . Here, the evidence (including evidence from testing of nearby community water wells) shows that existing water quality in the area is adequate, and that past activities on the site have not affected nearby well water quality. With respect to water quality at the site, the Board finds that the question can be better addressed at the time a development proposal is submitted for the site. At this point, the evidence shows that the proposed plan amendment/zone change will not have any effect on water quality.

Erosion/Fill. One of the neighbors expressed concerns regarding slope stability at the site, asserting that new grading may undermine the slope along the edges of the river bank. . . The evidence shows that diatomite mining occurred closer to the center of the site, and that the aggregate mining has ceased. There is no evidence that past mining has undermined slope stability along the river edge. . . As a condition of approval, if fill is brought onto the site, the applicant will be required identify the general location of the fill, and if the site is used for development, the applicant shall either certify that the fill is suitable for development, or specifically declaim any knowledge of its suitability. The Board concludes that these measures are adequate to assure that development on the site will not adversely affect air, water or land quality.

Dumping/Environmental Issues. A portion of the site west of Lower Bridge Way was an approved waste facility in the mid-1970s, and consequently, sludge, radioactive materials as well as standard solid waste was brought to the site during that time. According to the applicant, the dumping grounds were limited to the central portion of the site, near the former lagoons, and included 55-gallon drums filled primarily with caustic sand. The site was subject to a DEQ-mandated clean up, which was completed by January 1985. The evidence shows that all of the materials located at the site prior to 1985 were removed to approved hazardous waste disposal sites, including Arlington and the Hanford Reservation. According to Maul Foster and Alongi, Inc., the applicant’s environmental consultant, the standards used to evaluate the clean-up was based on one of two standards “clean up to the maximum extent practical” or “clean up to background conditions.” Maul Foster and Alongi, Inc. representatives testified that these standards are higher than the current risk-based standards, which permit less comprehensive clean up where the site will be used for industrial purposes than is required for sites that will be redeveloped for residential uses. With respect to spills or activities that have occurred since that time, including disposal of mining solvents and industrial burning, the evidence shows that the violations have been addressed by meeting industrial use standards. The Board has included conditions, as discussed more fully herein, to ensure the property is clean enough to meet residential use standards.” (Bold and underscored emphasis added.)
Based on these findings, the board concluded that re-designating the parent parcel to RREA for rural residential development would not “significantly impair air, water and land quality in the area,” and therefore would be consistent with the environmental quality goals set forth in Section 23.96.020 of the comprehensive plan.

However, in approving the proposed zone change from EFU and SM to RR-10 for the parent parcel, the board did not find the proposal complied with the zone change approval criterion in Section 19.136.020 requiring that the public interest be served by the rezoning. Instead, the board made the following findings:

“The record indicates the subject property was historically used to mine and process diatomaceous earth. The record also indicates that the process of diatomaceous earth can create cristobalite, classified by the International Agency for Research on Cancer as carcinogenic to humans. There is no evidence in the record that the property has been tested for potential hazard from this carcinogen. The site also has been used for hazardous and radioactive waste disposal and has been subject to numerous violations of environmental quality regulations.

The Oregon Department of Human Services, Environmental Health Assessment Program (EHAP) stated that the existing EHAP evaluation of environmental conditions at the site only dealt with the present use of the property. EHAP recommended that the landowner obtain a letter of ‘No Apparent Public Health Hazard’ from EHAP for the site prior to residential use. This would require additional environmental sampling and cleanup of any identified environmental concerns. EHAP has also found that airborne dust from any source can cause short-term respiratory irritation, but more information is needed to evaluate possible long-term effects at this site. EHAP considers inhalation of airborne dust emanating from this site to be an indeterminate health hazard.

The Oregon Department of Environmental Quality (DEQ) stated that the site has currently only been evaluated with respect to environmental safety for its current use as a mine and an industrial property. A rezone of the site from industrial to residential use would require a re-evaluation of the site for residential use. The re-evaluation of the site, applicable exposure routes, and pathways may result in some scenarios requiring deed restrictions, active cleanup and/or monitoring. Following a cleanup of any identified environmental concerns, DEQ could issue a ‘No Further Action Letter’ (NFA) for residential use.

Given the environmental history of the site, the Board finds that the public interest will not be served by rezoning the property for residential use, prior to establishing that the site is safe for residential use. [Footnote omitted.] The Board finds, however, that the applicant can meet this criterion through conditions of approval.” (Bold and underscored emphasis added.)

In making these findings, the board stated:
"With regard to environmental issues, the Board lacks the expertise to determine of the subject property is safe for residential use and will look to DEQ and DHS to provide this determination."

The board established separate conditions of approval applicable to the subject property and to the rest of the parent parcel. Conditions 1 and 2, applicable to the subject property, provided as follows:

1. Prior to final plat approval for any residential subdivision, the applicant shall obtain from the Department of Environmental Quality (DEQ) a ‘No Further Action’ (NFA) determination or the equivalent for a residential use designation for the 160 acres.

2. Prior to final plat approval for any residential subdivision, the applicant shall obtain from the Department of Human Services (DHS) a determination of ‘no apparent public health hazard’ for residential use designation for the 160 acres."

The Hearings Officer finds the board effectively substituted a condition of approval for the necessary findings of compliance with the “public interest” zone change approval criterion. And the board appears to have delegated making the necessary findings to EHAP and DEQ, and to have deferred those findings to an unspecified future date when the 2008 applicant or its successor would submit a final subdivision plat for approval. Nevertheless, nothing in the 2008 decision suggests the board intended that future residential development of the subject property would not be subject to applicable approval criteria for such development.

In its final argument, the applicant suggests the Hearings Officer also should defer findings on whether the subject property meets the “suitability” conditional use approval criterion for the proposed PUD to final plat approval, based on the following reasoning:

“As the Board correctly recognized in 2008, neither the County nor the Hearings Officer have [sic] the level of expertise necessary to determine the environmental condition of the site and its safety for residential use. . . DEQ is the appropriate regulatory agency to make that determination and the issuance of a NFA letter from DEQ after a complete and thorough analysis of the site will ensure it meets regulatory residential use standards. . . Conditions of approval which require receipt of a state agency permit or compliance with state agency requirements (and may defer compliance with approval criteria) are permissible and entirely appropriate in a multi-stage approval process (such as plan amendment/zone change and subsequent subdivision and/or development applications); see Butte Conservancy v. City of Gresham, 52 Or LUBA 550 (2006); Rhyne v. Multnomah County, 23 Or LUBA 442 (1992), and are likewise permissible and appropriate where the land use standards expressly require compliance with state agency requirements or that the applicant secure a state agency permit, see, Wetherell v. Douglas County, 44 Or LUBA 745 (2002); Sam Miller v. City of Joseph, 32 Or LUBA 472 (1996).”

13 These actions were at odds with cases holding that local governments cannot fail to adopt, or defer, findings on approval criteria in favor of imposing conditions of approval. E.g., Green v. Douglas County, 67 Or LUBA 234 (2013), and cases cited therein.
The Hearings Officer is not persuaded by the applicant’s argument. In the first place, the decision-maker is not excused from the requirement to make findings on compliance with approval criteria simply because the facts are complex and technical. Second, I find the applicant’s reliance on the Wetherell and Miller cases is misplaced because there is nothing in the PUD or subdivision approval criteria that requires either DEQ or EHAP approval or the issuance of DEQ or EHAP permits for residential development of the subject property.14

Third, the Hearings Officer finds the Rhyne and Butte Conservancy decisions do not assist the applicant. The circumstances presented here are similar to those in Rhyne in which LUBA found the county’s decision improperly deferred necessary findings to a stage in the proceedings for which notice and hearing were not required. In that case, the applicant sought approval of a zone change to create a planned development (PUD) overlay on the subject property in order to site a manufactured home development. The PUD approval was a two-stage process in which the second stage – final approval – was purely ministerial. LUBA’s decision in Rhyne included the following findings concerning when it is appropriate to condition approval on a future demonstration of compliance with applicable standards:

“Assuming a local government finds compliance, or feasibility of compliance, with all approval criteria during a first stage (where statutory notice and public hearing requirements are observed), it is entirely appropriate to impose conditions of approval to assure those criteria are met and defer responsibility for assuring compliance with those conditions to planning and engineering staff as part of a second stage. * * * 

Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, * * * instead of finding that the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily required notice and hearing. * * *.”

LUBA found the county erred in not adopting findings either than the proposed complied with the approval criteria or that it was feasible to comply with the criteria, and instead improperly deferring discretionary determinations concerning compliance with the criteria to a stage in the proceedings in which notice and hearing were not required or provided – essentially what the board did in its 2008 decision rezoning the parent parcel.

14 The only state agency permit required by Title 18 for PUD approval is state scenic waterway approval which, as discussed elsewhere in this decision, OPRD already has issued for the PUD infrastructure.
Finally, the Hearings Officer finds the circumstances in *Butte Conservancy* are distinguishable from those presented here. In that case, the city required the applicant for a residential development to obtain an easement for, and to construct, a secondary access road through adjacent private property that was subject to CC&Rs. The question before the city was whether the CC&Rs permitted an access road in the designated location. The city concluded it was feasible for the applicant to construct such a road either by obtaining an easement across the adjacent property, or through the city’s condemnation of the property for the road. In its decision, LUBA held that where the feasibility of satisfying an approval criterion through imposition of a condition of approval turns on a *legal interpretation* – e.g., whether the CC&Rs allowed road construction on the proposed access location – the proper approach is as follows:

“... it is sufficient for the local government in such circumstances to (1) adopt findings that establish that fulfillment of the condition of approval is not precluded as a matter of law, and (2) ensure, in imposing the condition of approval, that the condition will be fulfilled prior to final development approvals or actual development.” (Underscored emphasis added.)

The Hearings Officer finds the approach in *Butte Conservancy* is not applicable where, as in the subject PUD application, the feasibility of demonstrating compliance with the “suitability” conditional use approval criterion does not depend on a legal interpretation. The record for this PUD application includes conflicting evidence, some of it quite technical, concerning whether the subject property is suitable for residential development considering environmental impacts from previous mining and hazardous materials storage. The Hearings Officer finds that under *Rhyne*, I do not have the option of deferring findings of compliance with the “suitability” conditional use approval criterion to final plat approval as suggested by the applicant. That is because final plat approval is not required to, and does not, provide public notice or hearing. Under Chapter 17.24 of the subdivision ordinance, final plat approval is ministerial. Sections 17.24.105 and 17.24.110 describe final plat approval as determinations of whether the final plat “is substantially the same as it appeared on the approved tentative plan” and “all conditions of approval have been satisfied.” Once those determinations are made by the Planning Director, the final plat is signed by the board. Chapter 17.24 contains no provision requiring notice or hearing prior to final plat approval. In addition, under Section 22.04.020 of the land use procedures ordinance, final plat approval is a “development action” – i.e., a determination that involves application of the subdivision ordinance – which under Section 22.16.010 generally is handled administratively without notice and hearing. Finally, approval of a final subdivision plat is expressly excepted from the definition of “land use decision” under ORS 197.015(10)(G).

For the foregoing reasons, the Hearings Officer finds I have two options concerning findings on compliance with the “suitability” conditional use approval criterion:

- I may find the evidence, although conflicting, is sufficient to support a finding that the suitability criterion is satisfied or that it is feasible for the applicant to satisfy it through imposition of conditions of approval; or

15 Although under Section 22.16.010 the Planning Director may elect to handle a development action with notice and hearing, the Hearings Officer finds there would be no reason for the Planning Director to do so in this case inasmuch as the determination of whether the applicant submitted letter from DEQ and EHAP as required in Conditions 1 and 2 of the board’s 2008 decision would be purely ministerial – i.e., the applicant either did or did not submit the letters.
I may find that the evidence is insufficient to support a finding that the suitability criterion is satisfied or that it is feasible to satisfy it through conditions of approval, and therefore I must deny the application.

The applicant and opponents submitted evidence on four environmental issues potentially affecting the suitability of the subject property for development with a residential PUD – dust, water quality, hazardous materials, and radioactive materials. Each of these issues is discussed in the findings below.

**Blowing Dust.**

Opponents argue the exposed diatomite remaining on the subject property and on SM Site 461 presents an unacceptable risk to human health. Opponent David Jenkins submitted testimony and evidence that the mining and processing of diatomaceous earth on SM Site 461 produced cristobalite, a known carcinogen, and that this material was disturbed during mining and processing, resulting in it becoming airborne. Opponents note that prevailing winds in Central Oregon are from the west, therefore potentially blowing cristobalite from SM Site 461 onto the subject property. The record indicates Site 461 has been a significant generator of dust for decades.

In response to opponents’ concerns about dust hazards, the applicant submitted into the record as Exhibit “PH-2” to its burden of proof a document dated February 29, 2008, prepared by Maul, Foster, Alongi, Inc. (hereafter “MFA”), an environmental and engineering consulting firm, and entitled “Evaluation of Dust Risks at Former Diatomaceous Earth Mine Near Terrebonne, Oregon.” This evaluation states its purpose was to “assess if exposure to fugitive dust from the property could pose health hazards.” The evaluation concluded in relevant part:

> "Long-term, chronic exposure to most types of dust can cause adverse health effects. [Footnote omitted.] However, as described in greater detail below, it is MFA’s opinion that the dust from this particular site is no more hazardous than most types of dust in rural Oregon. If the dust control measures outlined in the work plan recently approved by the Oregon Department of Environmental Quality (DEQ) are implemented, it is unlikely DE [diatomaceous earth] at the site could pose unacceptable health risks."

The record indicates the DEQ-approved control measures consisted of seeding and watering most of SM Site 461 in order to establish vegetative cover to secure the DE and reduce blowing dust.

The applicant also submitted a memorandum dated June 22, 2015, prepared by R. Scott Wallace of the Wallace Group, and entitled “Preliminary Geologic Exploration Proposed Lower Bridge Road Subdivision, 10000 Lower Bridge Road, Terrebonne, Oregon, Project No. 10446 (2).” The memo states its purpose was to describe a “preliminary subsurface exploration” of the subject property conducted on June 9, 2015. The memo states the exploration revealed a layer of diatomite on the subject property ranging from 0.5 to 2 feet in depth. The memo goes on to state in relevant part:

> “Based on the initial lab data and our experience, the very lightweight nature of diatomite represents and air-borne dust hazard if the material is disturbed (i.e., excavated and processed during site grading). In addition, the diatomite horizon’s ability to support roads, infrastructure and residential structures warrants further
geotechnical investigation and testing. The supplemental geotechnical analysis should also address the infiltration characteristics of the diatomite and feasibility for on-site septic systems.”

The memo recommended dust control measures on the subject property including spraying the ground surface with water prior to site grading and road building, and/or covering the diatomite with three to six inches of sand and gravel.

The applicant's final argument states the following with respect to dust hazards and control on SM Site 461 and the subject property:

“With regard to the issues associated with the blowing DE, the Applicant worked closely with DEQ in 2008/2009 to develop and implement a dust mitigation plan to control airborne DE and to demonstrate safety for residential use. This dust mitigation plan involved watering and planting/seeding approximately 300 acres of the mined area west of Lower Bridge Road. The owners used a large agricultural pivot irrigation system on the site and spent substantial resources to reduce the airborne DE. These efforts were successful and the complaints of blowing dust have diminished significantly since 2009. The applicant will continue to utilize dust suppression measures approved by DEQ to control dust both during and post construction. Submitted as Exhibits PH-12 and PH-13 are memos outlining the construction, erosion and storm water control measures the Applicant will implement to control dust and ensure no runoff leaves the site.”

(Bold emphasis in original.)

Although the applicant states its dust control measures on SM Site 461 “were successful,” the Hearings Officer’s site visit observations indicate the opposite. I observed that on much of SM Site 461 the introduced vegetation has not taken hold, and as a result large areas of diatomaceous earth remain exposed. In addition, as discussed above, I have found that as long as SM Site 461 is zoned SM and included in the county’s inventory of significant mineral and aggregate sites, future mining on the site is possible with necessary county and DOGAMI permits, and therefore additional ground disturbance on Site 461 could occur in the future. Moreover, the Wallace Group geotechnical survey shows there is a significant amount of DE on the subject property that can become airborne with the types of disturbances contemplated in development of the proposed PUD – i.e., road building and grading for dwelling construction. And I find nothing in the proposed CC&Rs that addresses dust control on either SM Site 461 or the subject property.

The staff report questions whether there are clear lines of authority and adequate funding to assure future dust control measures will be adequate to address airborne DE dust blowing over the subject property from SM Site 461, and raises the following questions:

“1) What earth/vegetation disturbance and mining is allowed on tax lots 1501 and 1502 without any further land use review? What limits, if any exist on potential dust generation? The county does not have a grading ordinance and the site predates DOGAMI requirements. Is there any evidence that massive earthmoving and dust production could not be conducted without recourse on the SM zoned property?

2) What new earth/vegetation disturbance and mining could be permitted on tax lots 1501 and 1502 under conditional use and/or site plan review? Would these
review processes include sufficient safeguards to protect the PUD from dust, noise, and industrial emissions? Staff notes that the protections of the Surface Mining zone tend to be limited to only very close or immediately adjacent residences.”

The applicant’s only response to these questions is to argue SM Site 461 no longer can be mined because DOGAMI has closed its files for the site, and that the applicant can control DE dust on the subject property through the mitigation measures recommended in the 2015 Wallace Group memo. However, the applicant does not explain precisely how, and by whom, dust control measures will be undertaken during either road construction or site preparation for home construction. The applicant also argues I should defer to DEQ and EHAP for the determination of whether blowing DE dust would render the subject property unsuitable for residential development. I have found that option is not available or appropriate in this matter.

Based on the foregoing discussion, the Hearings Officer finds the applicant has not demonstrated the subject property is suitable for the proposed PUD considering blowing DE dust. I find the current state of SM Site 461 with large areas of exposed DE, the location of SM Site 461 west of the subject property, the potential for future mining of SM Site 461, and the presence of a significant amount of DE on the subject property, do not support a finding that blowing DE dust does not and will not present a health hazard to future PUD residents -- or that it is feasible to assure no health hazard from blowing DE dust will occur in the future through imposition of conditions of approval. I find particularly significant the evidence that re-vegetating and site watering efforts on SM Site 461 have not been successful in securing and covering the DE on the site, and that there is a significant amount of DE on the subject property.

I find this evidence simply does not support imposing a condition of approval requiring further similar mitigation actions to reduce or eliminate blowing DE dust.16

Hazardous Materials Cleanup.

Opponents argue hazardous materials likely remain on SM Site 461 and possibly on the portion of the subject property west of Lower Bridge Way. Opponent David Jenkins argues the 1985 DEQ-approved cleanup of SM Site 461 covered only one acre of the site and that contaminated soil was found on Site 461 after the approved cleanup.

In response to opponents’ concerns, the applicant submitted into the record as Exhibit “PH-3” to its burden of proof a February 29, 2008 document prepared by MFA entitled “Evaluation of Environmental Cleanup Actions at a Former Waste Management Facility Near Terrebonne, Oregon.” This evaluation states SM Site 461 was cleaned up in 1983 and 1984, and that DEQ concluded there were no remaining soil contaminants following cleanup. In addition, the applicant submitted as Exhibit “PH-6” to its burden of proof an MFA document dated May 20, 2008 entitled “Potential Environmental Hazards at a Former Mine Site Near Terrebonne, Oregon.” This document states in relevant part:

“Several comments . . . suggest that additional investigations are necessary to determine if there is environmental contamination that could pose unacceptable risks to future residents. MFA agrees that it is in the best interest of the prospective purchaser and other stakeholders to determine if environmental contamination is present at the site.

16 The Hearings Officer notes the owners of SM Site 461 have made no commitment to cease mining SM Site 461 or to prevent any purchaser of SM Site 461 from mining the site in the future.
MFA recommends that an investigation of potential hazardous substances in environmental media at the property should be performed as part of the Oregon Department of Environmental Quality’s (DEQ’s) Voluntary Cleanup Program (VCP). In our opinion, the DEQ’s VCP is the best available regulatory process to investigate and clean up potential contamination at this site.”

The MFA evaluation recommended further investigation of the site (the parent parcel) for several specific types of hazardous materials.

The applicant’s final argument states in relevant part:

“To further analyze the site for hazardous material issues and evaluate the previous clean up actions, the applicant hired . . . MFA . . . The evaluation performed by MFA previously submitted into this record confirms the result of the PA [DEQ’s ‘preliminary assessment’ of the hazards on the site]; see Exhibits PH-3 and PH-6). In fact, MFA finds that the clean-up standard that was used for the site was ‘to the maximum extent practical or cleanup to background conditions.’”

The applicant’s final argument states it “is working closely with DEQ to structure a plan involving DEQ oversight which will demonstrate and verify that the site is suitable for residential use.”

The Hearings Officer finds the crux of the applicant’s argument is that future evaluation and cleanup of SM Site 461 is needed to assure the subject property is suitable for the proposed PUD. The question, then, is whether this evidence is sufficient to demonstrate the subject property is suitable for PUD development considering the potential presence of hazardous materials on SM Site 461, or that it is feasible for the site to be made suitable for the PUD through imposition of conditions of approval. I find this is a close question. However, because the record indicates the applicant has entered into a DEQ VCP, the purpose of which is to identify and remediate hazardous conditions on SM Site 461, I find this evidence is sufficient to support a finding that it is feasible to make the subject property suitable for the proposed PUD through imposition of a condition of approval requiring the applicant to complete its DEQ VCP and to obtain an “NFA” letter from the agency. The board’s 2008 decision required only that the applicant obtain the “NFA” letter but said nothing about completing the VCP. Therefore, I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval expressly requiring the applicant to complete the VCP prior to submitting the final subdivision plat for approval.

Radioactive Waste. Opponents argue it is likely radioactive waste remains on SM Site 461 and the portion of the subject property west of Lower Bridge Way. Washington State, a representative of the U.S. Department of Energy with access to Hanford records advised him there are no records documenting radioactive waste from the parent parcel was delivered to Hanford.

In response to opponents’ concerns, the applicant submitted into the record as Exhibit “PH-1” a document dated April 2008, prepared by Joel Arana of Dade Moeller & Associates, and entitled “Environmental Radiological Survey Report: Property Associated with the Former Deschutes Valley Sanitation (DVS) Waste Disposal Site; 10000 & 70420 NW Lower Bridge Road, Deschutes County, Oregon.” The report states in relevant part:
On April 8, 2008, a comprehensive environmental radiological survey of the property associated with the former Deschutes Valley Sanitation (DVS) waste disposal site located in Deschutes County, Oregon, approximately 7 miles west of the city of Terrebonne, Oregon, on NW Lower Bridge Road was performed by a Dade Moeller and Associates staff Health Physicist.

All radiation measurements performed at the former waste disposal site were at (or below in some cases) naturally occurring background radiation levels. These findings support, and are in addition to, the findings in References 1 and 2 [17] which conclude that the site is free of residual radioactive contamination from previous site operations.”

While it is troubling that there is no evidence radioactive materials from the parent parcel were disposed of at Hanford, the Hearings Officer finds the evidence submitted by the applicant of no residual radioactive contamination is sufficient evidence from which I can find the subject property is suitable for the proposed PUD considering radioactive contamination.

Water Quality.

Opponents argue that if there remain any hazardous or radioactive materials on the parent parcel, there is a possibility such materials could leach into and contaminate the groundwater from which both their wells and future wells on the subject property would obtain domestic water.

In response to opponents’ concerns, the applicant submitted into the record as Exhibit “PH-4” to its burden of proof an April 21, 2008 memorandum from Dick Nichols of Newton Consultants, Inc. addressing water quality sampling results from testing a well drilled on the parent parcel to provide irrigation for the re-vegetation thereof, and from a natural spring located on the north side of the parent parcel. Mr. Nichols’ memo states the purpose of the water sampling and testing was to determine if hazardous or radioactive waste on the parent parcel had migrated to groundwater. The memo indicates water was tested for bacteria, several chemicals, and radiation. The memo states the results of the testing showed the levels of contamination and radium were “far below the drinking water standards” and consistent with test results for other wells in the surrounding area. The memo concluded that based on the water sampling and testing, “there is no reason to believe that individual wells completed into the deep aquifer will not provide adequate domestic water that meets” both state and federal drinking water standards.

The Hearings Officer finds the Newton Consultants’ memorandum provides sufficient evidence from which I can find the subject property is suitable for the proposed PUD considering water quality.

For the foregoing reasons, the Hearings Officer finds the applicant has not demonstrated the subject property is suitable for the proposed residential PUD considering man-made and natural hazards. Specifically, I have found the applicant has not demonstrated the suitability of the subject property considering blowing DE dust and the potential hazards to human health therefrom, or the feasibility of establishing such suitability through imposition of conditions of approval.

17 These references are, respectively, a previous environmental site assessment performed in May 2007 by PBS Engineering and Environmental, and the aforementioned DEQ preliminary assessment.
2. Adequacy of transportation access to the site; and

FINDINGS: The applicant proposes PUD access from Lower Bridge Way via a private access road and three private cul-de-sac roads within the PUD. In his May 11, 2015 comments on the applicant’s proposal, County Engineer George Kolb stated in relevant part:

“Lower Bridge Road is classified as a rural collector with an ADT of 551 (2011 count). Existing road width is 24 feet. Per DCC 17.36.040, ‘Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.’ Based on this, Lower Bridge Road will have to be improved to a width of 28 feet along the length of this subdivision.

- Access onto Lower Bridge Road will have to meet AASHTO standards for sight distance. Staff from the Road Department has met with the applicants engineer and it appears that the necessary sight distance can be met at a location that was agreed upon in the field. Another option would be to move the access from Lower Bridge Way south to NW Teater Avenue which is classified as a rural local road if sight distance requirements can’t be met on Lower Bridge Road.

- Roads within the subdivision will be built to the private road standards listed in DCC 17.48.180 F.2., Private Roads, which requires a paved road width of 28 feet.

- The applicant stated in the Burden of Proof that they will dedicate 60 feet of right of way along the subdivision boundary for Lower Bridge Way.

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

1. Road design within the subdivision shall be in accordance with DCC #17.48.180, “Private Roads” and Table “A”, DCC, private roads. Road will be constructed to a paved width of 28 feet.

2. Lower Bridge Way shall be widened to meet the minimum standards for a collector road along the frontage of the subdivision. That will involve widening the existing 24 foot width out to 28 foot width with 2 foot aggregate shoulders. The widened section shall be constructed with eight (8) inches of aggregate base and three (3) inches of HMAC.”

The Hearings Officer has found the sight distance at the proposed intersection of Lower Bridge Way and the PUD access road will be adequate. The applicant proposes to dedicate sufficient right-of-way for, and to widen and improve to the county’s collector road standards, the abutting segment of Lower Bridge Way.

Opponents argue the additional traffic on Lower Bridge Way generated by 19 new dwellings would exceed the road’s capacity and impair traffic safety. The Hearings Officer disagrees. Mr. Kolb’s comments indicate current traffic volumes on Lower Bridge Way are quite low for a collector road – i.e., 551 ADTs. The applicant’s traffic study concludes the addition of 190 ADTs.
and 20 p.m. peak hour trips will not cause Lower Bridge Way to operate below the county’s standards for rural collector roads.

For the foregoing reasons, the Hearings Officer finds the subject property is suitable for the proposed PUD considering transportation access to the site.

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

**FINDINGS:** Each of the natural features, resources and hazards is discussed in the findings below.

**Topography.** The subject property has varying topography, ranging from the floor and walls of the Deschutes River canyon to the upper bench/plateau above the river canyon that comprises the majority of the subject property. The applicant does not propose to modify the property’s existing topography except to construct the private PUD roads and as necessary to widen and improve the abutting segment of Lower Bridge Way. In addition, the applicant proposes to protect the existing river canyon by including the floor and the lower levels of the canyon walls within open space Tracts C and E. As discussed in the findings above, dwellings on the proposed residential lots will be subject to a minimum 100-foot setback from the OHWM of the river and a minimum 50-foot setback from any rimrock.

**Natural Hazards.** The Hearings Officer finds natural hazards include flooding within the flood plain of the Deschutes River, and wildfire. I find residential development within the PUD will not be affected by flooding as no structures are proposed or will be permitted in the flood plain, riparian areas, wetlands, or upland areas within the river canyon.

With respect to wildfire, the Hearings Officer finds the subject property has no greater risk of wildfire than other land within Deschutes County. I find the lack of significant vegetation on the bench/plateau that comprises most of the subject property, as well as the largely unvegetated SM Site 461 to the west across Lower Bridge Way, will create a natural fire break.

Redmond Deputy Fire Marshal Clara Butler’s submitted comments on the proposed PUD dated April 23, 2015, and discussed in detail in the subdivision findings below. Those comments include identification of provisions of the Oregon Fire Code (OFC) concerning water supply for firefighting. In response to Ms. Butler’s comments, the applicant’s engineer Keith D’Agostino submitted a memorandum dated June 30, 2015, included in the record as Exhibit “PH-9” to the applicant’s original burden of proof, addressing these water supply standards. The memorandum states the applicant proposes to provide firefighting water by installing a 10,000-gallon underground cistern with a dry hydrant near the intersection of PUD Roads C and E. In addition, the applicant proposes that at the time of building permit application for each dwelling, the lot owner/applicant will determine the minimum firefighting water supply for the structure, and if the water supply requirements for a particular structure cannot be met by the common cistern, the lot owner/applicant will be provide alternative or additional measures to assure adequate firefighting water supply, such as an automatic sprinkler system for the structure. The applicant proposes to include provisions addressing these water supply measures in the PUD CC&Rs.

The Hearings Officer finds the combination of the natural fire break on the subject property, the applicant’s proposed measures to provide an adequate water supply for firefighting, and the

*Attachment 4: Split Zone, Flood Plain Decisions*
location of the subject property within the fire department’s service area, will allow the subject property to be suitable for the proposed PUD residential uses considering natural hazards. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to install the proposed water cistern and dry hydrant, and to include in the PUD’s CC&Rs provisions addressing potential additional lot-specific firefighting water measures.

**Natural Resource Values.** The Hearings Officer finds the natural resource values on the subject property include: the abutting stretch of the Deschutes River, a designated state scenic waterway, and its associated wetlands and riparian areas; rock outcrops and native vegetation within the river canyon; fish and wildlife and their habitats; scenic views of the river and the Cascade mountains from the bench/plateau; and the Borden Beck Wildlife Preserve.

**a. Deschutes River and Canyon.** The applicant proposes to protect the natural resource values associated with the river and the canyon by including all of the land within the FP Zone and the lower levels of the river canyon within open space Tracts C and E. The staff report correctly notes that although the applicant has proposed CC&R provisions that restrict use of the open space tracts, the county does not enforce CC&Rs. For that reason, staff recommends, and the Hearings Officer agrees, that if the proposed PUD is approved on appeal, it should be subject to a condition of approval prohibiting within the PUD’s open space tracts: the construction of any structures, whether or not they require a building permit; earthmoving; and the alteration, removal or destruction of natural vegetation outside of any ODFW-approved habitat enhancement projects.

The staff report also notes that changes in the natural grade, or alteration, removal or destruction of natural vegetation, on the slopes of the river canyon could result in erosion and increased sediment delivery to the river. For this reason, staff recommends, and the Hearings Officer agrees, that if the PUD is approved on appeal, it also should be subject to a condition of approval prohibiting the following activities within the river canyon below the upper bench/plateau: changes in the natural grade, and the alteration, removal or destruction of natural vegetation, except as part of an ODFW-approved habitat enhancement project; and the construction of new structures.

Finally, as discussed in the findings above concerning supplementary code provisions, the staff report expressed concern that a residential lot owner potentially could construct a structure not requiring a building permit within the 50-foot rimrock setback established in the LM Zone. The Hearings Officer concurs with staff that allowing such construction would not adequately protect the natural resource values on the subject property. Therefore, I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval prohibiting the construction of any structure, whether or not it requires a building permit, closer than 50 feet from any rimrock on each PUD residential lot.

**b. Deschutes River Scenic Waterway.** The record indicates the section of the Deschutes River adjacent to the subject property is a designated state scenic waterway consisting of the Middle Deschutes Scenic Waterway, administered by OPRD. By a letter dated February 24, 2015, and signed by Greg Cianella, Scenic Waterway Program Coordinator, OPRD granted approval for the “subdivision framework (road and underground utilities)” for the applicant’s proposed PUD. The letter states the approval does not include any structures within the PUD.

Opponents argue the proposed PUD is not permitted in the scenic waterway, and/or that if the PUD were approved its presence would result in removal of the scenic waterway designation for
this stretch of the river. Greg Cianella responded to these concerns in a May 21, 2015 electronic mail message to Senior Planner Will Groves which states in relevant part:

“Our program has received calls from the public questioning whether a subdivision is allowed within the Scenic River Area (I’ve attached excerpts from Oregon Administrative Rule (OAR) that the public feels the development would be in direct conflict of [sic]).

It is unclear whether each individual lot could meet the rules and regulations of the program, given our lack of information regarding structure type, structure location on lot, and landscape plan. We don’t have enough information for each of these lots.

Of note, the Middle Deschutes Scenic River Area rules do not have specific language regarding screening requirements, as opposed to other Scenic River Area rivers in the program (example Middle For of the John Day) – attached are both OARs that have different screening requirement languages [sic].

Next step for OPRD. I have asked my superiors for guidance on whether 1) a 19 home subdivision is permissible in a ‘Scenic River Area’ and 2) given the rules and regulations for the Middle Deschutes River & the proposed layout of the subdivision, is it feasible to develop there?”

On July 7, 2015, Mr. Cianella sent another letter to Mr. Groves concerning the applicant’s proposal, stating in relevant part:

“Although no development on the lots or the common area tracts is proposed at this time, OPRD writes to note that any future development of land within one-fourth mile of the bank on each side of a river within a scenic waterway would be subject to state scenic waterway regulations. Specifically, portions of the subject property that are within a reach of the Middle Deschutes Scenic Waterway area classified as ‘Scenic River Area’ and subject to both general and specific regulations. Generally, OPRD will administer scenic river areas ‘to maintain or enhance their high scenic quality, recreational value, fish and wildlife habitat, while preserving their largely undeveloped character and allowing continuing agricultural uses.’ OAR 735-040-0040(1)(b)(B). Specifically, for the Middle Deschutes Scenic River Area ‘all new structures, improvements and development will comply with the Land Management rules as described in OAR 736-040-0040(1)(b)(B)’ in addition to complying with applicable Deschutes County land use and development regulations. OAR 736-040-0072(5)(b). The Middle Deschutes Scenic Waterway regulations also provide minimum setbacks for new structures and improvements and other measures to further mitigate visual impact of such structures and improvements as seen from the river. OAR 735-040-0072(5)(b)(A)-(B).

OPRD endorses the Deschutes County staff recommendation as described in the May 15, 2015 staff report on Section 18.84.050 – that the Hearings Officer require LM site plan approval for future dwellings or additions to dwellings as a condition of any approval of this application.

When current or future property owner(s) propose to construct new structures on their lots created by this decision, they will need to notify OPRD as prescribed by the Scenic Waterways Act, ORS 390.845(3); OAR 736-040-0030, and meet
OPRD requests that Deschutes County consider these criteria when evaluating the Lower Bridge Road LLC application so that property owner(s) will have the opportunity to develop their lot(s) in the future in a manner consistent with the Scenic Waterways Act.”

The Hearings Officer finds there is nothing in Mr. Cianella’s correspondence that indicates approval of the proposed PUD would result in a change in the current classification of the stretch of the Deschutes River adjacent to the subject property. Nor do his letters suggest dwellings on individual PUD lots could not receive scenic waterway approval from OPRD. To the contrary, the approval standards for new structures in the Middle Deschutes River Scenic Waterway, set forth in OAR 736-040-0072 attached to Mr. Cianella’s May 21, 2015 e-mail message, are similar to those imposed through the county’s LM site plan review. They require new structures to be set back 100 feet from the OHWM of the river and at least 20 feet from the edge of any rimrock, require exterior finishes to be of earth-tone colors, and require the maintenance of existing natural vegetative screening between new structures and the river.

The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that each future dwelling and other structures in the PUD within the Middle Deschutes Scenic Waterway receive scenic waterway approval from OPRD prior to commencement of construction of such dwelling or structure.

c. Fish and Wildlife. With respect to fish and wildlife and their habitats, Nancy Breuner, ODFW District Wildlife Habitat Biologist, stated in her May 6, 2015 comments on the applicant’s proposal:

“The proposed nineteen-lot residential development is not located in a Wildlife Area Combining Zone. However, ODFW is concerned with potential impacts to the rimrock and cliffs adjacent to the Deschutes River. All nineteen lots include rimrock habitat. According to the 2006 Oregon Conservation Strategy, residential development at the edge of rims alters vegetation and disturbs nesting birds. To protect rimrock habitat, ODFW urges Deschutes County planners to implement the setback standards described in the County’s Comprehensive Plan.

Also, per the Department’s Fish and Wildlife Habitat Mitigation policy (OAR 635-415-0010:0025), ODFW is concerned that these development actions could result in the loss of habitats used by a variety of native mammals, birds and reptiles. In particular, rimrock and cliffs provide nesting sites for raptors, especially golden eagles, and roosting sites for bats. ODFW again urges the County to implement stringent setback standards, to protect these sensitive species.” (Emphasis added.)

As discussed in the findings above, the Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to conditions of approval requiring that all dwellings within the PUD be set back a minimum of 100 feet from the OHWM of the Deschutes River and at least 50 feet from any rimrock, and that all structures be prohibited within the Deschutes River canyon. The application of rimrock setbacks is discussed in the findings above.

d. Borden Beck Wildlife Preserve. This 26-acre property is owned by the RAPRD and is located north of the subject property across the Deschutes River. In her May 6, 2015 comments on the applicant’s proposal, Katie Hammer, RAPRD Executive Director, stated in relevant part:
“Borden Beck Wildlife Preserve is a sensitive nesting habitat for a variety of bird species. Some of the bird species that can be seen at the preserve are Osprey, Canyon Wren, Bank Swallow, American Dipper and Yellow-breasted Chat. It also is our understanding the area is a migratory path for other animals as well.

While RAPRD is supportive of planned growth I wanted to share information about our property and share a concern regarding the preservation of wildlife habitats. I also have a secondary concern regarding the decreased user experience of those who use the wildlife preserve for recreation because of the impact on the view shed.

**RAPRD requests that as this application is being considered, the appropriate setbacks are enforced that will minimize the impact to the nearby wildlife habitat.**”

(Underscored emphasis added.)

The applicant proposes to protect all flood plain areas, wetlands, riparian habitat and canyon associated with the Deschutes River by including such areas within open space Tracts C and E, both of which are located across the river from the Borden Beck Wildlife Preserve. In addition, as discussed above, the Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that all structures be set back at least 100 feet from the OHWM of the Deschutes River and at least 50 feet from any rimrock.

And as discussed in the LM Zone findings above, I have found that any structures that would be visible from the river are required to obtain LM site plan review which assures the PUD’s visual impacts on the river are minimized. I find the design of the proposed PUD, and implementation of these setbacks and LM review, will minimize impacts on the wildlife habitat.

**e. Scenic Views.** Finally, with respect to scenic views of the river and mountains, the Hearings Officer finds that dwellings in the proposed PUD will not block or interfere with views of the river or the Cascade Mountains from adjacent or nearby properties to the east and north. Opponents who live across the Deschutes River east of the proposed PUD object to having to look at dwellings on the subject property. However, I find that with the 2008 rezoning of the subject property to RR-10, opponents no longer had reasonable expectations that the subject property would remain undeveloped.

For the foregoing reasons, and with imposition of the recommended conditions of approval set forth above, the Hearings Officer finds the subject property is suitable for the proposed PUD considering the natural and physical features of the site.

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

**FINDINGS:** The Hearings Officer finds existing uses on surrounding properties are as follows:

**West:** Tax Lots 1501 and 1502 (SM Site 461), zoned SM and consisting of an inactive surface mine.

**South/Southwest:** Several tax lots zoned EFU and developed with rural residences and irrigated pasture and hay production.
North: The Deschutes River and associated riparian habitats zoned FP, and SM Site 322 zoned SM and currently engaged in irrigated agriculture.

Northwest: Tax Lot 1400, zoned EFU, presently undeveloped juniper woodland with irrigated pasture and hay production.

East: The Deschutes River and associated riparian habitats zoned FP, and parcels zoned RR-10 and developed with rural residences.

Southeast: Several tax lots zoned RR-10 and developed with rural residences.

With respect to projected uses on these properties, the Hearings Officer finds it is likely the lands currently zoned RR-10 will continue to be developed with rural residential uses, and that the EFU-zoned lands will continue to be engaged in irrigated agriculture. I find the proposed PUD will be compatible with both existing and projected agricultural uses on surrounding land because such uses already are in close proximity to rural residential development in the area and both the agricultural and residential uses generally are of low intensity. And in light of existing restrictions on uses within the Deschutes River flood plain and associated riparian areas and wetlands, I find projected uses therein will continue to be limited to wildlife habitat and potential ODFW habitat enhancement projects, I find the proposed PUD will be compatible with both existing and projected river-related uses considering the protection for such areas within the proposed PUD’s open space tracts and CC&Rs.

As discussed in the findings above, because both SM Sites 322 and 461 are zoned SM and remain on the county’s inventory of significant mineral and aggregate sites, the Hearings Officer finds projected uses on these parcels include potential future surface mining. As discussed above, I have found all dwellings on PUD lots will be more than 250 feet from the SMIA Zones protecting SM Sites 322 and 461, and therefore can comply with the SMIA Zone standards. However, as discussed in detail in the findings above, the Hearings Officer has found the applicant has failed to demonstrate the subject property is suitable for the proposed PUD considering potential human health impacts on PUD residences from exposure to blowing DE dust from SM Site 461 and the portion of the subject property located west of Lower Bridge Way, both in their current condition and with future mining activity. Based on those findings, incorporated by reference herein, I find the proposed PUD will not be compatible with the current and future use of SM Site 461.

For the foregoing reasons, the Hearings Officer finds the applicant failed to demonstrate the proposed PUD will be compatible with existing and projected uses on surrounding land.

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

FINDINGS: The Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a number of conditions of approval, discussed throughout this decision, that are calculated to assure compliance with applicable conditional use approval criteria.

b. Section 18.128.210, Planned Development

A. Such uses may be authorized as a conditional use only after consideration of the following factors:
FINDINGS: The Hearings Officer finds this criterion requires me to consider the factors discussed in the findings below in determining whether to approve the proposed PUD. In other words, none of the individual factors establishes a PUD approval criterion.

1. Proposed land use and densities.

FINDINGS: The proposed land uses within the PUD include 19 residential lots, two common areas, five open space tracts, three private roads, and dedication of right-of-way for the abutting segment of Lower Bridge Way. The applicant proposes a residential density of one dwelling per 7.7 acres, calculated excluding the 10.4-acre EFU-zoned property within the PUD, leaving 146.6 acres of developable land. However, the Hearings Officer has found the proposed PUD cannot include EFU- or FP-zoned land because PUDs are not permitted in those zones. Subtracting both the 10.4 acres zoned EFU and the approximately 30 acres zoned FP from the PUD, only approximately 116 acres of developable land remain. I have found that at the maximum allowed density of one dwelling per 7.5 acres, the PUD could include no more than 15 dwellings – assuming the required 65 percent open space also could be provided on the remaining developable land. For these reasons, I have found I cannot approve the PUD.

2. Building types and densities.

FINDINGS: The applicant proposes that the PUD would include 19 new single-family dwellings, each located on a lot at least two acres in size. As discussed above, the Hearings Officer has found I cannot approve a 19-lot residential PUD, and that the applicant has failed to demonstrate each proposed residential lot is of sufficient size and proper configuration to allow the siting of a dwelling meeting the rimrock setback and all other yard and setback requirements.

3. Circulation pattern, including bicycle and pedestrian circulation, and a demonstration of how those facilities connect to the County transportation facilities. Private developments with private roads shall provide bicycle and pedestrian facilities.

FINDINGS: The PUD would have four private roads including the main access road that would intersect with Lower Bridge Way, a county rural collector road, and three cul-de-sacs. The PUD also includes right-of-way dedication for and improvement of the abutting segment of Lower Bridge Way. As discussed in the findings above, the Hearings Officer has found there will be adequate site distance at the intersection of Lower Bridge Way and the main PUD access road, and that the addition of traffic from 19 new dwellings will not exceed the capacity of Lower Bridge Way.

The applicant proposes to construct the new PUD private roads (Roads C, D and E) to the applicable private road standards in Table A of Title 17, including a 28-foot wide paved surface with 2-foot gravel shoulders. The Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to stripe a 4-foot-wide shoulder bikeway on both sides of the private roads to accommodate bicycle and pedestrian traffic.

4. Bicycle and pedestrian connections shall be provided at the ends of cul-de-sacs, at mid-block, between subdivision plats, etc., wherever the addition of such a
connection would reduce the walking or cycling distance to a connecting street by 400 feet and by at least 50 percent over other available routes. These connections shall have a 20-foot right of way, with at least a 10-foot wide useable surface, and should not be more than 100 feet long if possible.

**FINDINGS:** The Hearings Officer finds that in light of the shape and configuration of the subject property, the location of Lower Bridge Way, and the PUD’s proposed private road system, no additional bicycle and pedestrian connections are possible or required.

5. **Parks, playgrounds, open spaces.**

**FINDINGS:** The record indicates there are no parks or playgrounds in the surrounding area and none is proposed within the PUD. The PUD would have five open space tracts including the FP- and EFU-zoned portions of the subject property as well as areas within the Deschutes River canyon. According to the proposed PUD CC&Rs, these open space tracts would be available for PUD residents’ passive recreational activities such as fishing and hiking.

6. **Existing natural features.**

**FINDINGS:** The natural features on the subject property include the Deschutes River and its associated flood plain, wetlands and riparian areas and canyon, existing vegetation, and river and Cascade mountain views. As discussed above, the proposed PUD would retain most of the property in its natural condition, including all of the property within the open space tracts that protect the river and most of the river canyon. The applicant has proposed that the open space tracts be enhanced through the introduction of vegetative species to stabilize the soil, decrease dust, and promote wildlife habitat. As discussed in the findings above, the Hearings Officer has found the proposed PUD will be compatible with existing natural features.

7. **Environmental, social, energy and economic impacts likely to result from the development, including impacts on public facilities such as schools, roads, water and sewage systems, fire protection, etc.**

**FINDINGS:**

a. **Environmental Impacts.** The environmental impact from the development of the proposed PUD will likely involve the removal of some vegetation for structures and the new road. The applicant proposes to preserve the existing vegetation within the Deschutes River flood plain, wetlands and riparian areas, as well as on the canyon walls. The staff report states, and the Hearings Officer’s site visit observations confirmed, that most existing trees on the subject property are located in the riparian area adjacent to the river and therefore will be retained. As discussed elsewhere in this decision, I have found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to retain all surface water drainage on site and out of the river canyon.

As discussed in detail in the findings above, the Hearings Officer has found the applicant has failed to demonstrate the subject property is suitable for the proposed PUD considering potential health hazards to PUD residents from blowing DE dust. Based on these findings, incorporated by reference herein, I find this health hazard will be an environmental impact likely to result from
development of the PUD because such development will place people on the subject property and in the path of DE dust blowing from the adjacent SM Site 461 and the portions of the subject property located west of Lower Bridge Way.

b. Social Impacts. The social impacts from development of the proposed PUD will include additional people living in this area and additional traffic on Lower Bridge Way. As discussed elsewhere in this decision, the Hearings Officer has found the addition of traffic generated by 19 new dwellings on the subject property will not exceed the capacity of Lower Bridge Way or cause traffic hazards thereon.

As discussed in the Findings of Fact above, the historic Lynch and Roberts Store Advertisement sign is located near the northwest corner of the subject property. The sign is painted on rocks adjacent to Lower Bridge Way. In its 2008 decision, the board included as Condition of Approval 4 a prohibition against any development within a 100-yard radius of the sign and a requirement that the applicant post markers near the sign to prevent trespass. Condition 4 also required the applicant to include in the CC&Rs provisions obligating PUD lot owners to protect the area within a 100-yard radius of the sign from development and trespass and to maintain the posted markers. The Hearings Officer finds that imposition of this condition of approval will protect this historic sign to the greatest extent practical.

c. Energy Impacts. The energy impacts from development of the proposed PUD will include additional vehicle trips to the property during construction and after development with residences, as well as domestic energy use within the new dwellings.

d. Economic Impacts. The economic impacts from development of the proposed PUD will include additional work being available for the installation of utilities and the construction of dwellings on the new lots. In addition, new dwellings will add to the county’s property tax base. Potential negative economic impacts from development of the PUD could include limiting future mining and industrial uses on SM Site 461. Opponents argue development of the proposed PUD will devalue their nearby rural residential properties. However, they did not submit credible evidence to support their arguments.

e. Impacts on Public Facilities. Public facilities affected by development of the proposed PUD would include roads, police and fire protection, and public schools. As discussed in detail in the subdivision findings below, incorporated by reference herein, the Hearings Officer has found all affected utilities are available to, and can accommodate, new dwellings within the proposed PUD with imposition of recommended conditions of approval. I also have found the addition of traffic generated by 19 new dwellings in the PUD will not exceed the capacity of Lower Bridge Way or cause traffic hazards thereon.

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

FINDINGS: The area surrounding the subject property is characterized by a mixture of agricultural enterprises, surface mines, and rural residences on land zoned RR-10. The proposed PUD would add 19 additional single-family residences to the area. The applicant correctly notes that conditional use approval is not required to site rural residences on the subject property, but rather to increase the density of development on the property from one dwelling per 10 acres to one dwelling per 7.7 acres through clustering of dwellings and preservation of the majority of the property in open space tracts.
Opponents who own property and reside in the Eagle Rock and Lower Bridge Estates subdivisions east and southeast of the subject property across the Deschutes River object to the applicant’s PUD primarily because of the proposed density and the clustering of dwellings along the river. As discussed above, the Hearings Officer has found the applicant cannot include EFU- and FP-zoned land within the proposed PUD because PUD is not a use permitted outright or conditionally in those zones. Therefore, I have found the acreage available for PUD development on the subject property would be approximately 116 acres, and at the applicant’s proposed density of one dwelling per 7.7 acres, a maximum of 15 dwellings would be permitted within the PUD. However, because standard subdivisions are permitted in the FP Zone, the acreage available for subdivision development would be 146.6 acres (157 acres minus 10.4 EFU-zoned acres), and the applicant could develop the subject property with 14 dwellings on standard 10-acre lots with no clustering and no preserved open space.

The Hearings Officer finds the difference in density between a standard subdivision and a PUD on the subject property is minimal, and the applicant’s proposed density will not be incompatible with the existing rural development in the area. With respect to the clustering of dwellings along the river, I understand opponents’ concerns about the increased visual impact from 19 clustered PUD dwellings compared to fewer dwellings along the river with a standard subdivision. Nevertheless, I find dwellings clustered on two-acre lots still constitute “rural” development and not “urban” development as claimed by opponents. Moreover, I find inclusion of over 100 acres of open space – consisting of the river and its associated flood plain, wetlands, riparian areas, and canyon as well as most of the upper plateau on the subject property – will preserve the rural character of the area.


10. Operation and maintenance proposal (i.e. homeowners association, condominium, etc.).

FINDINGS: The proposed PUD residential lots would be owned by individual lot owners. The common areas, open space tracts and private roads would be owned and maintained by the PUD homeowners association (HOA).


FINDINGS: The proposed PUD residential lots would be served by Individual on-site systems. Solid waste (garbage) will be handled by High Country Disposal, or lot owners/residents may choose to haul their solid waste to the closest landfill or transfer area.

12. Water supply system.

FINDINGS: The proposed PUD residential lots would be served by individual or shared “exempt” private wells. In addition, as discussed above the applicant proposes to install a 10,000-gallon cistern with a dry hydrant for firefighting water, and to assure through the PUD’s CC&Rs that if the cistern does not provide sufficient firefighting water for any individual lot/dwelling, an additional or alternative water supply system, such as automatic fire sprinklers, would be implemented.
13. Lighting.

**FINDINGS:** No street lighting is proposed for the PUD. The PUD’s CC&Rs provide that each lot owner may install exterior lights on his/her lot in compliance with the county’s outdoor lighting ordinance. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring all exterior lighting to comply with the county’s outdoor lighting ordinance in DCC 15.10.


**FINDINGS:** The applicant proposes to commence construction of PUD road improvements within two years of tentative plan approval for the PUD. The applicant proposes to apply for extension(s) in the event additional time is needed to complete all requirements for submission of the final subdivision plat.

B. The conditional use may be granted upon the following findings:

1. All subdivision restrictions contained in DCC Title 17, the Subdivision/Partition Ordinance, shall be met.

**FINDINGS:** Compliance with the provisions of Title 17 is discussed in the findings below.

2. The proposed development conforms to the Comprehensive Plan.

**FINDINGS:** The Hearings Officer has held in several previous decisions that the comprehensive plan generally does not establish approval criteria for a quasi-judicial land use application, but it may be a source of approval criteria depending on the text and context of the comprehensive plan provision. The staff report identifies the following plan provisions as potentially applicable to the proposed PUD.

**Chapter 3, Rural Growth Management**

**Section 3.3 Rural Housing Policies**

**Goal 1** Maintain the rural character and safety of housing in unincorporated Deschutes County.

**Policy 3.3.1** The minimum parcel size for new rural residential parcels shall be 10 acres.

**Policy 3.3.4** Encourage new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.

The Hearings Officer finds that because Policy 3.3.1 is couched in mandatory terms, it appears intended to apply to quasi-judicial applications for the creation of new rural residential parcels. As discussed above, the applicant has proposed to increase the density of development to one dwelling per 7.7 acres as permitted in the RR-10 Zone. I find Policy 3.3.4 does not constitute an approval criterion because it is directed at the county and written in aspirational terms. However,
I note the applicant’s proposal is for an alternate development pattern – a PUD – that would cluster the dwellings on smaller parcels and preserve large tracts of open space to protect the riparian and scenic resources of the area.

**Section 3.6 Public Facilities and Services Policies**

**Goal 1 Support the orderly, efficient and cost-effective siting of rural public facilities and services.**

- **Policy 3.6.8** Coordinate with rural service districts and providers to ensure new development is reviewed with consideration of service districts and providers needs and capabilities.
- **Policy 3.6.9** New development shall address impacts on existing facilities and plans through the land use entitlement process.
- **Policy 3.6.14** Guide the location and design of rural development so as to minimize the public costs of facilities and services.

The Hearings Officer finds Policies 3.6.8 and 3.6.14 are directed at the county and therefore do not constitute approval criteria. I find Policy 3.6.9 is written in mandatory terms and therefore appears to apply to the applicant’s proposal. As discussed in detail in findings throughout this decision, I have found the applicant’s proposal addresses impacts on existing and future public facilities.

3. Any exceptions from the standards of the underlying district are warranted by the design and amenities incorporated in the development plan and program.

**FINDINGS:** Except for the increased density allowed for a PUD, and a street frontage exception for proposed Lot 7, no exceptions from the standards of the underlying district -- the RR-10 Zone -- are proposed. As discussed above, the proposed PUD would have over 100 acres of open space, including the river and its associated flood plain, wetlands, riparian areas and canyon walls, as well as the majority of the upper plateau on the subject property. Development within the river canyon is severely restricted because of the minimum OHWM and rimrock setbacks, the state scenic waterway designation, and the LM Zone standards. Therefore, the Hearings Officer finds the preservation of these areas through inclusion in open space tracts likely does not provide much if any additional protection for them. Nevertheless, I find preservation of such a large amount of open space justifies the minimal increase in density.

4. The proposal is in harmony with the surrounding area or its potential future use.

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found the proposed PUD will be compatible with existing and projected uses on surrounding land, with the exception of the adjacent SM Site 461 to the west. I find the “compatibility” standard is equivalent to the “harmony” standard in this subsection. Therefore, based on the findings above, incorporated by reference herein, I find the proposed PUD will be in harmony with the surrounding area and potential future uses, except for conflicts between existing and potential conditions and uses on SM Site 461 to the west due to the potential human health impacts from blowing DE dust.

Attachment 4: Split Zone, Flood Plain Decisions
5. The system of ownership and the means of developing, preserving and maintaining open space is adequate.

FINDINGS: As discussed in the findings above, residential lots would be owned by individual owners, and the HOA would own and manage common areas, open space tracts, and private roads. The proposed PUD’s CC&Rs provide the authority and means to impose assessments on homeowners for the cost of maintenance of common areas, open space tracts and private roads. Opponents question whether the HOA would have sufficient funds and authority to undertake remediation on the subject property should such actions become necessary after the applicant has transferred ownership to the HOA. The Hearings Officer shares these concerns, particularly because the board’s 2008 decision approving the intent to rezone for SM Site 461 and the plan amendment and zone change for SM the subject property does not condition such approval on a commitment from the applicant to use proceeds from the sale of PUD residential lots on any necessary remediation of those properties.

As discussed in the findings under Section 18.128.015 above, the Hearings Officer is authorized to impose conditions of approval designed to assure compliance with applicable approval criteria. I have not found any provisions in Title 18 expressly authorizing imposition of a bond to assure remediation of DE dust on SM Site 461 and the subject property. However, I find that in the absence of any requirement in the board’s 2008 decision that the applicant complete and pay for such remediation, and any commitment on the applicant’s part to do so in as part of this application, I find it is appropriate to require the applicant to post a bond or other form of security acceptable to Deschutes County to assure the DE dust issues on SM Site 461 and the subject property are fully remediated before any dwellings are constructed on the subject property.

Unfortunately, there is no evidence in this record as to the potential cost of remediating the DE Dust on these properties. However, as discussed above, the June 22, 2015 Wallace Group geotechnical report discussed in the findings above memo recommended dust control measures including spraying the ground surface with water prior to site grading and road building, and/or covering the diatomite with three to six inches of sand and gravel. The Hearings Officer finds it is feasible to arrive at a reasonable cost estimate for covering exposed DE on SM Site 461, and spraying and covering DE on the subject property. Therefore, I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to provide cash or a performance bond in favor of Deschutes County, and acceptable to Deschutes County Legal Counsel, for the cost of remediating DE dust on SM Site 461 and the subject property, in an amount to be identified by the applicant and approved by the board, prior to any grading or construction on the subject property. The bond shall be redeemable by the county if the applicant fails to complete the DE remediation identified as necessary for SM Site 461 and the subject property by the Wallace Group report.

Finally, with respect to the PUD CC&Rs, they are not enforceable by the county. Therefore, staff questions whether they are sufficient to assure open space tracts are not developed. Staff suggests there could be confusion among residential lot owners regarding what uses are allowed in the open space tracts. To avoid such confusion, staff recommends, and the Hearings Officer agrees, that additional open space protection should be provided through deed restrictions. I find that if the proposed PUD is approved on appeal, it should be subject to the following conditions of approval, based on the restrictions applicable to cluster developments:

Attachment 4: Split Zone, Flood Plain Decisions
• Uses permitted in the open space tracts include the management of natural resources, creation and maintenance of trail systems, and other outdoor uses that are consistent with the character of the natural landscape.

• Off-road motor vehicle use is prohibited in the open space tracts.

• Where the natural landscape on an open space tract has been altered by prior land use such as surface mining, reclamation and enhancement of the open space tract is permitted to create or improve wetlands, create or improve wildlife habitat, restore native vegetation, and provide for agricultural or forestry use after reclamation. All land use approvals required for such projects -- such as work in mapped wetlands, floodplains, and within the bed and bank of the Deschutes River – shall be obtained from Deschutes County.

• At the time the applicant/owner transfers ownership of the open space tracts to the HOA, the applicant/owner shall record with the Deschutes County Clerk deed restrictions on the open space tracts assuring that use of the tracts is limited to the use(s) allowed in the approved PUD, and precluding construction of any residential dwelling on the tracts, for as long as the open space tracts remain outside an urban growth boundary.

The Hearings Officer finds that with imposition of the recommended conditions of approval, the structure and procedures established in the CC&Rs will be adequate for maintenance of the open space tracts.

6. That sufficient financing exists to assure the proposed development will be substantially completed within four years of approval.

FINDINGS: The applicant's burden of proof states "sufficient funding is available to complete the development as proposed within four years of approval." However, the applicant did not submit any evidence supporting this statement. The Hearings Officer finds a simple conclusory statement does not constitute sufficient evidence to demonstrate compliance with this conditional use approval criterion.

7. Sixty-five percent of the land is to be maintained in open space.

FINDINGS: The subject property is 157 acres in size. To calculate the maximum density of PUD development and the 65 percent open space requirement, the applicant subtracted the 10.4-acre EFU-zoned property, leaving 146.6 acres of developable land. Sixty-five percent of that acreage is 95.3 acres, the exact acreage the applicant has proposed for open space tracts. However, as discussed above, the Hearings Officer has found the proposed PUD cannot include the approximately 30 acres of FP-zoned land on the subject property because PUDs are not allowed in the FP Zone. Subtracting these 30 FP-zoned acres leaves a total of approximately 116 acres of developable land, of which 65 percent is 75.4 acres. As also discussed above, the maximum number of dwellings that could be allowed on the 116-acre developable portion of the subject property is 15. I cannot determine from this record whether the applicant would be able to preserve 65 percent open space on the 116 remaining acres (75 acres) and still provide sufficient room for 15 two-acre residential lots, private roads, and dedication of additional right-of-way for the abutting segment of Lower Bridge Way.
8. Adequate provision is made for the preservation of natural resources such as bodies of water, natural vegetation and special terrain features.

**Findings:** The applicant proposes to protect the Deschutes River, its associated flood plain, wetlands, riparian areas, and canyon, and the natural vegetation and terrain in the river canyon, by including most of those areas within open space Tracts C and E, and by assuring that dwellings sited on the proposed residential lots would be set back at least 100 feet from the OHWM of the river and at varying distances from the riverside lot lines. As discussed above, the Hearings Officer has found the applicant’s proposed “special setbacks” are not sufficient to assure each lot may be developed with a dwelling, on-site septic system, and individual well while meeting the minimum 50-foot setback from any rimrock and the other applicable yard and setback requirements.

The proposed PUD CC&Rs contain provisions restricting uses in the open space tracts. The Hearings Officer has found that if the proposed PUD is approved on appeal, such approval should be subject to conditions of approval requiring that the applicant implement these protective measures. I find that with imposition of these recommended conditions of approval, the measures proposed by the applicant will be adequate to preserve natural resources and vegetation and special terrain features.

C. All applications for planned developments shall include the materials and information required for approval of a subdivision as specified in DCC Title 17, the Subdivision/Partition Ordinance and the materials and information required for approval of a conditional use as specified in DCC Title 18.

1. Approval for the conditional use application and the planned development application may be given simultaneously.

**Findings:** The applicant has submitted concurrent applications for tentative subdivision plan approval and conditional use approval for the proposed PUD. This decision addresses both applications. Compliance with the applicable approval criteria in Titles 17 and 18 is discussed throughout this decision.

D. Dimensional Standards.

1. Setbacks and height limitations shall be as determined by the Planning Director or Hearings Body upon review of the evidence submitted.

**Findings:** The Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to conditions of approval requiring the applicant to assure new dwellings in the PUD are sited consistent with the river and rimrock setback requirements and the building height limitations in Title 18.

2. Densities shall not exceed that established in the underlying zone.
FINDINGS: The applicant’s proposed PUD would include the entire 157-acre subject property, but the applicant’s proposed density does not include the 10.4-acre EFU-zoned portion of the subject property, and is therefore based on 146.6 developable acres. The applicant proposes 19 residential lots for a density of one dwelling per 7.7 acres, less than the maximum allowed density of one dwelling per 7.5 acres. However, as discussed in the findings above, the Hearings Officer has found the PUD cannot include the approximately 30 acres of FP-zoned land included in the subject property, and therefore I cannot approve the proposed 19-lot PUD.

3. The minimum lot area, width, frontage and yard requirements otherwise applying to individual buildings in the zone in which a planned development is proposed do not apply within a planned development. An equivalent overall density factor may be utilized in lieu of the appropriate minimum lot area.

FINDINGS: The applicant did not address this criterion. As discussed above, the 10-acre minimum lot size of the RR-10 Zone does not apply to PUDs that include clustered dwellings, and the applicant has proposed an overall density factor of one dwelling per 7.7 acres. As discussed in the subdivision findings below, the Hearings Officer has found the proposed residential lots will be of sufficient size to allow the siting of dwellings meeting the minimum required yards and setbacks in the RR-10 Zone. However, I have found the applicant has not demonstrated the proposed residential lots will allow the siting of dwellings, on-site septic systems and individual wells consistent with the 50-foot setback from any rimrock and all other yard and setback requirements.

4. Minimum size for a planned development shall be 40 acres.

FINDINGS: The subject property is 157 acres in size. As discussed above, the Hearings Officer has found that after the EFU- and FP-zoned portions of the subject property are subtracted from that acreage, there remain 116 acres of developable land. Therefore, in either case, the subject property is at least 40 acres in size.

E. Any commercial use permitted outright in an area zoned as an unincorporated community as that term is defined herein will be allowed in a planned development, subject to the following conditions:

1. Each use shall be wholly enclosed in a building.

2. The total area of such uses shall not exceed three percent of the total area of the planned development.

FINDINGS: The Hearings Officer finds these criteria are not applicable because no commercial uses are proposed in the PUD.

For the foregoing reasons, the Hearings Officer finds the proposed PUD does not comply with all applicable conditional use approval criteria.
ADMINISTRATIVE RULES

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

1. Division 4, Goal 2 Exceptions Process

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

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

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

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

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

            (A) land inside an acknowledged urban growth boundary;

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

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

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

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

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

            (G) marginal land, as defined in ORS 197.247, 1991 Edition;
land planned and zoned primarily for rural industrial, commercial or public use.

FINDINGS: In 2008 the board re-designated and rezoned the subject property (minus the 10.4-acre EFU-zoned portion and the approximately 30 acres of FP-zoned land) to RREA and RR-10, respectively (PA-08-1/ ZC-08-1). The Hearings Officer finds the RR-10 and FP-zoned portions of the subject property are nonresource land as described in Paragraph (F) above. The board’s decision found the subject property no longer had significant mineral and aggregate resources and was not subject to Statewide Planning Goals 3, 4 or 5. For these reasons, I find the proposed PUD is not subject to the Goal 2 exception process.

PA-08-1 AND ZC-08-1 CONDITIONS OF APPROVAL

FINDINGS: The board’s 2008 decision approving a plan amendment and zone change for the subject property imposed seven conditions of approval. The staff report recommends the Hearings Officer include each of these conditions of approval in this PUD decision. I find such inclusion is not necessary because the conditions in the 2008 decision remain in effect and are binding on the applicant and its successors whether or not they are restated in this decision. However, I find it appropriate to include a condition of approval stating that the 2008 conditions of approval remain in full force and effect.

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

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

   a. Section 17.16.100, Required Findings for Approval

   A tentative plan for a proposed subdivision shall not be approved unless the Planning Director or Hearings Body finds that the subdivision as proposed or modified will meet the requirements of DCC Title 17 and DCC Title 18 through 21, and is in compliance with the comprehensive plan. Such findings shall include, but not be limited to, the following:

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

   FINDINGS: Each of the factors listed in this criterion is addressed in the findings below.

   Land Use Patterns. The land use pattern in the surrounding area consists of a mixture of uses and densities. The subject property abuts two inactive surface mines (SM Site 322 and 461) on the north and west, lands engaged in irrigated agriculture, and lands zoned RR-10 and developed with rural residences. The subject property also abuts the Deschutes River along most of the property’s eastern and northern boundaries. The applicant proposes a 19-lot residential PUD with large open space tracts that would include the river and its associated flood plain, wetlands, riparian areas, and most of its canyon, as well as undeveloped farm-zoned land and small rezoned portions of SM Site 461 on the west side of Lower Bridge Way.
The Hearings Officer has found that although the proposed PUD would allow greater density than that permitted in a standard subdivision, (one dwelling per 7.5 acres rather than one dwelling per 10 acres), the increase in density is not so at odds with surrounding rural residential development as to conflict with existing land use patterns in the area.

**Orderly Development.** The Hearings Officer finds this factor focuses on whether the proposed PUD will have adequate facilities and services. The applicant proposes that PUD dwellings will have access from Lower Bridge Way via a private road system. As discussed in the findings above, I have found there will be adequate sight distance at the intersection of Lower Bridge Way and the PUD access road, and that the addition of PUD-generated traffic will not cause Lower Bridge Way to function below acceptable performance standards. Each dwelling would be served by a private well and on-site sewage disposal system. The applicant submitted as part of Exhibit “D” to its original burden of proof well logs from two nearby properties showing water is available in the area. The record indicates utilities are available in the area to serve PUD dwellings.

Opponents argue the drilling of additional wells on the subject property will damage the existing aquifer. In response to these concerns, the applicant submitted into the record as Exhibit “PH-5” to the applicant’s burden of proof a document prepared by Newton Consultants, Inc., dated April 21, 2008, and entitled “Water Supply Development Feasibility Report, Lower Bridge Development Project, Deschutes County, Oregon.” This report states its purpose was to “assess the availability of water” for individual wells for the entire parent parcel with up to 74 two-acre residential lots and dwellings. After an extensive review of the geology and hydrology in the area surrounding the parent parcel, the report reached the following conclusions:

- There are two groundwater zones – upper and lower-- reflected in well log data from area properties;
- Pumping the maximum peak daily water need for 74 residences – 0.35 cubic feet per second (cfs) could reduce Deschutes River flows by 0.35 cfs, but that drawdown is not likely to occur, and in any event it would represent a very small reduction in the estimated minimum 72 cfs in the river at Lower Bridge;
- Wells could be limited to drawing from the lower groundwater zone to protect river flows and such an approach would be reasonable;
- Well yields reported by well drillers and others for wells in the surrounding area indicates yields range from 5 to 1,300 gallons per minute (gpm) which yield rates are “more than adequate for single-family home use;” and
- Well use and performance test results indicate the aquifer system in the area of the subject property “is capable of supplying the total cumulative peak day need of 49 gpm for all site wells combined without interfering with other wells.”

The Hearings Officer finds from this evidence that since the applicant has proposed only 19 residential lots in the PUD, there is adequate water available to supply wells for these uses without interfering with other wells in the area.

**Preservation of Natural Features and Resources.** The natural features and resources on the subject property include the Deschutes River and its associated flood plain, wetlands, riparian
areas and canyon, as well as existing topography and vegetation, and scenic views of the Cascade Mountains. The applicant proposes to retain most of the property in its natural condition, and to include the river and most of its canyon in open space tracts. As discussed in the conditional use findings above, incorporated by reference herein, the Hearings Officer has found that with imposition of recommended conditions of approval, the proposed PUD will preserve the subject property’s natural resources and features.

For the foregoing reasons, the Hearings Officer finds the proposed PUD will contribute to the orderly development and land use patterns in the area, and provides for the preservation of natural features and resources.

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

FINDINGS: The Hearings Officer finds public facilities and services affected by the proposed subdivision include water, sewer, stormwater drainage, roads, police and fire protection, and schools. Each of these facilities and services is addressed in the findings below.

Water. Both domestic water and water for firefighting would be provided through individual on-site wells. The applicant submitted two well logs as part of Exhibit “D” to its original burden of proof, demonstrating that water is available in the area. And as discussed in the findings above, the applicant submitted a technical report on the affected groundwater aquifer indicating it is large enough to provide domestic water for up to 74 dwellings on the parent parcel.

Sewer. The proposed lots would be served by individual on-site septic systems. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that each residential lot receive an approved septic site evaluation prior to final plat approval.

Stormwater Drainage. Because of the proximity of the subject property to the Deschutes River, the staff report recommends the applicant be required as a condition of approval to provide certification by a licensed professional engineer that drainage facilities in and for the PUD have been designed and constructed to maintain all surface water drainage out of the river canyon and on the residential lots, and, in particular, designed in accordance with the current Central Oregon Stormwater Manual (“Manual”) to receive and/or transport at least the design storm as defined in the current Manual for all surface drainage water including stormwater coming to and/or passing through the development.

In response to staff’s recommendation, the applicant submitted a July 7, 2015 memorandum from the applicant’s engineer Keith D’Agostino, included in the record as Exhibit “PH-13” to the applicant’s original burden of proof, addressing stormwater runoff. The memorandum states in relevant part:

“If the project construction were to create stormwater runoff that left the project site, and impacted the Deschutes River, it would be subject to the Oregon DEQ-NPDES regulatory process, and may require a DEQ 1200-C Construction Stormwater Permit. There is no proposal or intent, nor anything in the Tentative Subdivision application that suggest that construction stormwater may leave the site and impact the River. In fact, the application notes that all stormwater from the proposed development, including stormwater runoff during construction, will
be retained onsite as required. The location of the planned roads and utility infrastructure depicted on the Tentative Plan demonstrates that on-site retention of development stormwater runoff and construction stormwater is very feasible and can be easily accomplished. The numerous existing applicable County and State standards and regulations related to future home construction, onsite water wells, and on-site sewage disposal systems, on individual lots, provide adequate protection to ensure those activities as well can be completed without adverse stormwater impacts to the River, or any surrounding area.

*I met with Krista Ratliff, Natural Resources Specialist Stormwater, Oregon DEQ-Eastern Division Bend Office, on February 13, 2015 to review the Tentative Subdivision Plan and construction stormwater issues relative to the DEQ 1200-C Permit process. Ms. Ratliff concurred that the proposed subdivision could be constructed without any requirement to submit for a 1200-C Permit, if the applicant prevents stormwater from leaving the site, and that such provision appeared very feasible."

The record does not describe the relationship, if any, between the Manual referred to in the staff report and the DEQ stormwater permit process referred to in Mr. D’Agostino’s memorandum. In any case, the Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant and its successors, including individual lot owners, to maintain all surface water drainage on site and out of the Deschutes River. Section 6.1(f) of the proposed CC&Rs states the HOA is responsible for maintaining “stormwater conveyance and detention systems serving the subdivision, except drainage swales and other stormwater management facilities located on the Lots.” Section 6.2 of the CC&Rs provides that lot owners are responsible for maintaining drainage swales and stormwater management facilities on their own lots. Section 11.2 addresses protection of the “Scenic River Area” but does not include any provisions addressing the prevention of stormwater runoff into the river. And I have not found any provisions in the proposed CC&Rs requiring that all surface water drainage be maintained on site. Therefore, I find that if the proposed PUD is approved on appeal, it also should be subject to a condition of approval requiring the CC&Rs to include a provision specifying that surface water drainage must be retained on site and out of the Deschutes River and its canyon.

Roads. As discussed in the findings above, incorporated by reference herein, the Hearings Officer has found the addition of PUD-generated traffic will not cause Lower Bridge Way to function below acceptable levels of service, and that there will be adequate sight distance at the intersection of the PUD access road and Lower Bridge Way. I have found that if the proposed PUD is approved on appeal, it should be subject to the conditions of approval recommended by the road department for right-of-way dedication and improvement of the abutting stretch of Lower Bridge Way.

Police. The subject property is served by the Deschutes County Sheriff. The Sheriff did not comment on the applicant’s proposal.

Fire. The subject property is served by Redmond Fire and Rescue (fire department). In her April 23, 2015 comments on the applicant’s proposal, Clara Butler, Deputy Fire Marshal for the fire department, submitted a summary of the fire code requirements applicable to the proposed PUD, including the minimum flow requirements for water for fire protection, and specifications for fire apparatus access roads and dead-end streets. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring
the applicant to comply with all requirements of the fire department, and to submit to the Planning Division prior to final plat approval written documentation from the fire department that all such requirements have been satisfied.

**Schools.** The subject property is within the boundaries of the Redmond School District ("school district"). The school district did not submit comments on the applicant's proposal. However, the Hearings Officer is aware that school districts respond in a variety of ways to accommodate additional students who may move into new residential developments within the school districts, and often request that the developer be required to guarantee school bus access onto private development roads. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to execute and record with the Deschutes County Clerk prior to final plat approval a perpetual easement allowing school district vehicles to travel across the PUD private roads.

For the foregoing reasons, and with imposition of the recommended conditions of approval described above, the Hearings Officer finds the proposed PUD will not create excessive demand on public facilities and services.

**C. The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.**

**FINDINGS:** The Hearings Officer finds the provisions of ORS 92.090 are implemented through Title 17, and therefore compliance with Title 17 will result in compliance with Chapter 92. Nevertheless, staff and the applicant have addressed compliance with the following provisions in ORS 92.090.

1. **Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters.**

**FINDINGS:** The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to obtain approval of the subdivision name from the Deschutes County Surveyor.

2. **No tentative plan for a proposed subdivision and not tentative plan for a proposed partition shall be approved unless:**
   
   a. The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other aspects unless the city
or county determines it is in the public interest to modify the street or road pattern.

**FINDINGS:** The record indicates there are no subdivision or partition plats on adjoining property with which the proposed PUD roads must conform. The proposed PUD access road would intersect Lower Bridge Way at a right angle.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

**FINDINGS:** The applicant proposes private PUD roads. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring that all private road information, reservations, and restrictions be shown on the final plat.

(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances and regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

**FINDINGS:** The proposed PUD’s compliance with the applicant zoning regulations is discussed in detail findings throughout this decision. As discussed in those findings, the Hearings Officer has found the proposed PUD is not permitted in the EFU and FP Zones, does not comply with all applicable provisions of the RR-10 Zone, and does not comply with all applicable conditional use approval criteria. Therefore, I find the proposed subdivision also does not comply with this statutory requirement.

(3) No plat of a proposed subdivision or partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.

(b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.

**FINDINGS:** The proposed PUD has no public streets. As discussed in the subdivision findings below, the Hearings Officer has found the proposed private PUD streets satisfy, or with imposition of recommended conditions of approval will satisfy, all county road standards.

(c) The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.

**FINDINGS:** As discussed in the findings above, the Hearings Officer has found the proposed PUD is not permitted in the EFU and FP Zones, does not comply with all applicable provisions
of the RR-10 Zone, and does not comply with all conditional use approval criteria. Therefore, I find the proposed subdivision also does not comply with this statutory requirement.

(d) The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.

FINDINGS: The Hearings Officer finds this requirement is applicable to final subdivision plats and therefore does not apply to the proposed tentative plan.

(e) The subdivision or partition plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition plat.

FINDINGS: The tentative subdivision plat includes a dedication to the public of additional right-of-way for the abutting segment of Lower Bridge Way. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to provide the right-of-way dedication designated on the tentative plan.

(f) Explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.

FINDINGS: The Hearings Officer finds this requirement is applicable to final subdivision plats and therefore does not apply to the proposed tentative plan.

(4) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

FINDINGS: The applicant proposes to provide domestic water to PUD dwellings through private individual on-site wells. The applicant submitted as part of Exhibit “D” to its original burden of proof two well logs demonstrating the depth and availability of water in the area, and as Exhibit “PH-5” a comprehensive analysis of availability of water supply for the proposed PUD. Therefore, the Hearings Officer finds this requirement is not applicable.

(5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a

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sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

FINDINGS: As discussed above, sewage treatment will be provided by individual on-site septic systems. In his May 15, 2015 comments on the applicant’s proposal, Todd Cleveland of the county’s Environmental Soils Division stated each PUD lot would require an individual approved site evaluation before final plat approval. The staff report recommends, and the Hearings Officer agrees, that if the proposed PUD is approved on appeal, such approval should be subject to a condition of approval requiring the applicant to obtain an approved septic site evaluation for each residential lot prior to final plat approval.

(6) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the record indicates the subject property is not located within any irrigation district, drainage district, water control district, water improvement district or district improvement company.

D. For subdivision or portions thereof proposed within a Surface Mining Impact Area (SMIA) zone under DCC Title 18, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of DCC 18.56, as amended, as demonstrated by the site plan and accompanying information required under DCC 17.16.030.

FINDINGS: As discussed in detail in the findings above under the SMIA Zone, incorporated by reference herein, the Hearings Officer has found the size and configuration of the proposed residential PUD lots will allow dwellings to be sited on those lots in accordance with the SMIA site plan requirements.

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

FINDINGS: The Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to obtain the county surveyor’s approval of the subdivision name.

b. Section 17.16.105, Access to Subdivisions

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

**FINDINGS:** The proposed subdivision would have access from Lower Bridge Way, a designated rural collector road. The applicant proposes, and the Hearings Officer has recommended the applicant be required as a condition of approval, to dedicate additional right-of-way for, and to improve to the county’s standards for rural collector roads, the abutting segment of Lower Bridge Way. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to construct all private PUD roads to the applicable county private road standards. I also recommend the applicant be required as a condition of approval to execute and record with the Deschutes County Clerk an agreement acceptable to the road department and the county’s legal counsel for the maintenance of the new private roads.

2. Chapter 17.36, Design Standards
   a. Section 17.36.020, Streets
      A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles, and automobiles with intersection angles, grades, tangents, and curves appropriate for 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 requirement for streets set forth in this chapter.

**FINDINGS:** There are no adjoining subdivisions or partitions, and no adjoining property is eligible for further partitioning or subdividing. Therefore, the Hearings Officer finds there are no principal streets on adjoining property that the proposed PUD roads must continue. The submitted tentative plan shows all private PUD roads will be located on the upper plateau of the subject property which is relatively level. These roads consist of a main PUD access road intersecting with Lower Bridge Way and three cul-de-sacs. I find that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to construct the private PUD roads to the county’s private road standards set forth in Table A of Title 17, including a 28-foot-wide paved surface and 2-foot-wide gravel shoulders. The staff report recommends, and I agree, that the applicant also should be required as a condition of approval to stripe a 4-foot-wide shoulder bikeway on each side of the private PUD roads.

   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.

**FINDINGS:** The applicant proposes private streets within the PUD. Because of the location of the subject property, which is bounded by the Deschutes River and Lower Bridge Way, the Hearings Officer finds there is no potential for future through traffic, and therefore public roads are not required.

**b. Section 17.36.040, Existing Streets**

Whenever existing streets, adjacent to or within a tract, are of inadequate width to accommodate the increase in traffic expected from the subdivision or partition 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 Road Department Director, shall determine whether improvements to existing streets adjacent to or within the tract, are required. If so determined, such improvements shall be required as a condition of approval for the tentative plan. Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.

**FINDINGS:** The applicant proposes to dedicate additional right-of-way for the abutting segment of Lower Bridge Way, for a total right-of-way width of 60 feet. The applicant also proposes to improve the adjacent segment of Lower Bridge Way by widening to provide 28 feet of paved surface with 2-foot-wide aggregate shoulders. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to improve the abutting segment of Lower Bridge Way in accordance with county standards for a rural collector road.

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

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

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the proposed subdivision has no streets that would constitute a continuation of other streets.

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

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

**FINDINGS:** The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to dedicate right-of-way for and to improve the abutting segment of Lower Bridge Way in accordance with the county's
standards for rural collector roads, and to construct the private PUD roads in accordance with the county’s private road standards.

e. Section 17.36.070, Future Resubdivision

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

FINDINGS: The applicant proposes to create lots that are larger than one acre in size. However, the Hearings Officer finds no further subdivision of the subject property would be allowed under current zoning regulations.

f. Section 17.36.080, Future Extension of Streets

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

FINDINGS: The Hearings Officer finds that all adjoining land is subdivided or partitioned to minimum lot sizes in the applicable zones and therefore will not be further subdivided. The proposed private PUD roads would connect with Lower Bridge Way. Therefore, I find no street extension to adjoining properties is required.

g. Section 17.36.100, Frontage Roads

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

FINDINGS: Lower Bridge Way is a designated rural collector. The Hearings Officer finds no frontage road is needed to support the proposed subdivision.

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

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

**FINDINGS:** The Hearings Officer finds this criterion is not applicable because the subject property is not adjacent to a railroad, freeway or parkway.

i. **Section 17.36.120, Street Names**

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

**FINDINGS:** The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to obtain approval of PUD road names from the county’s Property Address Coordinator before final plat approval.

j. **Section 17.36.130, Sidewalks**

* * *

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

**FINDINGS:** The Hearings Officer finds no sidewalks are required for the proposed PUD because the subject property is outside any acknowledged UGB.

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

A. Pedestrian and Bicycle Circulation within Subdivision.

1. The tentative plan for a proposed subdivision shall provide for bicycle and pedestrian routes, facilities and improvements within the subdivision and to nearby existing or planned neighborhood activity centers, such as schools, shopping areas and parks in a manner that will:

   a. Minimize such interference from automobile traffic that would discourage pedestrian or cycle travel for short trips;
b. Provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers, and

c. Otherwise meet the needs of cyclists and pedestrians, considering the destination and length of trip.

FINDINGS: The record indicates there are no existing or planned neighborhood activity centers in the vicinity of the subject property. The applicant proposes to accommodate bicycles and pedestrians on the private PUD roads which would have a 28-footwide paved surface. As discussed above, the Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to stripe a 4-foot-wide shoulder bikeway on each side of the private PUD roads.

2. Subdivision Layout.

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

FINDINGS: Most of the subject property lies between Lower Bridge Way and the Deschutes River, and the record indicates there are no abutting subdivisions or nearby neighborhood activity centers to which PUD roads should or can connect. The applicant proposes three cul-de-sacs off the main PUD access road to serve the proposed residential lots. The Hearings Officer finds these cul-de-sacs are justified because of the configuration and location of the subject property which prevent any additional road connections.

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

FINDINGS: The Hearings Officer finds no additional bicycle or pedestrian connection would reduce the walking or cycling distance to an existing or planned neighborhood activity center by 400 feet and by at least 50 percent over other available routes, and therefore none is required.
c. Local roads shall align and connect with themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400-foot intervals.

d. Connections shall not be more than 400 feet long and shall be as straight as possible.

FINDINGS: The record indicates there is no street grid system with typical blocks in the area surrounding the subject property. The proposed new private PUD access road would intersect with Lower Bridge Way, a rural collector. However, alignment of this private road across the collector is not proposed or appropriate as there are no roads on SM Site 461 and Tax Lot 1502 on the west side of Lower Bridge Way with which to align.

3. Facilities and Improvements.

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

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

c. Connections shall have a 20-foot right of way, with at least a 10-foot usable surface.

FINDINGS: The applicant proposes to accommodate bicycle and pedestrian traffic on the private PUD roads which would have 28 feet of paved surface. The Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to stripe 4-foot-wide bikeways on both sides of the PUD roads.

I. Section 17.36.150, Blocks

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

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

FINDINGS: The Hearings Officer finds these criteria are not applicable because there is no grid system with typical blocks in the area, the configuration of the subject property does not allow for the creation of a street grid within the proposed PUD, and the subject property is not located within a UGB.

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m. Section 17.36.160, Easements

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

FINDINGS: The applicant’s burden of proof states all utility easements will be shown on the final plat. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to show and label all utility easements on the final plat.

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

FINDINGS: The Hearings Officer finds the Deschutes River qualifies as a “watercourse” under this criterion. The applicant proposes to protect the river and its flood plain, wetlands, riparian areas and canyon by including them in open space Tracts C and E. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring a stormwater easement or drainage right-of-way conforming substantially to the course of the river. I find the proposed subdivision’s private roads generally run parallel to the river.

n. Section 17.36.170, Lots - Size and Shape

The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of DCC Title 18 through 21.

FINDINGS: The Hearings Officer finds that in general, the size, width and orientation of the proposed lots are appropriate for the proposed PUD, and are consistent with the lot size permitted for PUDs in Title 18. However, as discussed in the LM Zone findings above, I have found the applicant has failed to demonstrate the size and configuration of each proposed PUD lot will allow the siting of dwellings, on-site septic systems and individual wells consistent with the 50-foot setback from any rimrock and all other applicable yard and setback requirements. For this reason, I find the applicant’s proposal also does not satisfy this subdivision standard.
o. Section 17.36.180, Frontage

A. Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet, except for lots or parcels fronting on the bulb of a cul-de-sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards. Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.

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

FINDINGS: The applicant proposes a PUD with lots fronting on private roads. The side lot lines are generally at right angles to the proposed new streets. With the exception of Lot 7, all residential lots have at least 50 feet of frontage on a PUD road or 30 feet of frontage on a cul-de-sac. It appears the applicant proposes to vary this standard for Lot 7 as part of the PUD proposal. The Hearings Officer finds the amenities provided by the proposed PUD – specifically the preservation of most of the subject property and all of the river areas in open space tracts – is sufficient to justify this minor deviation from the road frontage standard.

p. Section 17.36.190, Through Lots

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

FINDINGS: Section 17.08.030 defines “through lot” as an “interior lot having a frontage on two streets and/or highways, not including an alley.” The Hearings Officer finds proposed Lots 3 and 16 would qualify as “through lots” because they have frontage on both the main PUD access road and a cul-de-sac. However, I find no planting screen or easement is necessary to prohibit access across these residential lots in light of their interior location within the PUD and the relatively low predicted volume of vehicular, bicycle and pedestrian traffic within the PUD.

q. Section 17.36.200, Corner Lots

Within an urban growth boundary, corner lots or parcels shall be a minimum of five feet more in width than other lots or parcels, and also shall have sufficient extra width to meet the additional side yard requirements of the zoning district in which they are located.
FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not located in a UGB.

r. Section 17.36.210, Solar Access Performance

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

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

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

FINDINGS: The Hearings Officer finds that because of the size and configuration of the proposed PUD lots, solar access will be available to all lots.

s. Section 17.36.220, Underground Facilities

Within an urban growth boundary, all permanent utility services to lots or parcels in a subdivision or partition shall be provided from underground facilities; provided, however, the Hearings Body may allow overhead utilities if the surrounding area is already served by overhead utilities and the proposed subdivision or partition would create less than 10 lots. The subdivision or partition shall be responsible for complying with requirements of DCC 17.36.220, and shall:

* * *

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not located in a UGB.
t. Section 17.36.230, Grading of Building Sites

Grading of building sites shall conform to the following standards, unless physical conditions demonstrate the property of other standards:

A. Cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally.

B. Fill slope ratios shall not exceed one foot vertically to two feet horizontally.

C. The composition of soil for fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.

D. When filling or grading is contemplated by the subdivider, he shall submit plans showing existing and finished grades for the approval of the Community Development Director. In reviewing these plans, the Community Development Director shall consider the need for drainage and effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.

FINDINGS: The applicant did not propose any dwellings in conjunction with the conditional use permit and tentative subdivision plan applications and therefore no grading or fill for their construction has been proposed. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to comply with all grading and fill requirements in this section.

u. Section 17.36.250, Lighting

Within an urban growth boundary, the subdivider shall provide underground wiring to the County standards, and a base for any proposed ornamental street lights at locations approved by the affected utility company.

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not located in a UGB.

v. Section 17.36.260, Fire Hazards

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

FINDINGS: The applicant has proposed a single point of access to the PUD from a new private road connecting to Lower Bridge Way. The Hearings Officer finds other connections to Lower Bridge Way are not feasible because they either have steep topography adjacent to the road, or they would not provide a meaningful secondary access. For example, the staff report notes, and
I agree, that a second connection to Lower Bridge Way from Teater Avenue would not provide any better emergency access to the subdivision because of its location at the southern boundary of the subject property and well away from all residential lots.

w. Section 17.36.270, Street Tree Planting

Street tree planting plans, if proposed, for a subdivision or partition, shall be submitted to the Planning Director and receive his approval before the planting is begun.

FINDINGS: The applicant did not address this criterion. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to plant any street trees in accordance with a street tree plan submitted to and approved by the Planning Director before street trees are planted.

x. Section 17.36.280, Water and Sewer Lines

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

FINDINGS: The Hearings Officer finds this criterion is not applicable because the proposed domestic wells and on-site septic systems for each residential lot do not require water and sewer lines or mains, and none are proposed.

y. Section 17.36.290, Individual Wells

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

FINDINGS: The applicant proposes to serve the PUD residential lots with individual wells. The applicant submitted as part of Exhibit “D” to its original burden of proof well logs for two wells within one mile of the subject property, showing completed well depths of 220 and 390 feet, therefore satisfying this criterion.

z. Section 17.36.300, Public Water System

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

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each and every lot depicted in the proposed subdivision or partition plat, prior to final approval.

FINDINGS: The Hearings Officer finds this criterion is not applicable because a public water system is neither required nor proposed for the PUD.

3. Chapter 17.44, Park Development
   a. Section 17.44.010, Dedication of Land

   A. For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.

   FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not located in a UGB.

   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.

   FINDINGS: The record indicates the subject property is not in an area planned for parks. The applicant’s burden of proof does not address whether portions of the proposed open space tracts are suitable and adaptable for park purposes. The Hearings Officer finds that because of the sensitive nature of the river and its canyon, open space Tracts C and E would not be suitable or adaptable for park purposes. With respect to the remaining open space areas, I find adapting them for park purposes would not be consistent with the applicant’s intention to preserve the majority of the subject property in its natural state and not to disturb the ground surface more than necessary for road construction. For these reasons, I find the applicant is not required to set aside land within the PUD for park purposes.
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.

FINDINGS: The subject property is located outside the boundaries of the Bend Metro Park and Recreation District and the RAPRD, and therefore the provisions of Section 17.44.010 apply to the proposed PUD.

b.  Section 17.44.020, Fee in Lieu of Dedication

A.  In the event there is no suitable park or recreation area or site in the proposed subdivision or partition, or adjacent thereto, then the developer shall, in lieu of setting aside land, pay into a park acquisition and development fund a sum of money equal to the fair market value of the land that would have been donated under 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 of County Commissioners and/or applicable park district.

B.  DCC 17.44.020 shall not apply to subdivision or partition of lands located within the boundaries of a parks district with a permanent tax rate.

FINDINGS: As discussed above, the subject property is located outside the boundaries of the Bend Metro Park and Recreation District and the RAPRD. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant pay a fee in lieu of dedication of park land in the amount of $350 per dwelling unit.

4.  Chapter 17.48, Design and Construction Specifications

a.  Section 17.48.160, Road Development Requirements - Standards

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

FINDINGS: The applicant proposes that the new private PUD roads will be maintained by the HOA pursuant to the CC&Rs. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to record the CC&Rs with the Deschutes County Clerk with the final plat.

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

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

FINDINGS: The applicant proposes to dedicate right-of-way for, and to improve to the county's standards for rural collector roads, the abutting segment of Lower Bridge Way. The Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to improve Lower Bridge way to the county's standards for rural collector roads in Table A of Title 17.

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

FINDINGS: The applicant proposes that the primary access road for the subdivision will be a private road connecting with Lower Bridge Way and leading to three private cul-de-sacs within the PUD. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to construct all private PUD roads to the applicable county standards for private roads in Table A of Title 17.

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

FINDINGS: As discussed in the findings above, the Hearings Officer has found that because of the location and configuration of the subject property, it is not feasible or necessary to provide a secondary access road. Therefore, I find this criterion is not applicable.

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

FINDINGS: The Hearings Officer finds this criterion is not applicable because the applicant does not proposed to terminate any PUD road at the boundary of the subject property.
F. Cul-de-sacs. Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road. The maximum grade on the bulb shall be four percent.

FINDINGS: The applicant proposes three private roads terminating in cul-de-sac bulbs. The tentative plat shows Road “C” is over 600 feet in length, and Road “E” also may be longer than 600 feet. In her comments on the applicant’s proposal, Deputy Fire Marshal Clara Butler stated Section 503.2.5 of the Oregon Fire Code (OFC) requires that dead-end fire apparatus access roads exceeding 150 feet in length must have an approved turnaround for fire apparatus, and that dead-end roads exceeding 500 feet in length must have one of three alternative turnarounds depicted on a chart attached to Ms. Butler’s April 23, 2015 comments, one of which is a 96-foot-diameter cul-de-sac. The submitted tentative plan does not indicate the diameter of the proposed cul-de-sac bulbs. However, Keith D’Agostino’s June 30, 2015 memorandum states all three proposed cul-de-sacs will have outside diameters of 96 feet. According to Mr. D’Agostino, the cul-de-sac design also includes a 40-foot diameter paved circle within a 26-foot-wide paved driving surface. The memo does not indicate whether the interior paved circle would have a rolled curb allowing large vehicles to drive over it. Mr. D’Agostino’s memo also states the applicant would add two “hammerhead” turnarounds along proposed Road “C”, the main PUD access road, to aid fire apparatus access.

The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to construct all three cul-de-sac bulbs to a minimum diameter of 96 feet, and to submit to the Planning Division prior to final plat approval written documentation from the fire department that the cul-de-sacs as designed and constructed satisfy the applicable provisions of the OFC, including minimum diameter, maximum grade, and adequate driving surface.

b. Section 17.48.180, Private Roads

The following minimum road standards shall apply for private roads:

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

B. Minimum radius of curvature, 50 feet;

C. Maximum grade, 12 percent;

FINDINGS: The applicant proposes to construct the private PUD roads to the applicable county standards for private roads set forth in Table A of Title 17. Specifically, the private roads would have a 28-foot-wide paved surface with 2-foot-wide gravel shoulders. And the Hearings Officer has found that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to stripe a 4-foot-wide shoulder bikeway on each side of the PUD roads. I find any PUD approval also should be subject to a condition of approval requiring PUD roads to satisfy the maximum curve radius and grade standards in this section.
D. At least one road name sign will be provided at each intersection for each road;

FINDINGS: The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring at least one road name sign at each road intersection.

E. A method for continuing road maintenance acceptable to the County;

FINDINGS: The applicant proposes to provide for the continuing maintenance of the private PUD roads by the HOA through recorded CC&Rs for the PUD that include road maintenance provisions. The Hearings Officer finds that if the proposed PUD is approved on appeal, it should be subject to a condition of approval requiring the applicant to obtain approval of the road maintenance provisions of the CC&Rs from the county’s legal counsel prior to final plat approval.

F. Private road systems shall include provisions for bicycle and pedestrian traffic. In cluster and planned developments limited to ten dwelling units, the bicycle and pedestrian traffic can be accommodated within the 20-foot wide road. In other developments, shoulder bikeways shall be a minimum of four feet wide, paved and striped, with no on-street parking allowed within the bikeway, and when private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.

FINDINGS: As discussed above, the applicant proposes to construct the private PUD roads with 28 feet of paved surface and a 2-foot-wide gravel shoulder, and the Hearings Officer has recommended any PUD approval be subject to a condition of approval requiring the applicant to construct PUD roads to these standards, and to stripe a 4-foot-wide bicycle path on each side of PUD roads. I find that with imposition of the recommended condition of approval set forth above, the applicant’s proposal will satisfy this criterion.

As discussed in the foregoing findings, the Hearings Officer has found the proposed PUD does not satisfy all applicable standards in Title 17. Specifically, I have found the applicant failed to demonstrate the size and configuration of each proposed PUD lot are appropriate for the proposed use because they may not allow the siting of dwellings, on-site septic systems and individual wells consistent with the minimum 50-foot setback from any rimrock and all other applicable yard and setback requirements.

Based on the foregoing discussion, the Hearings Officer finds the applicant’s proposal does not satisfy all applicable subdivision standards in Title 17.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer DENIES the applicant’s requested conditional use permit and tentative plan approval for a 19-lot planned development.

Attachment 4: Split Zone, Flood Plain Decisions
If the applicant’s proposal is approved by the Board of County Commissioners on appeal, the Hearings Officer hereby RECOMMENDS THE APPROVAL BE SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

1. This approval is based upon the applicant’s submitted tentative plan, site plan, burden of proof statements, supplemental materials, and written and oral testimony. Any substantial change to the approved plan will require new land use applications and approvals.

2. The conditions of approval established in the Board of County Commissioner’s decision in ZC-08-1/PA-08-1 remain in full force and effect.

PRIOR TO SUBMITTING THE FINAL SUBDIVISION PLAT FOR APPROVAL:

3. The applicant/owner shall execute and record with the Deschutes County Clerk a conservation easement as specified in Section 18.04.030 of the Deschutes County Code.

4. The applicant/owner shall execute and record with the Deschutes County Clerk a perpetual easement allowing Redmond School District vehicles to travel across the PUD private roads.

5. The applicant/owner shall execute and record with the Deschutes County Clerk an agreement acceptable to the Deschutes County Road Department and Deschutes County Legal Counsel for the maintenance of the private PUD roads.

6. The applicant/owner shall complete the Department of Environmental Quality Voluntary Cleanup Program for SM Site 461 and the portion of the subject property located west of Lower Bridge Way.

7. The applicant/owner shall provide to the Planning Division certification by a licensed professional engineer that drainage facilities in and for the PUD have been designed and constructed to maintain all surface water drainage out of the river canyon and on the residential lots, and in accordance with the current Central Oregon Stormwater Manual, to receive and/or transport at least the design storm as defined in the current Manual for all surface drainage water including stormwater coming to and/or passing through the PUD.

8. The applicant/owner shall submit to the Planning Division written documentation from Redmond Fire and Rescue that all requirements of the fire department have been satisfied.

9. The applicant/owner shall submit to the Planning Division written documentation from Redmond Fire and Rescue that the private road cul-de-sacs as designed and depicted on the tentative plan satisfy the applicable provisions of the Oregon Fire Code, including minimum diameter, maximum grade, and adequate driving surface.

10. The applicant/owner shall obtain from Deschutes County an approved septic site evaluation for each PUD residential lot.

11. The applicant/owner shall obtain from the Deschutes County Surveyor approval of the subdivision name.
12. The applicant/owner shall obtain from the Deschutes County Property Address Coordinator approval of all PUD road names.

13. The applicant/owner shall install a 10,000-gallon cistern with a dry hydrant for firefighting water in the location identified on the tentative plan.

14. The applicant/owner shall amend the proposed PUD covenants, conditions and restrictions (CC&Rs) to include including the following:

a. provisions addressing potential additional lot-specific firefighting water measures, including: (i) each lot owner/applicant will determine the minimum firefighting water supply for the structure; and (ii) if the lot owner/applicant determines the water supply requirements for a particular structure cannot be met by the common cistern, the lot owner/applicant will provide alternative or additional measures to assure adequate firefighting water supply, such as an automatic sprinkler system for the structure.

b. a provision specifying that surface water drainage must be retained on site and out of the Deschutes River and its canyon.

15. The applicant/owner shall pay to Deschutes County a fee in lieu of dedication of park land in the amount of $350 per dwelling unit.

16. The applicant/owner shall dedicate right-of-way for, and improve to Deschutes County's standards for rural collector roads set forth in Table “A” of Title 17, the abutting segment of Lower Bridge Way.

17. The applicant/owner shall construct all private PUD roads to Deschutes County's standards for private local roads set forth in Table “A” of Title 17, including the following:

a. twenty-eight (28) feet of pavement width;

b. two (2) foot wide gravel shoulder on each side of the road;

c. four (4) foot wide striped bicycle lane on each side of the road;

d. fifty (50) foot minimum radius of curvature;

e. twelve (12) percent maximum grade;

f. minimum diameter of ninety-six (96) feet for all cul-de-sac roads; and

g. at least one road name sign at each road intersection.

WITH OR ON THE FINAL SUBDIVISION PLAT:

18. The applicant/owner shall include the following on the final subdivision plat:

a. right-of-way dedication for the abutting segment of Lower Bridge Way;
b. a stormwater easement or drainage right-of-way conforming substantially to the course of the Deschutes River;

c. all private road information, reservations, and restrictions; and.

d. the location of all utility easements.

19. The applicant/owner shall record the PUD’s covenants, conditions and restriction with the Deschutes County Clerk.

PRIOR TO CONSTRUCTION GRADING OR CONSTRUCTION OF IMPROVEMENTS:

20. The applicant/owner shall provide cash or a performance bond in favor of Deschutes County, and acceptable to Deschutes County Legal Counsel, for the cost of remediating DE dust on SM Site 461 and the subject property, in an amount to be identified by the applicant and approved by the board, prior to grading or construction of any improvements on the subject property. The bond shall be redeemable by the county if the applicant fails to complete the DE remediation identified as necessary for SM Site 461 and the subject property by the June 22, 2015 Wallace Group report.

21. Each dwelling shall receive scenic waterway approval from the Oregon Parks and Recreation Department.

22. Each dwelling shall receive LM site plan approval from Deschutes County.

23. Each dwelling shall receive SMIA site plan approval from Deschutes County.

WITH CONSTRUCTION OF DWELLINGS OR OTHER STRUCTURES:

24. All dwellings shall satisfy all applicable lot coverage and building height limitations, including no lot coverage in excess of thirty (30) percent of the total lot area, and no building or structure exceeding 30 feet in height.

25. All dwellings shall be constructed of fire resistant materials.

26. All structures shall be set back at least 100 feet from the OHWM of the Deschutes River and at least 50 feet from any rimrock.

27. All dwellings shall be constructed consistent with all grading and fill requirements in Section 17.36.230 of the Deschutes County Code.

28. All structures shall be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.

29. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., all existing tree and shrub cover screening any structure from the Deschutes River shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation.

30. Subject to applicable rimrock setback requirements or rimrock setback exception standards in Section 18.84.090(E) of the Deschutes County Code, all structures shall be
sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream.

31. All exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the Deschutes River.

32. The applicant/owner shall plant any street trees in accordance with a street tree plan submitted to and approved by the Deschutes County Planning Director before street trees are planted.

33. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape.

34. No structure shall be constructed within the LM Zone rimrock setback without the granting of a rimrock setback exception.

35. No structure shall be sited in the FP Zone.

36. No signs or other forms of outdoor advertising that are visible from the Deschutes River shall be installed. Property protection signs (No Trespassing, No Hunting, etc.,) are permitted.

37. No alteration of the existing grade or removal of vegetation on the upper plateau at the upper edge of the river canyon is permitted unless such actions are part of an Oregon Department of Fish and Wildlife approved habitat enhancement project.

AT ALL TIMES:

38. The applicant/owner and its successors, including individual lot owners, shall maintain all surface water drainage on site and out of the Deschutes River.

39. The applicant/owner and its successors, including individual lot owners, shall prohibit within the PUD’s open space tracts the following activities: construction of any structures, whether or not it requires a building permit; earthmoving; and the alteration, removal or destruction of natural vegetation outside of any Oregon Department of Fish and Wildlife approved habitat enhancement projects.

40. The applicant/owner and its successors, including individual lot owners, shall prohibit the following activities within the river canyon below the upper bench/plateau: changes in the natural grade; construction of structures; and the alteration, removal or destruction of natural vegetation, except as part of an Oregon Department of Fish and Wildlife approved habitat enhancement project.

41. The applicant/owner and its successors, including individual lot owners, shall install and maintain all exterior lighting in compliance with Deschutes County’s outdoor lighting ordinance in Chapter 15.10 of the Deschutes County Code.

42. The applicant/owner and its successors, including individual lot owners, shall comply with all requirements of Redmond Fire and Rescue.

Attachment 4: Split Zone, Flood Plain Decisions
DURATION OF APPROVAL:

43. The applicant/owner shall complete all conditions of approval and apply for final plat approval from the Deschutes County Planning Division within two (2) years of the date this decision becomes final, or obtain an extension of the approval in this decision in accordance with the provisions of Title 22 of the Deschutes County Code, or this approval shall be void.

Dated this 11th day of September, 2015  Mailed this 11th day of September, 2015

Karen H. Green, Hearings Officer

THIS DECISION BECOMES FINAL TWELVE DAYS AFTER MAILING UNLESS TIMELY APPROVED BY A PARTY OF INTEREST.