August 28, 2019

Deschutes County Planning Commission
c/o Nicole Mardell
117 NW Lafayette Avenue
Bend, OR 97703

RE: Flood Plain Amendments; 247-19-000531-TA
Our File No.: 116094-150752

Dear Members of the Deschutes County Planning Commission:

We are writing in support of the proposed amendments to the Flood Plain zone converting it from a base zone to an overlay zone and allowing Flood Plain zoned acreage to be used as open space in cluster and planned developments. To provide evidentiary support for the planned and cluster development forms of subdivisions and the significant riparian protections which can be realized through those developments, attached hereto are the following documents:

1. Riparian Area Management Plan prepared for the Lower Bridge Property located along the Deschutes River;
2. Biologist Report on Cluster Subdivisions; and
3. Draft CC&Rs for a Planned Development at the Lower Bridge Property.

Thank you for the opportunity to submit these materials.

Sincerely,

Tia M. Lewis
TML:ipa

PDX\116094\150752\TML\26067430.1

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1.0 INTRODUCTION

Lower Bridge Road, LLC proposes to build a housing development on approximately 144 acres adjacent to the Deschutes River near Terrebonne, Oregon (Figure 1, Appendix A). This report provides a Riparian Area Management Plan (RAMP) to demonstrate the proposed development’s compliance with the newly adopted code requirement for developments proposed within the Flood Plain zone in Deschutes County (Chapter 18.128.200, B. 15.).

The Deschutes County Comprehensive Plan (2011) includes the following definition of riparian areas:

“Riparian areas are areas adjacent to rivers, streams, lakes or ponds where there is vegetation that requires free or unbound water or conditions that are more moist than normal. Riparian areas form an interconnected system within a watershed. At the water’s edge they define the transition zone between aquatic and terrestrial systems. Riparian areas often contain a diversity of vegetation not found in upland areas. Riparian areas are limited in Deschutes County and are important habitats for both fish and wildlife.”

The Deschutes County Comprehensive Plan (Chapter 2 Resource Management, Section 2.5 Water Resources, 2011) also further defines significant riparian habitat as:

“The area within 100 feet of the ordinary high water mark of an inventoried river or stream. The 100 foot wide area may contain both riparian vegetation and upland vegetation.”

2.0 RIPARIAN RESOURCE INVENTORY

2.1 Methodology

Two Mason, Bruce & Girard, Inc. (MB&G) Biologists, (Dr. Wendy Wente, Wildlife Biologist, and Kristen Currens, Botanist/Professional Wetland Scientist) visually surveyed approximately 90 percent of the riparian area within the project study area (PSA) on December 14, 2018. The biologists documented aspect, species composition, and noxious weed presence at eight vegetation plots within the PSA to document the variety of conditions observed. Vegetation plots were informal and encompassed riparian vegetation within the immediate vicinity of the observer. The biologists also recorded GPS locations of the Deschutes River ordinary high water mark (OHWM) and upper extent of the riparian area above the OHWM.

In the office, MB&G utilized the GPS data to derive average OHWM and upper riparian area elevations for four sub-reaches of the river, as shown on Figure 2, Appendix A. Riparian vegetation areas were mapped between the average OHWM and upper riparian vegetation elevation for each sub-reach. The Riparian Area that is the subject of this plan includes the riparian vegetation as well as upland vegetation extending 100 feet from the OHWM (Figure 2).

2.2 Results

In general, the Riparian Area extended from the Deschutes River OHWM up through the riparian vegetation band and continued up relatively steep slopes along the river where the riparian vegetation transition to upland species. Below the OHWM of the Deschutes River we observed large areas of wetland vegetation, but these fell outside of the Riparian Area as defined in the Deschutes County Comprehensive Plan (2011) and they are not further addressed in this RAMP. We observed an existing trailhead at the southwest corner of the Lower Bridge Road
Bridge. Adjacent to the bridge was a river access point, and a trail extended along the south side of the river through and beyond the PSA. No other developed trails were observed within the Riparian Area; however, numerous game trails paralleled the river at various elevations. These showed signs of current, and in some cases heavy, use by mule deer (Odocoileus hemionus). We also noted sign of North American beaver (Castor canadensis) harvesting riparian vegetation cuttings within the Riparian Area.

A full inventory of botanical species observed in the eight vegetation plots is provided in Appendix B and an overview of the riparian vegetation present in the Riparian Area in each sub-reach is described below.

**Sub-reach 1: Aspect northeast, Vegetation Plots 1 and 2**

The riparian vegetation extends approximately 20 feet above the OHWM and is dominated by gray alder (Alnus incana), prickly rose (Rosa acicularis), and white squaw currant (Ribes cereum) in the overstory and native bunchgrasses and cheat grass (Bromus tectorum) in the understory. Cheat grass is a “C” Rated weed on the Deschutes County Weed List (2015) which recommends control and monitoring of this species.

**Sub-reach 2: Aspect east, Vegetation Plots 3 and 4**

The riparian vegetation extends approximately 15-30 feet above the OHWM and is dominated by Great Basin lyme grass (Leymus ceneres) and cheat grass in the understory. At the far north extent of this sub-reach, red osier (Corus alba) and prickly rose are also present.

**Sub-reach 3: Aspect northwest, Vegetation Plots 5 and 6**

The riparian vegetation extends approximately 20 feet above the OHWM and is dominated by water birch (Betula occidentalis), bitter cherry (Prunus emarginata), prickly rose, and white squaw currant.

**Sub-reach 4: Aspect northeast, Vegetation Plots 7 and 8**

The riparian vegetation extends approximately 25 feet above the OHWM and is dominated by Geyer’s willow (Salix geyeriana), prickly rose, reed canary grass (Phalaris arundinacea), cheat grass, and sedge species (Carex sp.). Spotted knapweed (Centaurea stoebe) was also located throughout the Riparian Area within this sub-reach. Reed canary grass and cheat grass are both “C” Rated and spotted knapweed is a “B” Rated weed on the Deschutes County Weed List (2015). The County recommends intensive control, containment and monitoring of spotted knapweed.

**3.0 RIPARIAN AREA MANAGEMENT PLAN**

Post-development, the Riparian Area as defined in this report and depicted on Figure 2 will be protected and managed as a sensitive resource by following this RAMP. The Deschutes County Code pertaining to Cluster Developments (18.128.200) and Planned Developments (18.128.210) specifically prohibits the following uses within the Riparian Area that is subject to this RAMP:

- Golf courses, tennis courts, swimming pools, marinas, ski runs or other developed recreational uses of similar intensity. Low intensity recreational uses such as bicycle, equestrian and pedestrian trails, and wildlife viewing areas located to minimize impact to the identified riparian resources may be permitted.
- Off-road motor vehicle use is prohibited.

The following sections detail additional specific conservation and avoidance measures targeted at protecting and enhancing the Riparian Area, provide a monitoring approach, and identify contingent mitigation measures that could be implemented should the conservation and avoidance measures fail to perform.
3.1 Conservation and Avoidance Measures

Conservation and avoidance measures designed to protect and preserve the on-site riparian vegetation and the greater Riparian Area include:

**Noxious Weed Control:** Vegetation within the Riparian Area will be monitored, and weeds or other non-native plants will be controlled and eradicated when possible and feasible following recommendations of the Deschutes County Noxious Weed Board, or a similar body. Cheat grass was located throughout the Riparian Area, but spotted knapweed appeared to be isolated to Sub-reach 4 along the existing trail corridor. Reed canary grass was observed throughout the riverine wetland habitat, but it extended into the Riparian Area most profusely in Sub-reach 4.

- Control of weeds in Sub-reach 4, and any others detected throughout the Riparian Area will begin immediately upon implementation of this RAMP.
- Control measures and schedule will follow the species-specific recommendations of the Deschutes County Noxious Weed Board, or similar body.

**Waste Control and Trash Removal:** Regularly (at least every 2 years) search for and remove trash from within the Riparian Area. Continuously maintain the bag supply at the dog waste bag station at the Lower Bridge Road trailhead. Keep a written record of trash removal efforts and dog waste bag station replenishment.

**Remove Old Fence:** Within the first two years of RAMP implementation, remove the derelict fence that parallels the Riparian Area to encourage wildlife movement to and from the riparian habitat.

**Leash Requirement:** To minimize the impact of domestic dogs on wildlife species utilizing the riparian habitat, post and strictly enforce leash laws within the designated Riparian Area. Post the trailhead at Lower Bridge Road within the first year of implementing this RAMP. Any future trails would be posted upon completion.

**Limited Access and Trail Development:**

If a trail network is planned for this development beyond that already existing west of the bridge, site the trail outside of the Riparian Area, if possible and feasible.

Maintain the fencing that creates the limited access point at the southwestern corner of the Lower Bridge Road Bridge.

Lower Bridge Road LLC is planning to develop an access trail to the river through the open space bordering the river on the eastern edge of the development. If this or other trails are developed within the Riparian Area:

- Limit trail development to outside of the riparian vegetation band where possible and use only pervious surfaces (no pavement).
- Trails must be designed to confine access to designated areas and designated fishing platforms.
- No more than two new trails will be constructed across the riparian vegetation to provide access to the river. These would be in addition to the already existing access trail at the southwestern corner of the Lower Bridge Road bridge.
- If a trail will provide access to the river, limit the access point by defining and protecting the trail border with fencing or other clear demarcation (e.g. signage).
  - If fences are installed to protect the trail border, they will allow wildlife passage by following the design standards and guidelines in DCC 18.88.070.
Education: Develop a program to educate residents and guests on the development’s Riparian Area conservation and protection goals, and how they can reduce impacts to the Riparian Area habitat value. The education program will include the installation of signs at appropriate locations (e.g. the existing river access point at the southwestern corner of the Lower Bridge Road Bridge) to make users aware of the Riparian Area and the resources it protects.

Vegetation Monitoring and Maintenance: A professional biologist will re-assess the riparian vegetation community within the Riparian Area during the regular RAMP monitoring cycle (every 3 to 5 years) to detect any newly disturbed sites or other sources of habitat degradation.

3.2 Monitoring Approach

3.2.1 Responsible Parties
The developer will implement the Riparian Area conservation measures and will be responsible for monitoring and enforcing adherence with these measures until management is turned over to the Home Owner’s Association (HOA).

Riparian Area conservation measures will be incorporated into the Declaration of Covenants, Conditions, and Restrictions (CC&Rs), therefore, the HOA will have ultimate authority to assess a fine or fee if an owner is non-compliant and the HOA will have the ability to bring the property into compliance should an owner continue failing to comply. The HOA will create an Architectural Review Committee (ARC) that will review and approve any improvements proposed within the Riparian Area (e.g. river access trail).

There will be a provision in the CC&Rs for a professional biologist to conduct an audit of the compliance of the developer or HOA (the managing party, as determined by the status of land management responsibility at the time of the audit) with this RAMP. This audit will be performed every 3 to 5 years starting from inception of ground-breaking activities associated with the development. The expected deliverable will be a monitoring report assessing the implementation and effectiveness of the Riparian Area conservation measures described in this RAMP and proposing potential adaptive management actions to address any issues detected during the audit.

The managing party (the developer or the HOA, depending on the status of land management responsibility) is required to meet County Code and abide by the land use decision.

3.2.2 Performance Standards
The following performance standards will be used to monitor and measure success of the conservation and avoidance measures presented in this RAMP.

Noxious Weed Control:

- Spotted knapweed has not progressed in distribution beyond areas indicated in this original 2018 RAMP.
- Weeds are under active management and control. Records indicate species-specific response is commiserate with guidance provided by Deschutes County Weed Board or a similar body.

Waste Control and Trash Removal:

- Records indicate ongoing efforts to remove trash (at least every 2 years) and continuous replenishment of dog waste bag station.
Remove Old Fence:
- Fence has been removed by the time the initial monitoring report is prepared.

Leash Requirement:
- Signs stating leash requirement are present at the trailhead on the southwest corner of the Lower Bridge Road Bridge and at any new trailheads where trails pass on the edge of or within the Riparian Area.

Limited Access and Trail Development:
- Confirm no trails have an impervious surface.
- Confirm access points to the river are controlled by fencing or a well-defined trail edge resulting in minimal disturbance to adjacent riparian vegetation.

Education:
- Report on Riparian Area education materials and how they are distributed or presented to residents and guests.

Vegetation Monitoring and Maintenance:
- Vegetation communities observed by the biologist completing monitoring should be similar in extent and condition to, or improved from the pre-development 2018 RAMP vegetation community description.
- If the monitoring biologist detects a newly disturbed area, biologist will prepare a restoration plan with implementation requirements. Such a plan could entail installing temporary exclusion measures (fencing), replanting the site with appropriate vegetation, setting appropriate success criteria, and monitoring success of the restored site.

3.2.3 Timeline
A professional biologist will complete the monitoring fieldwork and prepare the monitoring report every 3 to 5 years.

3.3 Contingent Mitigation

As a first step, if conservation measures fail to meet the performance standards, the monitoring biologist will recommend actions to bring the Riparian Area back into compliance with the RAMP (e.g., identify areas needing noxious weed control). The monitoring biologist can also recommend additional conservation measures not originally included in the 2018 RAMP if they would result in additional preservation or protection of the Riparian Area.

If the Riparian Area continues to show degradation over the course of two or more monitoring periods, the monitoring biologist will work with local resource agency staff (e.g., Oregon Department of Fish and Wildlife) to identify appropriate off-site riparian mitigation options that would allow the project to meet the requirement of 18.128.200 to preserve and protect riparian resources.
4.0 REFERENCES


APPENDIX B

Vegetation Plot Data
<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Noxious Weed</th>
<th>Non-native</th>
<th>Subreach 1</th>
<th>Subreach 2</th>
<th>Subreach 3</th>
<th>Subreach 4</th>
</tr>
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<tbody>
<tr>
<td>Achillea millefolium</td>
<td>Common yarrow</td>
<td>N</td>
<td>N</td>
<td>Trace</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alnus incana</td>
<td>Grey alder</td>
<td>N</td>
<td>N</td>
<td>10</td>
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<td></td>
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<tr>
<td>Alnus incana</td>
<td>Grey alder</td>
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<td>N</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Betula occidentalis</td>
<td>Water birch</td>
<td>N</td>
<td>N</td>
<td>Trace</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bromus tectorum</td>
<td>Cheat grass</td>
<td>Y</td>
<td>Y</td>
<td>30</td>
<td>10</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Carex sp.</td>
<td>Sedge species</td>
<td>N</td>
<td>N</td>
<td>Trace</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Centaurea stoebe</td>
<td>Spotted knapweed</td>
<td>Y</td>
<td>Y</td>
<td>Trace</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cirsium arvense</td>
<td>Canada thistle</td>
<td>Y</td>
<td>Y</td>
<td>Trace</td>
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<td>Cornus alba</td>
<td>Red osier</td>
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<td>90</td>
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<td>Elymus elymoides</td>
<td>Western bottle-brush grass</td>
<td>N</td>
<td>N</td>
<td>30</td>
<td></td>
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</tr>
<tr>
<td>Erigeron douglasii</td>
<td>Gray rabbitbrush</td>
<td>N</td>
<td>N</td>
<td></td>
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<tr>
<td>Festuca idahoensis</td>
<td>Bluebunch fescue</td>
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<td>N</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juniperus occidentalis</td>
<td>Western juniper</td>
<td>N</td>
<td>N</td>
<td>10</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Leymus cespitatus</td>
<td>Great Basin lyme grass</td>
<td>N</td>
<td>N</td>
<td>85</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phalaris arundinacea</td>
<td>Reed canary grass</td>
<td>N</td>
<td>Y</td>
<td>15</td>
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<td></td>
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<tr>
<td>Prunus emarginata</td>
<td>Bitter cherry</td>
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<td>N</td>
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<td></td>
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<td>Pseudognaphalium spicata</td>
<td>Bluebunch-wheat grass</td>
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<td>N</td>
<td>30</td>
<td>Trace</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ribes cereum</td>
<td>White squaw currant</td>
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<td>30</td>
<td>10</td>
<td>10</td>
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<tr>
<td>Ribes oxyacanthoides</td>
<td>Canadian gooseberry</td>
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<td>N</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Rosa acicularis</td>
<td>Prickly rose</td>
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<td>N</td>
<td>50</td>
<td>5</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>Salix geyeriana</td>
<td>Geyer's willow</td>
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<tr>
<td>Verbascum blattaria</td>
<td>White moth mullein</td>
<td>N</td>
<td>Y</td>
<td>Trace</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Bunch grasses</td>
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<td>N</td>
<td></td>
<td>50</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX C

Photo Pages
PHOTO 1
December 14, 2018
Riparian vegetation (prickly rose [Rosa acicularis] in the foreground) at Vegetation Plot #1 within Sub-reach #1. Brown vegetation in the center of the photo is reed canary grass (Phalaris arundinacea) located below the ordinary high water mark (OHWM) of the Deschutes River.

PHOTO 2
December 14, 2018
Vegetation plot #2 within Sub-reach #1. Grey alder (Alnus incana) and reed canary grass dominate the riparian area shown in the photo.
PHOTO 3
December 14, 2018
Overview of Sub-reach #2. Vegetation Plot #3 was collected below the photographer within the riparian band. The riparian habitat is dominated by Great Basin lyme grass (*Leymus cinereus*).

PHOTO 4
December 14, 2018
Vegetation Plot #4 within Sub-reach #2. Riparian vegetation is dominated by red osier (*Cornus alba*).
PHOTO 5
December 14, 2018
Vegetation Plot #5 within Sub-reach #3. Riparian vegetation is dominated by bitter cherry (*Prunus emarginata*).

PHOTO 6
December 14, 2018
Vegetation Plot #6 within Sub-reach #3. Riparian vegetation is dominated by cheat grass (*Bromus tectorum*), bunchgrasses, and white squaw currant (*Ribes cereum*).
PHOTO 7
December 14, 2018
Vegetation Plot #7 within Sub-reach #4. Riparian vegetation is dominated by prickly rose and Great Basin lyme grass.

PHOTO 8
December 14, 2018
Vegetation Plot #8 within Sub-reach #4. Vegetation within the riparian area is dominated by sedge and Geyer’s willow (Salix geyeriana).
PHOTO 9
December 14, 2018
River access trail at southwestern corner of bridge on Lower Bridge Road.

PHOTO 10
December 14, 2018
River trail access on south side of river near Lower Bridge Road bridge. The dog waste bag dispenser is located to the left the trail.
DATE: July 10, 2019
TO: Lower Bridge Road, LLC (Applicant)
FROM: Wendy Wente, Ph.D., Mason, Bruce & Girard, Inc. (MB&G)
SUBJECT: Lower Bridge Road PUD and impacts to riparian area

Project Description

The proposed Lower Bridge Road Project would result in the construction of a 19-lot residential Planned Unit Development (PUD) on approximately 144.7 acres zoned by Deschutes County as Rural Residential 10 (RR-10) and Flood Plain (FP). Lots would range in size from 2 to 5 acres and 94 acres would be preserved as open space. There is an important natural resource on the property; the Deschutes River and its adjacent riparian area.

Background

In late 2018, the Applicant contracted with MB&G to prepare a Riparian Area Management Plan (RAMP) to demonstrate compliance of the proposed development with the Deschutes County code pertaining to developments within the Flood Plain zone (Chapter 18.128.200.B.15). Deschutes County recently withdrew this Flood Plain code and the associated requirement for a RAMP, county-wide. The Applicant remains committed to including the RAMP as a part of the proposed development. A draft of the RAMP is included in the land use application materials.

This memorandum provides my expert opinion regarding the relative potential impacts to the riparian resources from two development alternatives: 1) the proposed PUD developed as a conditional use of RR-10 (DCC 18.60.060(C)) and with the RAMP in place, or 2) a standard subdivision developed following DCC 18.60 as an allowable use of the property zoned RR-10.

Comparison of PUD to Standard Subdivision Development

The standard subdivision allowed by Deschutes County (without condition) on RR-10 — zoned land requires a 10-acre minimum lot size. This means up to 14 privately-owned lots could be developed on the 144-acre property where each lot boundary would extend to the centerline of the Deschutes River with no community ownership or oversight of the riparian area.

The proposed PUD represents a conditional use of RR-10 (DCC 18.60.060(C)). The Applicant proposes up to 19 lots to meet the conditional code density of one unit per 7.5 acres and intends to include the RAMP in Article 6 (Common Areas) of the proposed PUD’s Covenants, Conditions and Restrictions (CC&Rs). The RAMP would be initiated by the developer with continued implementation and enforcement by the Home Owner’s Association (HOA).
CC&Rs would include a provision for a professional biologist to conduct an audit of RAMP compliance. Please refer to the CC&Rs and the RAMP for additional detail on plan management.

Although the PUD as proposed would allow five more lots than the standard subdivision, it would concentrate the lots and associated dwellings and provide 94 acres of designated open space. It would also better protect the riparian resource, most significantly by limiting (via the conditions described in the RAMP) access to the riparian area and to the Deschutes River below the flood plain boundary. Specifically, no more than two new access trails would be installed across the riparian area to the river for the entire development.

In contrast, a standard subdivision developed under DCC 18.60 with lot lines extending into the Flood Plain zone (DCC 18.96.030) would give residents access to the river from each lot, and could allow the construction of individual access trails, the introduction of fill or other nonnative materials in the riparian area and possibly fishing stands, docks or piers. This alone means impacts from each lot to the riparian vegetation and the river itself could be much greater than that allowed under the proposed PUD.

The RAMP also includes other riparian area conservation measures such as noxious weed control, dog-leash requirements, trash control and removal, wildlife-friendly fencing requirements, a resident education program, and a monitoring and management plan that would support habitat conditions within the riparian area for the life of the development. These would not be requirements for a standard subdivision developed following DCC 18.60 as an allowable use of the property zoned RR-10.

Opinion

In my opinion the proposed 19-lot PUD is a preferable development plan when compared to the 14-lot standard development because of the protections provided to the Deschutes River and its adjacent riparian area by the proposed RAMP.
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOWER BRIDGE ROAD SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOWER BRIDGE ROAD SUBDIVISION (this “Declaration”), made effective upon its recording in Deschutes County, Oregon, is executed on the date hereinafter set forth by LOWER BRIDGE ROAD, LLC, an Oregon limited liability company, whose address is 205 E. 11th Street, Suite 200, Vancouver, Washington 98660 (“Declarant”).

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in Deschutes County, Oregon and more particularly described on attached Exhibit A (the “Property”);

WHEREAS, Declarant desires to develop the Property as a nineteen (19) planned community known as Lower Bridge Road Subdivision (the “Subdivision”), as shown on the duly recorded plat filed in the Official Records of Deschutes County, Oregon. The Subdivision is Class I planned community as defined in, and is subject to, the Oregon Planned Community Act, being ORS 94.550 to 94.783 (as amended from time to time). Any prospective purchaser should review these covenants carefully as well as the environmental history of the Property discussed in ARTICLE 2 herein.

NOW, THEREFORE, Declarant declares that the Property shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

1.1 “Act”

“Act” shall mean the Oregon Planned Community Act, being ORS 94.550 et seq., as amended from time to time.

1.2 “Annual Assessments”
“Annual Assessments” shall mean Base Assessments, Reserve Account Assessments, and any Specific Assessments which may be levied by the Association in each of its fiscal years pursuant to the terms of Article 4.

1.3 “ARC”

“ARC” shall mean the architectural review committee established pursuant to the terms of Section 8.1.

1.4 “Articles”

“Articles” shall mean the Articles of Incorporation for the Association.

1.5 “Association”

“Association” shall mean the Lower Bridge Road Homeowners Association (“HOA”), an Oregon nonprofit corporation, established for the purposes set forth herein.

1.6 “Base Assessments”

“Base Assessments” shall mean the assessments imposed upon all Lots for services rendered or expenses incurred by the Association pursuant to the terms of Section 4.3.

1.7 “Board”

“Board” shall mean the Board of Directors of the Association.

1.8 “Builder”

“Builder” shall mean any individual or company who purchases one or more Lots for the purpose of constructing Units for resale to consumers in the ordinary course of its business.

1.9 “Bylaws”

“Bylaws” shall mean the Bylaws of the Association, as amended from time to time. The Bylaws shall be adopted pursuant to ORS 94.625 and recorded in the Deed Records of Deschutes County, Oregon. A copy of the Bylaws is attached as Exhibit B.

1.10 “Common Areas”

“Common Areas” shall mean those portions of the Property owned or leased by the Association for the common use and benefit of the Owners. The definition of “Common Areas” specifically excludes Lots. The legal description of the Common Areas is set forth on attached Exhibit C.

1.11 “Common Maintenance Areas”

“Common Maintenance Areas” shall mean the Open Space and Common Areas, and shall also mean any areas within public rights-of-way or located on adjacent property that the
Association is required to maintain pursuant to the terms of this Declaration or which the Board deems necessary, desirable or appropriate for the Association to maintain for the common benefit of the Owners.

1.12 “Conversion Date”

“Conversion Date” shall be the date upon which Class B membership shall cease and be converted to Class A membership. Such date shall be the date which is the earlier of (i) the date at which seventy-five percent (75%) of the Lots anticipated to be created within the Subdivision have been conveyed to Class A members; (ii) ten (10) years after conveyance of the first Lot to a Class A member; or (iii) upon written election of Declarant.

1.13 “County”

“County” shall mean Deschutes County, Oregon.

1.14 “Declarant”

“Declarant” shall mean Lower Bridge Road, LLC, an Oregon limited liability company, its successors and assigns, who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

1.15 “Declaration”

“Declaration” shall mean this Declaration of Protective Covenants, Conditions, and Restrictions for Lower Bridge Road Subdivision and any amendments and supplements thereto made in accordance with its terms.

1.16 “Design Guidelines”

“Design Guidelines” shall mean the design guidelines adopted by the ARC or Declarant pursuant to Section 8.2, as amended or modified from time to time.

1.17 “Directors”

“Directors” shall mean the members of the Board.

1.18 “Dust Control Plan”

“Dust Control Plan” shall mean the plan for the subject property, implemented as approved by DEQ and as a condition of subdivision approval by Deschutes County and attached hereto as Exhibit D.

1.19 “Governing Documents”

“Governing Documents” shall mean this Declaration and the Articles, Bylaws and Rules and Regulations of the Association, all as may be amended from time to time.
1.20 "Historic Sign"

"Historic Sign" shall mean the Lynch and Roberts Store advertisement sign painted on the rock facing Lower Bridge Way as documented and referenced in the County land use file ZC-08-1 / PA-08-1.

1.22 "Improvement"

"Improvement" shall mean every structure or improvement of any kind, including, but not limited to, a Unit, landscaping, patios, decks, fences and walls (including retaining walls), driveways, sidewalks, fixtures, storage shelters, pools, hot tubs, athletic facilities and other products of construction efforts (including exterior painting, alterations, and reconstruction).

1.23 "Lot"

"Lot" shall mean the plots of land indicated as such on the Plat. The term "Lot" specifically excludes Common Areas and Common Maintenance Areas.

1.24 "Mortgagee"

"Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage," as used herein, shall include deeds of trust. "First Mortgagee" as used herein, shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

1.25 "Open Space"

"Open Space" shall mean the areas labeled as such and shown on the Plat for Lower Bridge Road Subdivision as filed in the Official Records of Deschutes County.

1.26 "Owner"

"Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.27 "Plat"

"Plat" shall mean the duly recorded plat of Lower Bridge Road Subdivision filed in the Official Records of Deschutes County, Oregon.
1.28 "Property"

"Property" shall mean the real property described on the attached Exhibit A.

1.29 "Reserve Account Assessments"

"Reserve Account Assessments" shall mean assessments established pursuant to the terms of Section 3.4.

1.30 "Riparian Area Management Plan (RAMP)"

"Riparian Area Management Plan (RAMP)" shall mean that plan document prepared by Mason, Bruce, Girard, Inc. dated __________, for the Lower Bridge Road subdivision project attached hereto as Exhibit E.

1.31 "Riparian Protection Area"

"Riparian Protection Area" shall mean the area defined and labeled as such and shown in the RAMP described herein.

1.32 "Rules and Regulations"

"Rules and Regulations" shall mean the rules and regulations adopted by the Association from time to time in accordance with Article 12 of the Bylaws.

1.33 "Special Assessments"

"Special Assessments" shall mean any special charges established pursuant to the terms of Section 4.6.

1.34 "Specific Assessments"

"Specific Assessments" shall mean the charges imposed upon some, but less than, all Lots for services rendered or expenses incurred pursuant to Section 4.5.

1.35 "Subdivision"

"Subdivision" shall mean Lower Bridge Road Subdivision.

1.36 "Transitional Advisory Committee"

"Transitional Advisory Committee" shall mean the committee described in Section 4.2 of the Bylaws.

1.37 "Turnover Meeting"

"Turnover Meeting" shall mean the meeting of the Owners called to turn over control of the Association to the Class A members, as further described in the Bylaws.

1.38 "Unit"

"Unit" shall mean any residential dwelling situated on a Lot intended for occupancy by a single family including, without limitation, a single family home.
ARTICLE 2 – ENVIRONMENTAL HISTORY

The subject property was historically part of an approximately 557 acre property (parent parcel) that was mined for aggregate and diatomite from the early 1920’s. Because mining began long before county or state land use or mining regulations became effective, most of the property is exempt from mining reclamation requirements. The parent parcel was also used for the storage of solid and hazardous waste, with some evidence of historic solid waste storage and aggregate mining on the subject property. The property has a long history of industrial and mining use, which have resulted in some environmental impacts to soil and air quality. Those impacts include airborne diatomite dust, hazardous and radioactive waste storage, disposal and clean-up and citations for violations of environmental quality regulations. The property has gone through the Voluntary Clean Up Program through DEQ and has received a No Further Action letter verifying it is safe for residential use. The environmental history of the property is well documented in County land use files ZC-08-1 / PA-08-1 and 247-15-000194-CU / 247-15-000195-TP as well as Department of Quality (DEQ) files for the subject property under ECSI #4950.

ARTICLE 3–ASSOCIATION

3.1 Membership. Declarant and every other Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and shall not be separated from ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgment, Owners shall be governed and controlled by the Governing Documents. There shall be two (2) classes of membership in the Association, Class A membership and Class B membership, as described in Section 2.2.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

3.2.1 Class A Membership

Class A members shall be all Owners with the exception of Declarant (provided that Declarant shall become a Class A member from and after the Conversion Date), and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot. If the co-Owners of a Lot cannot agree upon the vote, then the vote of the Lot shall be disregarded in determining the particular matter at issue.

3.2.2 Class B Membership

The Class B member shall be Declarant, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and become converted to Class A membership on the Conversion Date.
3.3 **Suspension.** All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to Article 3 or is otherwise in default under the Governing Documents. The Board may also suspend an Owner’s rights to use the Common Areas during such period of default.

**ARTICLE 4— ASSOCIATION FINANCES**

4.1 **Budgeting.**

4.1.1 At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated operating expenses of the Association for the coming year. The estimated expenses in the budget shall include, in addition to operating reserves, a contribution to the Reserve Account determined in accordance with the terms of Section 3.4 below. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount estimated to be generated through the levy of assessments against Lots. Finally, the budget shall differentiate between expenses applicable to all Lots versus expenses applicable to some, but not all, Lots.

Estimated operating expenses and Reserve Account Assessments applicable to all Lots shall be allocated among such Lots as Base Assessments pursuant to Section 3.3 below, while estimated operating expenses and Reserve Account Assessments applicable to some, but not all Lots, shall be allocated among the affected Lots as Specific Assessments pursuant to Section 3.5 below.

4.1.2 The Board shall send a copy of the final budget, together with notice of the amount of the Annual Assessment to be levied pursuant to the budget, to each Owner within thirty (30) days after the adopting the budget. The budget shall automatically become effective unless disapproved by the vote of a majority of the Class A members.

The Association has no obligation to call a meeting for purposes of considering the budget, but the Owners may call a special meeting for such purpose as provided in the Bylaws. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

4.1.3 The Board may revise the budget and adjust the assessments levied pursuant thereto from time to time during the year, subject to the same notice and right to disapprove the revised budget as set forth above.
4.2 **Initial Assessments.** At the closing on the initial sale of a Lot to an Owner other than Declarant or a Builder, the Owner shall make a one-time working capital contribution to the Association equal to three (3) months of Annual Assessments.

4.3 **Base Assessments.** Upon determining the total amount of income required to be generated through the levy of Base Assessments as provided in Section 3.1, the Association shall allocate such amount equally among all Lots subject to assessment (as determined by Section 3.8 below) on the effective date of the budget. The amount allocated to each Lot shall then be levied as a Base Assessment.

Declarant may, but is not obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant (if any), or a loan, as determined by Declarant in its sole discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

4.4 **Replacement Reserve Assessments.**

4.4.1 As a part of any Annual Assessment the Board shall obtain from Owners contributions for a reserve account (the “Reserve Account”) established for all items of property included within the Common Maintenance Areas which will normally require major maintenance, repair or replacement, in whole or in part, in more than one (1) and less than thirty (30) years, for exterior painting (if the Common Maintenance Areas includes exterior painted surfaces), and for other items, whether are not included within the definition of Common Maintenance Areas if the Association has responsibility to maintain; provided, however, that the Reserve Account need not include items that could reasonably be funded from Base Assessments or Specific Assessments or other funds or accounts of the Association, or items for which the Owners (and not the Association) are responsible for maintenance, repair and replacement under the terms of the Governing Documents.

4.4.2 The Declarant shall conduct an initial reserve study (a “Reserve Study”) and initial maintenance plan (a “Maintenance Plan”) to determine the Reserve Account requirements. The Reserve Study shall include: (a) identification of all items for which reserves are or will be established; (b) include the estimated remaining useful life of each item as of the date of the Reserve Study; and (c) include for each item, as applicable, an estimated cost of maintenance, repair and replacement at the end of the item’s useful life. The Maintenance Plan shall: (i) describe the maintenance, repair and replacement to be conducted; (ii) include a schedule for the maintenance, repair and replacement; (iii) be appropriate to the size and complexity of maintenance, repair and replacement responsibility; and (iv) address issues that include, but are not limited to, warranties and the useful life of the items for which the Association has maintenance, repair and replacement responsibility. The Board shall thereafter conduct an annual Reserve Study or review and update an existing Reserve Study to determine the Reserve Account requirements. The Board shall also review and update the Maintenance Plan as necessary.
4.4.3 Contributions to the Reserve Account ("Reserve Account Assessments") shall be in an amount (i) initially determined by Declarant based upon the results of the initial Reserve Study or other reliable information and (ii) thereafter by the Board from time to time based on the results of the annual Reserve Study (or review and update of an existing Reserve Study). Reserve Account Assessments shall be allocated to Lots pursuant to Section 3.3 (Base Assessments) and Section 3.5 (Specific Assessments) of this Declaration, as applicable, and shall be paid to the Association monthly, quarterly or annually as determined by the Board.

Reserve Account Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. The Reserve Account must be a separate account holding only Reserve Account Assessments and other funds intended to be used for the same purpose maintained a federally insured bank or other depository institution with branches in Oregon, and any funds in the Reserve Account may be expended only for the purposes for which the Reserve Account was established as described above.

4.4.4 After the Turnover Meeting, the Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association’s regular operating fund or to meet unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of such funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period of time.

4.4.5 At any time after the second (2nd) year after the Turnover Meeting, future replacement reserve assessments for the Reserve Account may be increased or reduced by the vote of Owners of Lots representing seventy-five (75%) of the Owners.

4.4.6 Nothing in this Section 3.4 prohibits the prudent investment of Reserve Account funds, subject to any constraints imposed by the Board or the Governing Documents.

4.5 Specific Assessments. The Association shall have the authority to levy assessments to satisfy the expenses of undertaking a particular project or effort that benefit some, but less than all, of the Lots (such assessments, "Specific Assessments"). Specific Assessments shall be allocated equally against the Owners of those Lots that benefit from the project, effort or other specific undertaking by the Association, unless the Association, in its reasonable discretion determines another method of apportionment more accurately reflects the benefit received by such Owners.

4.6 Special Assessments. In addition to the Base Assessments authorized above, the Board may levy "Special Assessments” against an Owner or all Owners in the following manner for the following purposes:

(a) To correct a deficit in the operating budget, by vote of a majority of the Board;
(b) To collect additional amounts necessary to make repairs or renovations to the Common Areas or Common Maintenance Areas if sufficient funds are not available from the operating budget or Reserve Account, by vote of a majority of the Board; and

(c) To make capital acquisitions, additions or improvements, by vote of Owners holding at least sixty percent (60%) of the voting rights of the Association.

Special Assessments shall be imposed against all Lots in the same proportion as Base Assessments as provided in Section 3.3 above.

4.7 Reimbursement Assessments. The Association shall have the authority to levy a reimbursement assessment (each, a "Reimbursement Assessment") against any Owner and such Owner’s Lot if (a) a failure to comply with this Declaration or the other Governing Documents has necessitated an expenditure of monies by the Association to effect compliance or resulted in the imposition of a fine or penalty against such Owner or such Owner’s Lot; or (b) corrective action of the Association has necessitated an expenditure of monies by the Association as a result of the willful or negligent actions or omissions of such Owner or such Owner’s family members, tenants, guests, contractors or invitees. A Reimbursement Assessment, together with interest, costs, and reasonable attorney’s fees, shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least ten (10) days’ prior written notice to the Owner being assessed. If, within said ten (10) day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct the hearing not less than ten (10) nor more than thirty (30) days after the request by the Owner, and shall make its decision within thirty (30) days after the hearing is held. If a notice has been previously given, and the hearing has already been held or waived (in writing or by the Owner’s failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

4.8 Commencement of Assessments.

4.8.1 Base Assessments and Specific Assessments. Declarant shall pay all operating expenses of the Association until Declarant elects to assess the Lots for Base Assessments and Specific Assessments as provided herein. The date of commencement of Base Assessments and Specific Assessments on the Lots (excluding any Lots owned by Declarant or a Builder, which shall be exempt as provided below) shall be determined by Declarant; however, in no event shall it commence later than the Turnover Meeting or if no Turnover Meeting is held, the date on which administration of the Association is turned over to the Class A members.

Any Lot owned by Declarant or a Builder is exempt from the payment of Base Assessments and Specific Assessments. Base Assessments and Specific Assessments shall commence as to a Lot owned by Declarant or a Builder on the date the Lot is conveyed to an Owner other than Declarant or a Builder.

4.8.2 Reserve Account Assessments. Reserve Account Assessments commence as to a Lot as of the date Declarant or a Builder conveys the Lot to an Owner other than Declarant or a Builder. Declarant and a Builder are exempt from the payment of Reserve Account Assessments.
4.8.3 All Other Assessments. Special Assessments and Reimbursement Assessments shall commence as to a Lot as of the date Declarant or a Builder (as applicable) conveys the Lot to an Owner other than Declarant or a Builder. Declarant and Builders are exempt from the payment of Special Assessments and Reimbursement Assessments.

4.9 Obligation for Assessments. Each Owner, by accepting a deed for his, her or their Lot, is deemed to covenant and agree to pay all assessments authorized in this Declaration or other Governing Documents. All assessments, together with interest, fines and late charges as determined by Board resolution, and collection costs (including reasonable attorneys’ fees), shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. The Association may sue any person liable for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Annual Assessments on the basis of the last year for which an assessment was made, if any, until a new budget becomes effective and a new assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

No Owner may exempt himself from liability for assessments by non-use of the Common Areas, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

4.10 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, fines and late charges as determined by Board resolution, and collection costs (including reasonable attorneys’ fees). Such lien shall be superior to all other liens, except (a) liens for real estate taxes and assessments and other levies which by law would be superior; and (b) the lien of any recorded first Mortgage made in good faith and for value. Such lien, when delinquent, may be foreclosed as provided in ORS 94.709 after the Association records a notice of lien containing the information required by and otherwise complying with the requirements of ORS 94.709 (2) and (3) in the deed records for Deschutes County, Oregon.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessments shall be levied on it; and (c) each other Lot shall be charged, in addition to usual assessments, its pro rata share of the assessments that would have been charged to such Lot had it not been acquired by the Association.
Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof for the benefit of any First Mortgagee shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing, no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any First Mortgagee shall be deemed to extinguish any mortgage or lien which the Association has itself placed upon any property owned by the Association.

4.11 **Interest; Late Fees; Fines.** The Board, in its reasonable discretion, may from time to time adopt resolutions to set the rate of interest and to impose late fees and fines on delinquent assessments or for violations of the provisions of this Declaration or other Governing Documents as permitted by and subject to the requirements of ORS 94.630(1)(n). The adoption of such impositions by the Board shall be communicated to all Owners in writing not less than thirty (30) days before the effective date by a notice mailed to the address of the Owners as contained in the records of the Association. Such impositions shall be considered assessments that are lienable and collectible in the same manner as any other assessments; provided, however, that fines (but not interest or late fees) for violation of this Declaration or other Governing Documents may not be imposed against an Owner or such Owner’s Lot until the Owner is given an opportunity for a hearing as required by ORS 94.630(1)(n).

4.12 **Acceleration of Assessments.** If an Owner is delinquent in payment of any assessment or installment on any assessment, the Association, on not less than ten (10) days’ written notice to the Owner, may accelerate the due date of the full annual assessment for that fiscal year and all future installments of any Special Assessments.

4.13 **Certificate of Payment.** The Association shall provide, within ten (10) business days of receipt of a written request from an Owner, a certificate signed by an officer of the Association setting forth (i) the amount of assessments due from the Owner and unpaid at the time the request is received, including Annual Assessments and all other assessments authorized in this Declaration, late fees, interest, fines and other charges, (ii) the percentage rate at which interest accrues on assessments that are not paid when due, and (iii) the percentage rate used to calculate the charges for late payments; provided, however, that the Association is not required to comply with the foregoing if the Association has commenced litigation by filing a complaint against an Owner and the litigation is pending when the certificate would otherwise be due. A properly executed certificate of the Association shall be binding upon the Association as of the date of its issuance as to the status of assessments on a Lot.

4.14 **No Reimbursement to Declarant.** The proceeds of any assessments shall not be used to reimburse Declarant for any capital expenditures incurred in construction or other improvements of Common Areas or Common Maintenance Areas, nor for the operation or maintenance of such facilities incurred before conveyance of such common facilities to the Association.
ARTICLE 5 -- EASEMENTS AND RIGHTS OF ENTRY

5.1 **Plat Easements.** The Property shall be subject to all easements delineated on the Plat.

5.2 **Owners’ Easements in Common Areas.** Declarant grants to each Owner a perpetual, nonexclusive right and easement of use, access and enjoyment in and to the Common Areas, subject to the restrictions and limitations set forth in this Article and elsewhere in this Declaration.

5.3 **Easement of Encroachment.** Declarant grants reciprocal appurtenant easements of encroachments, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Areas and between adjacent Lots due to unintentional placement or settling or shifting of improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more the three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. In no event, however, shall an easement for encroachment exist if such encroachment occurred due willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

5.4 **Easements for Utilities, Etc.**

5.4.1 Declarant reserves for itself and the Association, for the benefit of the Property and any adjacent property owned by Declarant, perpetual, nonexclusive blanket easements upon, across, over and under the Property for purposes of ingress, egress, installation, maintenance, repair and replacement of utilities and infrastructure; cable and other systems for sending and receiving data and/or other electronic signals; security and similar systems; walkways, pathways and trails; stormwater drainage systems; irrigation systems; sanitary sewer systems; street lights; signage; and entry features; provided, however, that the exercise of these easements does not unreasonably interfere with the use of any Lot. Declarant further reserves for itself and the Association the right to grant the benefit of any such easements to the County and other utility service providers.

5.4.2 Declarant also reserves for itself and the Association the nonexclusive right and power to grant and record such specific easements over the Property as may be necessary, in the sole discretion of Declarant or the Association, to exercise the rights and easements granted by the preceding Section. The Owner of any Lot to be burdened by any easement granted pursuant to this Section 4.4 shall be given advance written notice of the grant, and the location of the easement on such Lot shall be subject to the written approval of the Owner (which shall not be unreasonably withheld, delayed or conditioned); provided, however, that an Owner shall be deemed to have consented to the location of an easement on his or her Lot if the Owner has not responded to a written request within thirty (30) days after such request was mailed to the Owner’s address on record with the Association.

5.4.3 All work associated with the exercise of the easements described in this Section 4.4 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to

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its condition prior to commencement of the work, except for any improvements placed within utility easements in violation of the terms of this Declaration. The exercise of these easements shall not extend to permitting entry into any Unit without the Owner’s consent, nor shall it unreasonably interfere with the use of any Lot by the Owner thereof. Except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

5.5 **Easements to Serve Additional Property.** Declarant hereby reserves for itself and its duly authorized agents, successors and assigns a perpetual, nonexclusive easement over the Common Areas for purposes of enjoyment, use, access and development of any property now or hereafter owned by Declarant adjacent to or near the Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction and use of roads, sidewalks and walking paths, and for connecting and installing any and all utilities on such property.

Declarant agrees that it and its duly authorized agents, successors and assigns shall be responsible for any damage caused to the Common Areas as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway, sidewalk or walkway providing access to such property.

5.6 **Easements for Maintenance, Emergency and Enforcement.** Declarant grants to the Association easements over the Property as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the terms of this Declaration and the other Governing Documents. Any such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in performance of their duties. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner.

5.7 **Easement to Inspect and Right to Correct.** Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, improvement or condition (including, but not limited to, drainage issues) which may exist on any portion of the Property, and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner; provided, however, that no entry into a Unit is permitted without the consent of the Owner. The person exercising these easements shall promptly repair any resulting damage.

5.8 **Perimeter Fence Easement.** An easement is hereby declared for the benefit of the Declarant and the Association for the construction, maintenance, repair and replacement of fencing along the perimeter of the Property, whether or not such fencing is located on the Common Areas or Lots. Declarant, however, is under no obligation to construct any perimeter fencing. Any perimeter fencing constructed by Declarant shall be maintained by the Association as a Common Maintenance Area.
5.9 **Retaining Wall Easement.** Retaining walls may have been constructed by Declarant within the Property (the “Retaining Walls”). The Retaining Walls are not in all cases located on a Lot line. The location of a Retaining Wall (or the construction by an Owner of any improvements on or near the Retaining Wall) shall not constitute evidence of the intended location of a Lot line, or provide grounds for any claim of adverse possession or prescriptive easement. Each Lot upon which any portion of a Retaining Wall is located shall be subject to an easement, for the benefit of the Association and all other Lots, for the purposes of support by and natural drainage from such Retaining Wall. Retaining Walls may or may not have been designed by a professional engineer, and no Owner shall take any action to add, construct or place any improvement on the Lot so that it may, in the judgment of the Association: result in disturbance of, weakening of, or damage to a Retaining Wall; increase any engineered load or alter design criteria; or cause damage to the Retaining Wall or surrounding properties. Any Lot Owner who takes such action, or who otherwise damages a Retaining Wall, shall be responsible for all resulting costs of repair and restoration of the Retaining Wall. This Section 4.9 shall not apply to retaining walls constructed by an Owner on its own Lot.

5.10 **Special Declarant Easements.** Declarant reserves for itself and its duly authorized agents, successors and assigns, perpetual, nonexclusive easements on, over and across the Common Areas for purposes of (a) constructing and maintaining such facilities and activities as Declarant, in its sole discretion, deems necessary or convenient to the sale of Lots and Units, including, but not limited to, business offices, signs, model units and sales offices; (b) constructing and maintaining Common Areas, including any structures thereon; and (c) storing materials and making such other use thereof as Declarant, in its sole discretion, deems necessary or convenient to the construction of Units and other structures on the Property (provided that no such storage or other use shall unreasonably interfere with access to, or the use, occupancy and enjoyment of, any Lot). Declarant shall also have easements for access to and use of the Common Areas for such facilities at no charge.

**ARTICLE 6 -- COMMON AREAS**

6.1 **Use of Common Areas.** Every Owner shall have a right to use and enjoy the Common Areas, subject to:

(a) The terms of this Declaration as it may be amended from time to time and any restrictions or limitations contained in any deed conveying the Common Areas to the Association;

(b) County restrictions on use of Open Space in Planned Developments;

(c) The Board’s Right to:

(i) adopt, promulgate, enforce and amend from time to time the Rules and Regulations pertaining to the use and enjoyment of the Common Areas, including rules and regulations limiting the number of guests of Owners who may use the Common Areas at any one time;

(ii) suspend the right of an Owner, after notice and an opportunity for a hearing, to use all or any portion of the Common Areas (A) for any period not
to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation of this Declaration or the Bylaws or Rules and Regulations; and (B) for any period during which any assessments or any other charges for such Owner’s Lot remains delinquent;

(iii) grant easements and dedicate or transfer all or any part of the Common Areas pursuant to Sections 4.4 and 5.2;

(iv) mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 5.2;

(v) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas that is not open or available to the general public; and

(vi) permit use of any recreational facilities situated on the Common Areas by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(d) All easements granted or reserved by Declarant in this Declaration, and all easements subsequently granted or reserved by Declarant pursuant to a right granted or reserved in this Declaration.

An Owner who resides in a Unit may extend his or her right to use and enjoyment of the Common Areas to the other members of his or her household and to guests, subject to the terms of this Declaration and the Rules and Regulations. If an Owner does not reside at his or her Unit, then the Owner shall be deemed to have assigned all of the Owner’s rights to use and enjoyment of the Common Areas to residents or occupants of such Unit, subject to the terms of this Declaration and the Bylaws and Rules and Regulations.

No Owner shall make any change to any Improvement or landscaping upon the Common Areas, or decorate, alter or repair any part of the Common Areas (except for maintenance of those parts of the Common Areas which the Owner has the duty to maintain, if any), without the prior written consent of the Association.

6.2 **Riparian Protection Area.** The designated Riparian Protection Areas as defined and labeled as such in the RAMP attached as Exhibit E and use is restricted as follows:

- Golf courses, tennis courts, swimming pools, marinas, ski runs or other developed uses of similar intensity
- Off-road motor vehicle use is prohibited
- Low intensity recreational uses such as bicycle, equestrian and pedestrian trails, and wildlife viewing areas located to minimize impact to the identified riparian resources may be permitted, subject to prior ARC approval.
No structures or improvements of any kind are allowed in this area without prior ARC approval. Only improvements related to confining access to designated areas and designated fishing platforms will be allowed and only after all county and state approvals are obtained and submitted to the ARC. Silt fencing will be required for any construction on an upland lot in accordance with Design Guidelines and ARC review pursuant to Article 8 hereof. Stormwater runoff shall be contained on each lot to reduce nonpoint source pollution of the riparian area.

Conservation and avoidance measures targeted at protecting and enhancing the Riparian Area, provide a monitoring approach and identify contingent mitigation measures that could be implemented should the conservation measures fail to perform are described in the RAMP attached as Exhibit E and are expressly made a part hereof. The HOA shall be responsible for the monitoring and enforcement of the RAMP provisions and each Owner shall be responsible for compliance with the provisions of the RAMP.

6.3 **Historic Sign.** The historic sign painted on the rock facing Lower Bridge Way located to the northwestern corner of Open Space Tract A shall be posted with markers protecting it from trespass and development within a 100 yard radius of the sign.

6.4 **Alienation of Common Areas.** As provided in ORS 94.665, the Association may sell, dedicate, transfer, grant a security interest in, or grant an easement for installation or maintenance of utilities or for similar purposes with respect to any portion of the Common Areas. Except for grants of easements for utility-related purposes under Section 4.4 above, no such sale, dedication, transfer or grant of a security interest shall be effective unless approved by eighty percent (80%) of the votes of both Class A and Class B members, or eighty percent (80%) of the votes of Class A members once Declarant has relinquished its Class B membership interests. Any sale of portions of the Common Area that include public trails or walking paths shall be made subject to reserved easements in favor of the public over such trails and walking paths.

6.5 **Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by amending this Declaration. Such amendment to this Declaration shall be executed by Declarant and bear a certificate of the President or Secretary of the Association reciting that the holders of a majority of the voting rights in the Association have approved such conversion to Common Areas.

6.6 **No Partition.** There shall be no judicial partition of the Common Areas. Each Owner, whether by deed, gift, devise, or operation of law, for such Owner’s benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any interest in the Common Areas and agrees that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment.

6.7 **Title to Common Areas.** Declarant shall cause fee simple title to the Common Areas to be conveyed to the Association, free and clear of monetary liens, no later than the date of the Turnover Meeting, and the Association shall unconditionally accept fee title to the Common Areas from Declarant on such date.

6.8 **Damage or Destruction By Owner.** If damage to any Common Areas or Common Maintenance Areas is directly attributable to an Owner or the family members,
invitees, licensee, or guest of an Owner, then that Owner shall repair such damage or destruction as soon as reasonably practicable, but in no event later than fifteen (15) days after the date the damage occurred, at his or her sole expense and without a right of reimbursement. If an Owner fails to repair such damage timely, the Association shall have all rights of enforcement and remedies set forth under this Declaration.

**ARTICLE 7 -- MAINTENANCE**

7.1 **Maintenance by Association.** The Association shall maintain and keep the Common Maintenance Areas in a clean and attractive condition and in good repair, such maintenance to be funded by Annual Assessments as provided in this Declaration. This maintenance shall include, but need not be limited to, maintenance, repair and replacement (subject to any insurance then in effect) of the following:

(a) All private streets comprising the Common Areas;

(b) All sidewalks, trails, walking paths and pedestrian/bicycle paths located on the Open Space or Common Areas;

(c) All monument entry signs and features for the Subdivision within or adjacent to the Property;

(d) The Riparian Protection Area including the monitoring plan requiring the employment of a professional biologist to conduct an audit of compliance with the RAMP every 3 to 5 years from the date on-site construction activities begin;

(e) All landscape plantings, trees and lawn areas (including irrigation thereof) located on the Common Areas, which shall include, but is not limited to, removal and replacement of dead or dying trees and other landscaping to ensure compliance with the approved landscaping plan (but subject to the terms of Section 11.3);

(f) the stormwater conveyance and detention systems serving the Subdivision, except drainage swales and other stormwater management facilities located on the Lots;

(g) Any perimeter fencing constructed by Declarant (although Declarant has no obligation to construct any perimeter fencing);

(h) All other Improvements situated in or on the Open Space or Common Areas, unless maintenance thereof is delegated to the Owners under the terms of this Declaration or handled by the County or other municipal or quasi-municipal authority;

(i) Compliance with Dust Control Plan for all Open Space or Common Areas.

The Association may also maintain other property which it does not own and is not required to maintain if the Board determines, in its discretion, that such maintenance is necessary or desirable. Such areas shall become part of the Common Maintenance Areas upon approval by the Board.
7.2 **Maintenance by Owner.** Each Owner shall at all times keep his or her Lot and Unit (including all Improvements, drainage swales and stormwater management facilities, landscape plantings, trees and lawn area located on his or her Lot) in a clean and attractive condition, in good repair, and in compliance with all applicable covenants and municipal ordinances, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to Section 6.1 above or any other provisions of this Declaration.

Each Owner shall also be responsible for maintaining the landscape plantings, trees and lawn area (including irrigation thereof) within the public right-of-way adjacent to his or her Lot to the edge of the sidewalk; provided, however, that there shall be no right to remove trees, shrubs or similar landscaping from this area without the prior written consent of the Association and compliance with the terms of Section 11.3 and any applicable zoning ordinances.

Responsibility for maintenance of landscape plantings, trees and lawn areas as required by the preceding paragraphs shall include responsibility for watering the same as needed to maintain them in a healthy condition, free from weeds and other noxious plant materials, and not permitting grasses to exceed four inches (4") in height. It shall also include responsibility for removal and replacement of diseased or dead trees, shrubs and other landscaping, subject to obtaining any required tree removal permit from the County.

If any Owner fails to properly perform his or her maintenance responsibility, the Association may, but is not obligated to, perform such maintenance responsibilities on behalf of such Owner and assess the Owner for a Reimbursement Assessment in accordance with Section 3.7 of this Declaration; provided, however, that except when entry is required due to an emergency situation, the Association shall provide the Owner with reasonable notice and an opportunity to cure the problem prior to entry.

7.3 **Maintenance During Construction.** During construction it shall be the responsibility of each Owner (including a Builder) to insure that his or her Lot and adjacent areas are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot or the Common Areas. This Section 6.3 shall not be applicable to Declarant or its employees, agents or contractors.

7.4 **Compliance with Dust Control Plan.** At all times it shall be the responsibility of each Owner to comply with the Dust Control Plan attached as Exhibit D.

**ARTICLE 8 - ARCHITECTURAL REVIEW**

8.1 **Architectural Review Committee.** A committee to be known as the Architectural Review Committee (the “ARC”) shall be established consisting of three (3) members, except that the ARC may, at the option of Declarant, consist of as few as one (1) member (which may be Declarant) for so long as Declarant owns a Lot within the Subdivision. Each member of the ARC shall serve for a one (1) year term, except that the member of the ARC appointed by Declarant may serve until Declarant no longer owns a Lot within the Subdivision.
8.1.1 The members of the ARC shall be appointed, terminated and/or replaced by Declarant for so long as Declarant owns a Lot within the Subdivision. Thereafter, the Board shall appoint the members of the ARC. Members of the ARC may be terminated and/or replaced by the Board, with or without cause, except that the Board may not terminate any member of the ARC appointed by Declarant so long as Declarant owns a Lot within the subdivision.

8.1.2 Declarant shall have the right to voluntarily relinquish control of the ARC to the Board during the period in which Declarant owns a Lot within the Subdivision, in which event Declarant’s right to appoint, terminate and replace members of the ARC shall terminate.

8.1.3 The purpose of the ARC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed on the Lots, and to ensure compliance with and enforce the Dust Control Plan.

8.1.4 The ARC shall act by simple majority vote, and shall have the authority to delegate its duties and to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

8.2 **Design Guidelines.** The ARC may, with the approval of the Board, adopt, amend, modify or revise Design Guidelines; provided, however, that Declarant may adopt, amend, modify and revise the Design Guidelines without the consent of anyone so long as Declarant owns a Lot within the Subdivision. Neither Declarant nor the ARC, however, shall have an obligation to adopt Design Guidelines. No amendments, modifications, or revisions to the Design Guidelines shall affect any prior ARC approval.

8.3 **Scope of Review.** No Improvements may be undertaken, constructed, altered, added onto or replaced upon any portion of the Property without the prior written consent of the ARC.

8.4 **Submission of Plans.** Before the initiation of construction of any Improvement upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed improvements. Plans shall include elevation drawings, design plans, specifications of materials and exterior colors, and any other information deemed necessary by the ARC for the performance of its function pursuant to the procedure outlined in the Design Guidelines (if any). In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. In the event an Owner submits plans or specifications to the ARC that are not adequate to permit the ARC to make an informed determination under this Article, the Board shall have the authority to require the Owner submitting the inadequate plans or specifications to retain, at the Owner’s expense, the services of a professional engineer, architect, designer, inspector or other person to assist in the preparation of a sufficient submittal to the ARC.

8.5 **Plan Review.** Upon receipt by the ARC of all of the information required by this Article, it shall have thirty (30) business days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ARC: (a) the improvements will be of an architectural style and material that are compatible with the other structures in the Property;
(b) the improvements will not violate any restrictive covenant or encroach upon any easement or cross building set back lines; (c) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (d) the individual or company intended to perform the work is acceptable to the ARC; and (e) the improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement (six (6) months for the construction of a complete Unit). If the ARC fails to issue its written approval or rejection within thirty (30) business days of its receipt of the last of the materials or documents required to complete the Owner’s submission, then the ARC’s approval shall be deemed to have been granted without further action. The ARC’s approval of plans and specifications shall be valid for a period of six (6) months from the date of issuance, during which time the Owner must commence construction of the approved Improvements and thereafter diligently proceed to completion; otherwise the approval is void.

8.6 Non-conforming Structures. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article to the same extent as if erected without prior approval of the ARC. The ARC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

8.7 Immunity of ARC Members. No individual member of the ARC shall have any personal liability to any Owner or any other person for the acts or omissions of the ARC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ARC or any member thereof arising from acts or omissions of the ARC committed in good faith and without malice.

8.8 Limited Review. Any review and approval made by the ARC is limited to compliance with the intent of the architectural standards of the neighborhood as may from time to time be established by the Board and/or the Design Guidelines. The review and approval made by the ARC is not to be construed as superseding, replacing, or modifying any review, approval, or permit required by any local, state or federal jurisdictional agencies. It is the applicant’s responsibility to obtain and comply with any permits that may be required by any local, state, or federal jurisdictional agency.

8.9 Address for Notice. Requests for ARC approval, Complaints of noncompliance with the Dust Control Plan or correspondence with the ARC shall be addressed to the Association. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in a form satisfactory to the ARC. An emergency contact person and phone number shall be maintained for the Association and provided to owners and neighbors upon request.

8.10 Appearance and Design of Subdivision. The Declarant shall not be prevented from changing the appearance of the Common Areas, including the landscaping and any other aspects directly or indirectly connected with its development of the Subdivision so long as Declarant obtains all applicable governmental approvals and consents. The construction and material standards of this Declaration and/or plans and drawings notwithstanding, Declarant may change exterior and/or interior designs of Units from initial plans. This may include designs,
colors, and type of materials, provided Declarant obtains all applicable governmental approvals and consents.

8.11 **Declarant Exempt: Construction by Declarant.** Declarant is exempt from the requirements of this Article 7. All construction by Declarant establishes the standards for the ARC and is deemed to meet any Design Guidelines of the Association and is deemed to be approved by the ARC.

8.12 **Approval of Builder Plans.** Declarant shall have the right, in its sole discretion, to approve the plans and specifications for all Improvements that will be constructed by a Builder, and all construction by a Builder pursuant to the plans and specifications approved by Declarant is deemed to satisfy the requirements of this Article 7.

**ARTICLE 9 – INSURANCE AND INDEMNIFICATION**

9.1 **Association Insurance Coverage.** The Association shall obtain and maintain at all times the insurance required by the Act and such additional insurance as the Board deems advisable, which will include, but is not be limited to, the following:

9.1.1 **Property Insurance.** The Association shall obtain and maintain at all times a policy of property insurance covering all insurable improvements within the Common Areas against loss or damage resulting from fire and other hazards covered under special form coverage ("all risk"), including vandalism, malicious mischief, sprinkler leakage, debris removal, cost of demolition, windstorm, flood and water damage endorsements. Coverage shall be for the full insurable replacement cost (without deduction for depreciation) of such improvements, exclusive of land, foundation, excavation and other items normally excluded from coverage, and shall be subject to a commercially reasonable deductible. Such policy of insurance shall cover the interests of the Association and the Owners and First Mortgagees as their interests may appear and, if available at reasonable cost, the following terms:

(a) A waiver of subrogation by the insurer as to any claims against the Association and its Board and property manager (if any), and against any Owner or guest of any Owner;

(b) A standard mortgagee clause, except that the loss payment provision shall be subject to the terms of this Article 8;

(c) A provision that no policy may be canceled, invalidated, or suspended because of the action of an Owner;

(d) A provision that no policy may be canceled, invalidated, or suspended because of the conduct of any director, officer, or employee of the Association unless the insurer gives the Association a prior written demand that the Association correct the defect and allows the Association a reasonable time to make the correction;

(e) A provision that the policy is primary in the event an Owner has other insurance covering the same loss;
(f) A provision that the policy cannot be canceled or substantially modified without at least ten (10) days’ prior written notice to all insureds; and

(g) A provision that any adjustment of the loss will be made by the Association, and that all proceeds thereof shall be paid to either the Association or an insurance trustee, as provided in this Article 8.

The Board may by resolution determine the amount of deductible for such insurance policy, based on availability and costs. Owners shall be responsible for the deductible to the extent that it is determined they, their tenants or guests are responsible for the damage caused to the Common Maintenance Areas or other properties that the Association insures.

9.1.2 Liability Insurance. The Association shall at all times maintain commercial general liability insurance covering the Common Maintenance Areas with limits of loss of not less than $1,000,000 combined single limit for personal injury or property damage (such policy limits to be reviewed at least annually by the Board and increased in its discretion), insuring the Association, all Owners, and any managing agent against liability to the public or to individual Owners, subject to a commercially reasonable deductible.

9.1.3 Workers and Employers Insurance. The Association shall obtain and maintain at all times worker’s compensation and employer’s liability insurance to the extent required by applicable laws.

9.1.4 Fidelity Bonds. The Board shall obtain and maintain at all times fidelity bonds naming the Board and all other officers, directors and employees of the Association handling or responsible for funds of or administered by the Association. If a management agent has the responsibility for handling or administering funds of the Association, the management agent will be required to maintain fidelity bond coverage for its officers, employees and agents responsible for such funds. In no event may the aggregate amount of such bonds be less than a sum equal to three (3) month’s Annual Assessments. The bonds must contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees,” or similar terms or expressions.

9.1.5 Insurance Against Loss of Association’s Personal Property. The Association shall obtain and maintain at all times insurance against loss of personal property of the Association by fire, theft, and other losses, with deductible provisions as the Board deems advisable.

9.1.6 Other Insurance. Such other insurance as the Board deems advisable; provided, however, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such property, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned community projects established by the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or other governmental or quasi-governmental agency involved in the secondary mortgage market, so long as such agency is a Mortgagee, an insurer or guarantor of a Mortgage, or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by such agency.
9.2 Owners' Insurance Coverage. Each Owner shall obtain and maintain a homeowner's insurance policy covering all insurable Improvements located on its Lot and liability resulting from use or ownership of the Lot. The insurance coverage maintained by the Association shall not be brought into contribution with the insurance obtained by an Owner under this Section.

9.3 Builders' Insurance Coverage. Each Builder shall maintain the following insurance coverages:

9.3.1 Liability Insurance. Commercial general liability insurance with limits of loss of not less than $1,000,000 combined single limit for personal injury or property damage, subject to a commercially reasonable deductible.

9.3.2 Automobile Insurance. Automobile liability insurance covering owned, hired, and non-owned vehicles in an amount of not less than $500,000 per occurrence.

9.3.3 Workers and Employers Insurance. Worker's compensation and employer's liability insurance to the extent required by applicable laws.

9.3.4 Additional requirements. Each insurance policy required to be maintained by a Builder under Sections 8.3.1 and 8.3.2 above shall name Declarant and the Association as additional insureds and shall be endorsed (if necessary) to insure the Builder's indemnification obligation under Section 8.4 below. Each Builder shall provide a certificate of insurance evidencing compliance with this Section to Declarant and the Association prior to commencing any preparatory or construction activities on any Lot, upon request, and upon renewal or issuance of new policies.

9.4 Builders' Indemnification. Each Builder agrees to indemnify, defend and hold Declarant and the Association harmless from and against any claims, demands, actions, suits, judgments, losses, damages, penalties, fines, costs, or expenses, including attorneys' fees (collectively, "Claims") arising from or relating to (a) the activities of the Builder and its employees, agents, consultants, contractors and suppliers within the Subdivision; or (b) the Builder's failure to comply with the terms and conditions of this Declaration, except to the extent of any Claims caused by the gross negligence or intentional acts of party claiming protection under this indemnification.

ARTICLE 10–DAMAGE OR DESTRUCTION

10.1 Common Areas. If any Improvements within the Common Areas are damaged or destroyed by fire or casualty, the Association shall promptly repair and restore such improvements in conformance with the original plans and specifications, or if adherence to such original plans and specifications is impracticable in the Board's opinion, then in conformance with revised plans and specifications provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction. The Board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangement for compensation to the contractor. If the proceeds of insurance maintained by the Association are not sufficient to defray the estimated costs of repair and reconstruction, or if at any time during repair and reconstruction, or upon completion of repair and reconstruction, the funds for payment
of the costs thereof are insufficient, assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs. If the amount of available insurance proceeds exceeds the cost of any such repair and reconstruction, the excess shall be paid to the Association and applied by it to reduce the common expenses of the Association.

10.2 **Units.** If all or any portion of a Unit or any other Improvements located on an Owner’s Lot is/are damaged by fire or other casualty, the Owner thereof shall either (a) restore the damaged Improvements or (b) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under (a) above must be performed so that the Improvements are in substantially the same condition in which they existed before the damage or destruction, unless the owner complies with the provisions of Article 7. The Owner must commence such work within sixty (60) days after the damage or destruction occurs and must complete the work within six (6) months thereafter.

**ARTICLE 11-CONDEMNATION**

Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any,) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as trustee for all Owners and First Mortgagees, as their interests may appear, to be disbursed as follows:

(a) If the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Class A members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefore, in accordance with plans approved by the Board of the Association.

(b) If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds shall be paid to the Association and applied by it to reduce the common expenses.

**ARTICLE 12- USE RESTRICTIONS**

12.1 **Residential Use.** Lots shall only be used for residential purposes. No trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business shall be kept or stored on any Lot. Nothing in this Section 11.1 shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder (including a Builder) to construct Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Unit as a sales office or model home for purposes of sales in the Subdivision, (c) the right of the Owner of a Lot to maintain such Owner’s personal business or professional library, keep such Owner’s personal business or professional records or accounts, handle such Owner’s
personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner’s residence, (d) residential day care facilities, or (e) garage sales, provided that no Owner may conduct more than three (3) garage sales in any twelve (12) month period and no individual garage sale may exceed three (3) days in length.

12.2 **Scenic River Area.** The area along the Deschutes River is classified as Scenic River Area. Within this area all new structures, improvements and development will comply with the Land Management rules as described in OAR 736-040-0035 and 736-040-0040(1)(b)(B) and be consistent with applicable Deschutes County land use and development regulations:

12.2.1 New structures and improvements shall be set back a minimum of 100 feet from the ordinary high water line of the river. A set back of 20 feet or more is required from the edge of the rim rock (where this feature exists). The ARC will determine the exact distance for the above setbacks on a case-by-case basis dependent on existing terrain, existing vegetation, height of proposed structure, and applicable county setback requirements;

12.2.2 New structures shall be finished in colors and tones that blend with the surrounding landscape. Natural evergreen vegetation shall be maintained between the improvements and the river. The establishment of additional vegetative screening (preferably native vegetation) may be required to further mitigate the visual impact of the structure as seen from the river;

12.2.3 Roads, driveways and similar forms of development shall be screened from view from the river by topography. Within the area no new roads shall be allowed below the canyon rim;

12.2.4 Improvements needed for recreation use or resource protection shall be designated to blend with the natural character of the landscape.

12.3 **No Tree Removal.** No trees identified for preservation on the approved tree removal permit or landscaping plan for the Subdivision, nor any newly planted trees used to meet the conditions of approval for the Subdivision, may be removed without the prior written approval of the County. Any Owner desiring to remove a tree from his or her Lot is required to confirm with the County that such tree is not required to be maintained pursuant to the approved tree removal permit or landscape plan for the Subdivision, as the same may be amended or modified from time to time.

12.4 **No Improvements or Fill Material.** No Owner may place or construct any Improvements over the utility easements located on his or her Lot (as shown on the Plat or any separate easement agreement or dedication now existing or hereafter granted pursuant to the terms of this Declaration), or fill or alter the drainage swales or any other stormwater facilities located on his or her Lot.
12.5 **Rental Restrictions.** An Owner shall be entitled to rent or lease his or her Unit, subject to the following:

12.5.1 **Written Rental Agreements.** A written rental or lease agreement is required, specifying that: (i) the tenant shall be subject to all provisions of the Declaration and other Governing Documents, and (ii) failure to comply with any provision of the Declaration and other Governing Documents shall constitute a default under the rental agreement.

12.5.2 **Minimum Rental Period.** The period of the rental or lease is not less than thirty (30) days; and

12.5.3 **Tenant Must Be Given Documents.** The Owner gives each tenant a copy of the Declaration and other Governing Documents.

12.5.4 **Owner Responsibility.** Owner shall be responsible for any violations by tenants and shall be solely responsible for either correcting or eliminating such violations, or getting tenant to do the same.

12.6 **Air Conditioning Units.** No Owner shall install, or permit to be installed or maintained, air conditioning units through exterior modifications of its Unit or through window openings. The only air conditioning units that will be permitted are those air conditioning units which are considered central in nature and installed on a slab in the rear or side yard of a Lot outside of and adjacent to the Unit.

12.7 **Nuisances.** No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

12.8 **Temporary Structures.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, car canopies, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or a Builder to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

12.9 **Signs.** No sign, banner or billboard of any kind may be kept or placed on any Lot or mounted, painted or attached to any Unit, fence or other improvement so as to be visible from public view in the Subdivision or adjacent public street or carried by any person or by any other means displayed within the Subdivision except as provided below:
12.9.1 “For Sale” Signs

An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

12.9.2 “Political Signs

Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

12.9.3 Subdivision Identification Signs

Signs may be erected by the Declarant to identify the Subdivision, with approval from the local jurisdictional authority, if applicable.

12.9.4 Flags

The foregoing restrictions shall not be deemed to prohibit the display of the flag of the United States by an Owner or occupant of a Lot if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. § 1 et seq.

12.9.5 Declarant’s Signs

Signs, banners and billboards may be erected by the Declarant and are exempt from the provisions of this Section 11.9.

12.9.6 Builder Signs

A Builder may erect signs and banners on any Lot or Unit owned by the Builder if such signs and/or banners are erected for the purpose of marketing and selling Units constructed by the Builder on Lots owned by the Builder, subject to rules and restrictions established by Declarant from time to time. A Builder may also erects signs and/or banners on the Common Areas to market and sell Units constructed by the Builder on Lots owned by the Builder, provided that Declarant authorizes in writing (in Declarant’s sole discretion) the erection of such signs and/or banners on the Common Areas.

12.10 Parking. The Owner of each Lot shall maintain off-street parking on its Lot (inclusive of its garage and driveway) able to accommodate at least two (2) automobiles.

12.11 Campers, Boats, Recreational Vehicles and other Non-Passenger Vehicles. Campers, boats, boat trailers, recreational vehicles, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may not be kept or stored on any public street within the Subdivision or on any Lot, except as provided below:

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or kept within an enclosed garage, or on the side of the Unit, provided that it is fully screened from view by a screening structure or fencing approved by the ARC.

12.11.2 Campers, boats, boat trailers, recreational vehicles, recreational trailers, and other non-passenger vehicles, equipment, implements, or accessories may be temporarily kept on the public streets within the Subdivision or on a paved driveway located on a Lot for a period not to exceed forty-eight (48) hours and only for purposes of cleaning, preparation for use and unloading.

12.12 Commercial Vehicles. No vehicles bearing commercial insignia or names may be parked on the public streets within the Subdivision or on any Lot, except for commercial vehicles that are temporarily parked on such areas for the sole purpose of serving an Owner, or those that are parked within an enclosed garage. The Board, however, shall have the absolute authority to grant approval for storing or keeping a commercial vehicle on the driveway of a Lot. Notwithstanding the foregoing, the Board shall not unreasonably withhold consent to keep a commercial vehicle bearing insignia or names where such vehicle is driven by an Owner pursuant to Owner’s primary job. Any Owner wishing to keep a commercial vehicle on the driveway of any Lot shall apply for approval to the Board, and shall provide such information as the Board, in their sole authority, may require. The Board may from time to time in their sole discretion review the approval to keep a commercial vehicle on the driveway of any Lot to determine if the vehicle complies with the intent of the original approval. Upon an adverse determination by the Board, any commercial vehicle shall be removed and/or otherwise brought into compliance with the requirements of this Section 11.12.

12.13 Disabled Vehicles or Vehicles in Disrepair. No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on any street within the Subdivision or on any Lot for a period in excess of twenty-four (24) hours.

12.14 Maintenance or Repair of Vehicles. Any maintenance or repair of vehicles or other machinery or equipment must take place entirely within the enclosed garage of an Owner.

12.15 Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than three (3) adult animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws). Owners shall be responsible for cleaning up after their pets’ waste. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas for pets which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ARC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Subdivision.

12.16 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, or disposed of, on any Lot except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or
disposal of trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day.

12.17 Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written approval of the ARC. Every outbuilding, inclusive of such structures as detached garages, storage buildings, greenhouses, doghouses, or children’s playhouses, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition.

12.18 Fences and Hedges. Fences, walls or hedges may be erected or maintained on any Lot subject to local laws regarding height and setback and approval by the ARC. No fencing shall be constructed in the front yard of any Lot, unless the front yard faces and is contiguous with a Common Area. Fences may be erected along the property line in the side and rear yards of a Lot, provided said fencing is not located closer to the street than the front of the Unit, does not exceed six feet (6’) in height and is a so-called good neighbor fence. The ARC shall permit vinyl fences and wood fences, but any wood fences shall be painted or stained (with a color approved by the ARC) or sealed to protect against decay. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot, except as required by governmental authority; provided however, that chain link fences may be installed for domestic pet runs with the prior approval of the ARC. Notwithstanding the foregoing, the ARC shall have the right and authority to approve variances for reasonable cause or to alleviate hardship as determined in the sole judgment of the ARC; provided however, the ARC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the local governmental jurisdictional authority unless the jurisdictional authority has previously approved the variance. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent Lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained jointly by the Owners of both Lots, with expenses shared equally. Declarant hereby grants to each Owner whose Lot contains a fence (and to any Owner where the location of the fence in relation to its property line is indefinite) an easement over those portions of the adjacent Owner’s Lot as is reasonably necessary to maintain the fence, subject to reasonable advance notice to the adjacent Lot Owner. The provisions of this Section 11.18 shall not apply to Declarant.

12.19 General Landscaping. All landscaping must comply with the approved landscaping plan and the landscaping requirements established by the County from time to time, and each Owner is required to have his or her landscaping plan approved by the County if approval is required by County zoning ordinances. All landscaping must be maintained by the Owner pursuant to the terms of Section 6.2. Decorative ground cover consisting of bark dust/mulch or rock may be installed on portions of the front, side and rear yards, as approved by the ARC.

12.20 Antennae and Satellite Dishes. Except as otherwise provided by law or this Section 11.20, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic
radiation shall be erected, constructed, or placed on any Lot. With prior written consent from the ARC, exterior satellite dishes or antennas with a surface diameter of one meter (39") or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from any street and are screened from neighboring Lots. The ARC may adopt reasonable rules and regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality (the ARC, in its sole discretion, may determine what constitutes a signal of acceptable quality). Such rules and regulations may prohibit installation of exterior satellite dishes or antennas if signals of acceptable quality can be received by placing antennas inside a Unit without causing an unreasonable delay or cost increase.

12.21 **Clothes Hanging Devices.** Clothes hanging devices exterior to a Unit shall be temporary, unaffixed structures not to exceed six (6) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ARC.

12.22 **Window Treatments.** Aluminum foil, reflective film, newspapers or similar treatments shall not be placed on windows or glass doors.

12.23 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

12.24 **Garages.** Garages may be used as Declarant’s sales offices before permanent occupancy of the main structure; however, sales offices must be converted to garages before permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, a garage shall be maintained solely for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door.

12.25 **Setback Lines.** All Units and other structures (including fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback standards imposed by the local governmental jurisdictional authority.

12.26 **Athletic and Recreational Facilities.** Outdoor athletic and recreational facilities such as basketball hoops, swing sets and sport courts of a permanent nature shall not be placed on any Lot in the Subdivision between the street and the front of a Unit; placement of these facilities of a permanent nature elsewhere on the Lot must be approved in advance by the ARC. Temporary facilities including outdoor athletic and recreational facilities such as basketball hoops may be placed on any Lot between the street and front of a Unit, provided that such facilities are removed from view when not in use but not later than at the end of each day. Temporary facilities including outdoor athletic and recreational facilities such as basketball hoops, hockey goals, etc. shall not be placed on any street within the Subdivision.
12.27 **Exterior Holiday Decorations.** Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday.

All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended.

12.28 **Retaining Walls.** Retaining walls may be constructed on a Lot only if in compliance with any adopted Design Guidelines and only if approved in advance by the ARC. Retaining walls may extend into the required front, side or rear setback lines of a Lot. The ARC may require any retaining wall which exceeds two (2) feet in height be designed by a qualified professional engineer licensed to practice engineering in the state of Oregon. Retaining walls constructed by the Declarant shall be exempt from this Section 11.28.

12.29 **Household Chemicals.** Owners shall be prohibited from dumping or otherwise disposing of household chemicals within or under his or her Lot, including, but not limited to, cleaning agents, automotive fluids, paint, solvents and other toxic chemicals.

12.30 **Prohibited Plants.** Owners shall be prohibited from planting the following species of plants on the Lots:

(a) *Cystisus scoparius,* commonly known as Scotch broom;
(b) *Hedera helix,* commonly known as English ivy;
(c) *Lythrum salicaria,* commonly known as purple loosestrife;
(d) *Phalaris arundinacea,* commonly known as reed canarygrass; and
(e) *Rubus discolor,* commonly known as Himalayan blackberry.

12.31 **Rezoning Prohibited.** No Owner may apply to the local zoning authority to rezone a Lot to any classification allowing commercial, institutional or other non-residential use.

12.32 **Drainage Alteration Prohibited.** The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant. No Owner shall fill or alter any drainage swale established by the Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant without the prior written approval of the ARC.
ARTICLE 13—SPECIAL DECLARANT AND BUILDER RIGHTS

In addition to any rights or easements reserved to Declarant or Builders elsewhere in this Declaration or any of the other Governing Documents, Declarant and/or Builders (as applicable) shall have the following rights in respect to the Subdivision:

13.1 Development and Sales Activities.

13.1.1 So long as Declarant owns a Lot within the Subdivision, Declarant shall have the right to construct and maintain upon portions of the Common Areas and any Lots owned by Declarant such facilities and activities as Declarant, in its sole opinion, may require or desire in connection with the construction and sale of Units and Lots within the Subdivision, including (but not limited to) business and construction offices (within Units or in free standing trailers); signs, banners and flags; model units; and sales offices (within Units or in free standing trailers), subject to compliance with governmental ordinances. Declarant shall also have easements for access to and use of the Common Areas for such facilities at no charge.

13.1.2 So long as a Builder owns any Lot within the Subdivision, the Builder shall have the right to construct and maintain upon any Lot owned by the Builder such facilities and activities as the Builder reasonably requires or desires in connection with the construction and sale of Units on Lots owned by the Builder, including (but not limited to) business and construction offices (within Units or in free standing trailers); signs, banners and flags (subject to Section 11.9.7); model Units; and sales offices (within Units or in free standing trailers), subject to rules and restrictions established by Declarant from time to time and subject to compliance with governmental ordinances.

13.2 Control of and Changes in Development Plan. Every Owner, by acceptance of the deed to their Lot, acknowledges that the Subdivision is a master planned community, the development of which is likely to extend over many years, and that changes in the master plan will likely occur as the development of the Subdivision proceeds. Each such Owner therefore agrees not to protest, challenge or otherwise object to changes made or proposed by Declarant in the development plan or in the uses or density of the Property. The rights and limitations set forth in this Section 12.2 shall continue in effect until Declarant no longer owns a Lot within the Subdivision.

13.3 Right to Transfer or Assign Declarant Rights. Any or all of Declarant’s special rights and obligations set forth in this Declaration or any other Governing Documents may be transferred in whole or in part by Declarant by written instrument executed and acknowledged by Declarant and recorded in the real property records for Deschutes County, Oregon. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant’s consent to such exercise.
ARTICLE 14 -- MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article shall apply to both this Declaration and to the Bylaws notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street number of the Lot to which its Mortgage relates, thereby becoming an “Eligible Holder”), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; or any violation of this Declaration or any other Governing Documents by such Owner which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the First Mortgagees or Owners representing at least sixty-seven percent (67%) of the total outstanding vote of the Association consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) material change in the method of applying assessments and other lienable charges to Lots (this restriction shall not apply to the determination of the amount of any assessments or other charges);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design, exterior appearance or maintenance of Lots and the Common Areas (the issuance and amendment of Design Guidelines or architectural standards and related procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);
(d) fail to maintain insurance, as required by this Declaration; or
(e) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

14.3 **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

14.4 **Notice to the Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner’s Lot.

14.5 **Applicability of this Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration or other Governing Documents, or under Oregon law for any of the acts set out in this Article.

14.6 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association’s request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested. An affidavit from the President of the Association indicating that a Mortgagee did not respond to a request and is therefore deemed to have consented to the requested action, along with a copy of the return receipt signed by or on behalf of the Mortgagee, may be attached to any amendment to this Declaration and the Bylaws of the Association and shall be conclusive proof such Mortgagee’s consent and approval of such action.
ARTICLE 15—AMENDMENT

15.1 General Amendments.

15.1.1 Except as otherwise specifically provided in this Article or in the Act, the Declaration may only be amended by Owners holding at least seventy-five percent (75%) of the votes of the Association, and the consent of the Declarant so long as the Declarant is a Class B member. Prior to the Turnover Meeting, however, Declarant shall be treated as a Class A member with one (1) vote per Lot owned for purposes of voting on an amendment to this Declaration under this Section 14.1. In no event shall an amendment under this Section 14.1:

(a) limit or diminish any right of Declarant reserved in this Declaration without the written consent of Declarant; (b) change the boundaries of any Lot or any uses to which any Lot is restricted as stated in this Declaration, or change the method of determining liability for assessments, the method of determining the right to common profits of the Association, or the method of determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment; (c) change the terms of any provision included in this Declaration as a condition of land use approval without the written consent of Deschutes County.

15.1.2 An amendment to this Declaration may be proposed by a majority of the Board or by at least thirty percent (30%) of the Owners.

15.1.3 Upon approval of an amendment as provided herein, the president and secretary of the Association shall execute an instrument amending this Declaration and certifying that the amendment was adopted in accordance with this Declaration and ORS 94.590, which certification shall be properly acknowledged in the manner of acknowledgment of deeds, and the Board, or other duly appointed and authorized persons, shall record the instrument amending this Declaration in the official records of Deschutes County, Oregon. No amendment to this Declaration is effective until recorded, and the effective date of an amendment is the date of recording, unless a later date is indicated in such amendment.

15.2 Declarant Amendments. In addition to specific amendment rights granted elsewhere in this Declaration, the Declarant reserves the right to unilaterally amend this Declaration for any purpose until conveyance of the first Lot in the Subdivision to a person other than Declarant. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary to (a) bring this Declaration into compliance with any provision of law, including (but not limited to) regulatory amendments permitted by Section 14.3 or (b) correct scriveners’ or clerical errors. Declarant shall also have the right to unilaterally amend this Declaration for any other purpose prior to the Turnover Date provided that the amendment has no material adverse effect upon the rights of any Owner, unless such Owner consents to such change in writing.

15.3 Regulatory Amendments. Notwithstanding any other provisions of this Article 14, and consistent with terms of ORS 94.585, Declarant shall have the right to unilaterally amend this Declaration prior to the Turnover Meeting in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmer’s Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any
ARTICLE 16—REMEDIES

16.1 Remedies. If any default by any Owner under the provisions of the Declaration or other Governing Documents shall occur, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration and any of the other Governing Documents, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements set forth in Section 15.2 and the Act. No rights or remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. Any and all of rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

To the extent allowed by law, notwithstanding any other provision of this Declaration or other Governing Documents, the Association shall not expend in excess of $5,000 for attorney fees and costs for any reason unless such expenditure is first approved by Owners holding at least fifty percent (50%) of the votes of the Association. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under this Declaration or the Governing Documents; actions to appoint a receiver; actions to summarily abate, enjoin and remove a structure or condition that violates this Declaration or the other Governing Documents; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims).

All expenses of the Association in connection with any actions or proceedings, including court costs and attorneys’ fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his or her respective assessment (to the same extent as the lien provided herein for unpaid assessments) upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot.

16.2 Dispute Resolution. Before initiating litigation or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to resolve the problem through a dispute resolution program pursuant to terms of ORS 94.630(4). The written offer to resolve the dispute must be hand-delivered or mailed by certified mail, return receipt requested, to the other party at the address contained in the records of the Association. The requirements of this Section 15.2, however, do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments (other than assessments attributable to fines).
16.3 **Attorneys’ Fees.** If an action or proceeding is commenced to enforce the terms of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association shall be entitled to its reasonable attorney fees incurred in any enforcement activity taken to collect delinquent assessments, whether or not suit or action is filed.

**ARTICLE 17– GENERAL TERMS**

17.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty (20) years unless amended or terminated as provided in Article 14.

17.2 **Rights and Obligations.** The provisions of this Declaration and the other Governing Documents and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and Mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the other Governing Documents, whether or not mention thereof is made in said deed.

17.3 **Waiver.** No restriction, condition, obligation or provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may have occurred and the number of times that the pertinent restriction, condition, obligation or provision was not enforced.

17.4 **Severability.** Invalidation or partial invalidation of any provision of this Declaration shall not affect any of the remaining provisions of the Declaration.

17.5 **Personal Pronouns.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

17.6 **Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

17.7 **Conflicts.** If there is a conflict between the terms of this Declaration and any other Governing Documents, this Declaration shall control.

17.8 **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Subdivision designed to increase security within the Subdivision. 

NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION, AND NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OR
DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

IN WITNESS WHEREOF, the Declarant has executed and delivered this instrument on the _____ day of ____________, 2015.

DECLARANT:

LOWER BRIDGE ROAD, LLC,
an Oregon Limited Liability Company

By: ____________________________
Name: __________________________
Title: __________________________

ACKNOWLEDGMENT

STATE OF OREGON )
County of Deschutes ) ss.

The foregoing instrument was acknowledged before me this _____ day of ____________, 2015, by __________________________, the __________________________ of Lower Bridge Road, LLC, an Oregon Limited Liability Company, on behalf of the company.

Notary Public, State of Oregon
My Commission Expires: ___________________
EXHIBIT A

PROPERTY SUBJECT TO DECLARATION

Real property located in Deschutes County, Oregon and being more particularly described as follows:

Lots 1 through 19, Tracts A, B, C and D, and all private roads shown on the plat of Lower Bridge Road Subdivision filed for record in the Official Records of Deschutes County, Oregon.
EXHIBIT B

BYLAWS OF THE ASSOCIATION

(Attached)
EXHIBIT C

LEGAL DESCRIPTION OF COMMON AREAS

Real property located in Deschutes County, Oregon and being more particularly described as follows:

Tracts A, B, C and D and all private roads shown on the plat of Lower Bridge Road Subdivision filed for record in the Official Records of Deschutes County, Oregon.
September 12, 2019

Filed via email: Nicole.Mardell@deschutes.org

Deschutes County Planning Commission
Attn: Nicole Mardell, Associate Planner
117 NW Lafayette Avenue
Bend, OR 97708


Dear Chair Crawford and Commissioners,

Thank you for the additional opportunity to comment on the proposed amendments to the Flood Plain Zone. Central Oregon LandWatch (“LandWatch”) offers these comments in addition to our oral and written comments submitted at the Planning Commission hearing on August 8, 2019.

I. Purpose of the proposed amendments.

The last time the County attempted to amend the Flood Plain Zone, via Ordinance No. 2018-005, the stated intent was to “streamline the County’s administration of FEMA’s requirements” by converting the Flood Plain Zone from a base zone to an overlay zone. Ordinance No. 2018-005, Exhibit P, page 4 (repealed). Many interested members of the public, however, saw the amendments for what they really were: an attempt to permit additional residential development adjacent to waterways throughout the County. The current proposed amendments in File Nos. 247-19-000530-TA, 533-PA would adopt portions of DLCD’s “Oregon Model Flood Damage Prevention Ordinance.” But the true intent of the other two proposed amendments, in File Nos. 247-19-000531-TA and 532-TA, is now transparent. These amendments seek nothing more than to allow increased land division and residential development on Flood Plain-zoned properties to the detriment of riparian areas, wetlands, and most of the County’s fish and wildlife species. If the County’s true
II. Existing County fish and wildlife inventory.

In our August 8, 2019 oral and written comments, we questioned whether the proposed amendments would repeal and replace the County’s Goal 5 inventory of fish and wildlife resources contained in Ordinance No. 92-041. Staff has since clarified that this is not the case, and that inventories in Ordinance No. 92-041 would remain intact. LandWatch is glad to hear this is the case. However, our Goal 5 concerns as related to the proposed amendments to the County’s program to protect fish and wildlife, riparian areas, and wetlands in the Flood Plain Zone, remain. To comply with Goal 5, the proposed amendments should identify each Goal 5 resource that relies on the Flood Plain Zone, and should analyze the effects of allowing new conflicting uses created by the proposed amendments on each of those Goal 5 resources through the ESEE decision process. The proposed findings and ESEE analyses fail to adequately identify individual fish and wildlife species, riparian areas, wetlands and adjacent upland habitats that would be impacted, and fail to analyze the ESEE effects on each of those individual resources, as required by OAR Division 660 Chapter 23.

III. ODFW letter.

The letter submitted by the Oregon Department of Fish and Wildlife (“ODFW”) on August 7, 2019 discusses the impacts of the proposed amendments on individual species of fish and wildlife, riparian areas, and wetlands:

“The proposal does not thoroughly evaluate or acknowledge the essential functions and values floodplains provide to fish and wildlife, nor does it adequately acknowledge the integral relationship between the floodplain and adjacent upland, riparian or wetland habitats.” (ODFW comments, page 1-2)
Further, ODFW states that the proposed amendments will not ensure that impacts to Goal 5 resources will be “fully mitigated,” as required currently “in the Goal 5 program for impacts to wetlands and riverbanks, […] as evaluated by ODFW.” ODFW comments, page 5.

ODFW also identifies several new conflicting uses that will be created by the proposed amendments that are not evaluated for their ESEE effects on Goal 5 resources. As one example, ODFW discusses the Landscape Management Combining Zone and its role in protecting many significant Goal 5 resources:

“[I]t is not clear from the proposal how or if [the Landscape Management Combining Zone] was evaluated for the increased potential of conflicting uses for the significant Goal 5 wildlife species that utilize these habitats. Cliffs, rimrock, rock outcrops and talus are identified as ‘Specialized and Local Habitats’ per the Oregon Conservation Strategy. These habitats are essential for wildlife, such as raptor nesting (golden eagles in particular) and bat roosting, protected as significant Goal 5 resources through the existing Goal 5 program. ODFW is concerned about the individual and cumulative impacts as a result of development actions disturbing these sensitive habitats. Residential development at the edge of rims alters vegetation and disturbs nesting birds, which can cumulatively affect the available suitable habitat along canyons.” (ODFW comments, page 2) (footnotes omitted)

As another example of a new conflicting use, ODFW identifies direct habitat loss that would result:

“[T]he ESEE analyses do not evaluate habitat loss, including the direct loss of resources available to wildlife. For example, vegetation removal and excavation in the upland may displace wildlife, but also have other direct and indirect effects, such as the loss of available forage and cover, and the increase in wildlife damage within the newly developed residential developments. Big game, such as mule deer, need forage and cover to provide safe passage between winter and summer ranges. The current policy (Ord. 92-040) also identifies that the county and ODFW will work together to ensure that deer migration is retained, which includes protection with a conservation easement for the corridor. ODFW continues to recommend a wildlife mitigation plan per the ODFW Fish and Wildlife Habitat Mitigation Policy, for development actions that could result in the loss of fish and wildlife habitat.” (ODFW comments, page 6)

ODFW also questions whether an adequate ESEE analysis and program to achieve Goal 5 are possible using 30-year old existing Goal 5 inventories:
“Overall, even with being limited to the existing Goal 5 inventories, ODFW does not believe that the ESEE analysis thoroughly evaluates the potential conflicting uses and proposes a program to achieve Goal 5.” (ODFW comments, page 5-6)

ODFW has extensive knowledge and expertise in fish and wildlife species and their habitat requirements. Their letter identifies many deficiencies in the proposed amendments, including the ESEE analyses and decisions. LandWatch encourages the County to fully address all of ODFW’s concerns.

IV. “Clear and objective” standards and criteria.

Recent changes in state law require that all standards and criteria applicable to housing, including outside of urban areas, must be “clear and objective”:

“[T]he ‘clear and objective’ requirement in ORS 197.307(4) applies, as it states, to ‘standards, conditions and procedures regulating the development of housing, including needed housing,’ without regard to whether the development will occur on ‘buildable land.’” (Warren v. Washington County, 296 Or App 595, 601 (2019))

As ODFW finds in its letter, the requirement for a Riparian Area Management Plan (“RAMP”) in 247-19-000531-TA “does not identify any specific mitigation measures to offset, or replace, the loss of habitat.” ODFW comments, page 4. The RAMP requirement lacks clear and objective standards, and under the rule from Warren, violates ORS 197.307(4).

V. Goal 2 adequate factual base.

Statewide land use planning Goal 2 requires that an “adequate factual base” underpin every land use decision. The proposed amendments do not identify which fish, wildlife, and bird species and habitats, which riparian areas, which wetland areas, and which adjacent rimrocks, rock outcrops, talus, and cliffs will be impacted, nor the ESEE consequences specific to each of those resources. As such, the proposed amendments lack an adequate factual base.

Thank you for your consideration of these comments. Because the proposed amendments result in significant negative impacts on many Goal 5 resources, and those impacts have not been
adequately identified and analyzed, we urge the Planning Commission to recommend denial of the proposed amendments.

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Sincerely,

Rory Isbell
Staff Attorney
Central Oregon LandWatch

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Phone: (541) 647-2930
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September 12, 2019

Deschutes County
Community Development Department
Attn: Nicole Mardell, Associate Planner
PO Box 6005
117 NW Lafayette Ave
Bend, OR 97708-6005


Dear Ms. Mardell:

Thank you for providing the Oregon Department of Fish and Wildlife (ODFW) the opportunity to review and comment on the proposed revisions to the Deschutes County Comprehensive Plan and Zoning Ordinance related to the Flood Plain Zone (247-19-000530/533-PA; 247-19-000531-TA; 247-19-000532-TA). ODFW previously submitted comments for the August 8, 2019 hearing, and we would like to acknowledge those are still applicable. In addition, ODFW recently submitted comments in an email dated September 5, 2019 specifically regarding the Riparian Area Management Plan (RAMP) proposal which were included in the record. In accordance with our mission, ODFW offers the following additional comments and recommendations for submittal in the record for all three amendments for the Deschutes County Planning Commission Hearing on September 12, 2019:

**Model Flood Plain Amendments (247-19-000530/533-PA):** ODFW continues to recommends the language provided in Chapter 18.96.010 of the current Flood Plain Zone are included in the new text amendments to Section 2.5 of the Comprehensive Plan. The current language and policy in DCC 18.96.010 does not prioritize or designate primary and secondary benefits to the floodplain zone. It acknowledges that there are multiple functions of the floodplain zone. Therefore, ODFW is concerned that the proposed text amendments are inconsistent with the existing policy.
**Flood Plain Cluster and Planned Unit Development Amendments (247-19-000531-TA):** ODFW appreciates the opportunity to coordinate on the fish, wildlife and habitat concerns raised in our previous comments regarding the RAMP, and provide the county with recommendations to consider in addressing those concerns. As provided in our emailed comments on September 5, 2019, ODFW recommends that the RAMP require a component of habitat enhancement, which is consistent with the requirement per DCC 18.128.200(B)(3)(a) for Wildlife Management Plans.

ODFW continues to have concerns regarding the proposal for cluster and planned unit developments that may result in conflicting uses with wildlife in the non-floodplain zoned land. Therefore, ODFW recommends that properties within the Wildlife Area Combining Zone are not eligible. ODFW understands that the existing DCC 18.128.200 requires a Wildlife Management Plan for cluster developments, however the existing DCC 18.128.210 for planned unit developments do not have the same requirement. Therefore, the reliance on the Wildlife Management Plan or RAMPs, to address the conflicting uses to Goal 5 resources outside of the floodplain zoned land, does not appear to be sufficient since a planned unit development would not be required to develop a Wildlife Management Plan. If these amendments are approved within the Wildlife Area Combining Zone without the requirement for a Wildlife Management Plan, ODFW recommends the county consult with ODFW regarding recommendations for the appropriate siting and design of the open space within the planned unit development to avoid, minimize and mitigate the impacts to wildlife (e.g., open space sited east-west to facilitate migratory corridors).

**ESEE Analysis:** As stated in our previous comments, ODFW does not believe that the ESEE analysis thoroughly evaluates the potential conflicting uses and proposes a program to achieve Goal 5. Therefore, ODFW would appreciate the opportunity to continue our coordination with the county on providing technical assistance regarding the ESEE analysis.

Thank you for the opportunity to provide these comments and recommendations for the Planning Commission hearing scheduled for September 12, 2019. ODFW is committed to finding collaborative solutions to avoid and/or minimize impacts to fish, wildlife and habitat resources of the state. Please contact me (joy.r.vaughan@state.or.us or 503-947-6089) with any questions or if you need further clarification on ODFW’s comments and recommendations.

Joy Vaughan
ODFW Land Use and Waterway Alterations Coordinator

cc: Corey Heath, Andrew Walch-ODFW