



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

MEMORANDUM

DATE: August 26, 2015
TO: Karen Green, Hearings Officer
FROM: Cynthia Smidt, Associate Planner
RE: Staff Report on Appeal 247-15-000430-A (247-15-000222-LR)

This memorandum serves as the Staff Report on the above-referenced appeal. The appellant, Central Oregon LandWatch, has appealed the decision of the Deschutes County Planning Division on a lot of record determination. The subject property is identified as Tax Lot 7891 on County Assessor's Map 16-11-00 (index map). The subject property contains lands zoned Exclusive Farm Use – Tumalo/Bend/Redmond subzone (EFUTRB), Open Space and Conservation (OS&C), Forest Use (F1 and F2), and Flood Plain (FP).

You will find attached a copy of the appellant's appeal, including the basis for their appeal. You will also find attached a copy of the decision letter mailed on July 27, 2015 to the applicant, which provides the lot of record determination.¹ The Planning Division reviewed the materials submitted with the application and had concluded that the subject tax lot constitutes eight (8) legal lots of record, including five (5) legal lots requested for review by the applicant. The subject property also includes four (4) areas that are not recognized as legal lots of record.

Attachments

1. Appeal submitted by Central Oregon LandWatch
2. Lot of Record Determination letter for County File No. 247-15-000222-LR

¹ The Lot of Record Verification letter was dated June 27, 2015. Staff concurs with the appellant that the letter was incorrectly dated. The letter was mailed on July 27, 2015, not June 27, 2015, and should have been dated to reflect this information.

15-430-A



**DESCHUTES COUNTY
PLANNING DIVISION**

117 NW Lafayette Avenue, Bend OR 97701

Phone: (541)388-6575 FAX: (541)385-1764 http://newberry.deschutes.org

APPEAL APPLICATION FORM

DATE SUBMITTED: August 7, 2015 FEE: \$250

APPELLANT: Central Oregon Land Watch PHONE: (541) 420-8433

MAILING ADDRESS: c/o Paul Daway
1539 NW Vicksburg Ave CITY: Bend ST: OR ZIP: 97703

LAND USE APPLICATION BEING APPEALED: # 247-15-000222-LR

PROPERTY DESCRIPTION: T 16 R 11 S 00 TAX LOT: 7891

APPELLANT'S SIGNATURE Paul Daway DATE: 8/7/15

IT IS THE RESPONSIBILITY OF THE APPLICANT (APPELLANT) TO COMPLETE A NOTICE OF APPEAL AS SET FORTH IN CHAPTER 22.32 OF THE COUNTY CODE, "APPEALS."

EVERY NOTICE OF APPEAL SHALL INCLUDE: (Attached)

1. A statement describing the specific reasons for the appeal;
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower Hearings Body's;
3. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons the Board should provide de novo review as provided in Section 22.32.027 of Title 22.

The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANTS SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED FROM, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANTS SHALL SUBMIT TO THE PLANNING DIVISION THE TRANSCRIPT NO LATER THAN THE CLOSE OF THE DAY 5 DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, IN ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.

**APPEAL OF CENTRAL OREGON LANDWATCH
ON #247-15-000222-L4**

Appellant Central Oregon LandWatch appeals the County Staff's decision of apparently July 27, 2015. The letter decision date is "June 27," but is presumably misdated. See the attached copy of the envelope with the date of July 27, 2015. In any event, this appeal is being filed within 12 days from the date the decision was mailed.

County Staff erred in determining that there are eight separate lots of record on the subject property. There is also no basis for TID's claim of five separate lots of record. The ownership history of the subject lands does not support a finding that there are any lots of record on the subject property.

ORS 92.017 does not act retroactively to resurrect historical conveyances of the subject lands in the early 1900s, but concerns the rights acquired by the current landowner. The State of Oregon in 1988 only conveyed a single parcel to the Applicant TID.

Further, patent deeds meet neither definition of "lot" or "parcel" and thus cannot be lots of record under DCC 18.04.030.

This conveyance also did not transfer the full bundle of rights to the property to TID but imposed use restrictions and retained reversionary rights. TID has no right to seek division of the land into parcels as lots of record.

Appellant reserves the right to raise further appeal issues before the Hearings Officer.



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Paul Dewey
Central Oregon Land Watch
1539 NW Vicksburg Ave
Bend, OR 97703

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Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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

June 27, 2015

Tumalo Irrigation District
64697 Cook Avenue
Bend, Oregon 97703

RE: File No. 247-15-000222-LR; Lot of Record Determination for of Property Identified on Deschutes County Assessor's Map 16-11-00, Tax Lot 7891

Dear Applicant:

You submitted an application for a lot of record determination for part of the above referenced tax lot. You have requested this verification in order create a legal lot boundary between the subject property owned by Tumalo Irrigation District and land owned by the State of Oregon. Although the request is for only a portion of the subject property, based on the overlap of historic transactions this decision reviews the legal status of the entire tax lot including the five lots you requested. The Planning Division has reviewed the information you submitted with the application along with federal land conveyance records, County Assessor's records, County Surveyor records, County Clerk deeds, and County building and land use permit information.¹ Based on this information, we have determined the subject property constitutes eight (8) legal lots of record, including the five (5) legal lots requested for review with the application. The subject property also includes four (4) areas that are not recognized as legal lots of record.

Section 18.04.030 of the Deschutes County Zoning Ordinance defines a "lot of record" as:

- A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:**
- 1. By partitioning land as defined in ORS 92;**
 - 2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;**
 - 3. By deed or contract, dated and signed by the parties to the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record**

¹ The land use history including past applications and County approvals may not have been relevant in this lot of record determination.

shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;

- 4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or*
- 5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.*

B. The following shall not be deemed to be a lot of record:

- 1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.*
- 2. A lot or parcel created by an intervening section or township line or right of way.*
- 3. A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed subject to DCC 18.04.030(B).*
- 4. A parcel created by the foreclosure of a security interest.*

Deschutes County adopted its first zoning ordinance (PL-5) on November 1, 1972, which described minimum lot sizes for new parcels. This zoning ordinance was replaced in 1979 with PL-15. The subdivision ordinance of 1970, PL-2, regulated subdivisions less than 10 acres in size but did not regulate partitions. The partition ordinance (PL-7) was adopted in 1977, which described the criteria under which parcels could be partitioned (divided into three or less parcels).

Land Use History and Public Comments

The subject property and the surrounding area are in a Wildlife Area (WA) Combining Zone. In particular, the area is within the Tumalo Deer Winter Range. In part, the purpose of the WA Zone is to conserve the important wildlife resources of the county. When the State of Oregon conveyed the subject property to Tumalo Irrigation District in 1988 (see additional information below), the land transfer included limitations of the property requiring it to be "held in public ownership and used as a winter feeding area for wildlife satisfactory to the Oregon Department of Fish and Wildlife." Based on the wildlife protections of the WA zone and the 1988 deed, there is an unmistakable interest by the public in the subject property and surrounding area. Several written comments were submitted to the record that expressed two common concerns. One concern was about the Lot of Record Verification as requested. The other concern involved the wildlife protections noted above.

In regards to the Lot of Record Verification, the common theme in the comments was that because the State of Oregon conveyed the entire property in a single deed in 1988, the legal lots of record reviewed here do not exist. Oregon Revised Statute (ORS) 92.017, as stated below, protects historic parcels created by deeds; in addition to, lots and parcels created by subdivisions or partitions.

92.017 When lawfully created lot or parcel remains discrete lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law.

For property boundaries to be eliminated, supporting evidence of such action is required (e.g. consolidation through a property line adjustment or platting a subdivision or partition). As noted below, evidence was not found that indicates the subject legal lots of record were consolidated through a property line adjustment approval or platted as part of a subdivision or partition. Through various Lot of Record Verification decisions, Deschutes County Hearings Officers found that when a single deed includes multiple parcels that were lawfully created with discrete

boundaries in previous conveyances, it did not result in the elimination of the previously established boundary lines (see LR-10-2/A-10-3, LR-92-43, LR-92-44, LR-92-46, and LR-92-47).

Regarding the Tumalo Deer Winter Range concerns, staff recognizes that the 1988 conveyance from the State of Oregon to Tumalo Irrigation District includes limitations on the subject property. The Lot of Record Verification, however, reviews the lawful creation of a lot or parcel and not necessarily the limitations placed on that lot or parcel. Nevertheless, the importance of the 1988 conveyance may limit future development of the subject property and thus be considered as part of any proposed development of the property. County zoning also places limits on the property. Together with the WA Zone noted above, a majority of the property is zoned Open Space and Conservation (OS&C) and Flood Plain (FP). These two zones have a common purpose of conserving important scenic and natural resources. There are small areas in the northwestern region of the property that are zoned Forest Use (F1 and F2), zones that are intended to preserve forest lands. A small region in the southeast is zoned Exclusive Farm Use (EFUTRB), a zone that is intended to preserve farmlands. According to the applicant's attorney, Liz Fancher, Tumalo Irrigation District "is not changing the use or management of the land." County records do not indicate that the applicant is seeking to divide or change the use of the subject property.

Staff finds that no specific development of the property is proposed or approved under this lot of record decision. As such, Staff is unaware of any provisions of Title 17 or 18, not otherwise addressed in this decision, which are applicable to this decision. In addition, Staff is unaware any provision of the 1988 conveyance, Deschutes County Code, or state statute that pertains to this of record decision which is not otherwise addressed in this decision.

Tax Lot 7891 History

The following information is a sequential review of land conveyances in the area involving the subject property, tax lot 7891 of map 16-11-00 (index map). For reference, **Figure 1** shows the tax lot in its current configuration.

Figure 2

For the eight years between 1905 and 1912, numerous deeds and federal land grants were conveyed in the area. The deeds and land grants were dated and signed by the parties to the transaction, containing a separate legal description of the parcels, and eventually recorded in Deschutes County. The first of these conveyances was through a U.S. federal land grant dated August 16, 1906, which conveyed 120 acres to Jerry Cramer, Assignee of Jesse Harcrow (Certificate Number 48) and was later recorded in Volume 1 of Patents, Page 422 at the Deschutes County Clerk's Office. This parcel is illustrated as **Parcel A** on Figure 2. Parcel A is described as the southeast quarter of the southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 29 and the north half of the northwest quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. This unit of land (Parcel A) is recognized as a legal lot of record.

Parcel B, as shown on Figure 2, was originally part of a larger parcel, including thousands of acres first conveyed in 1905 to the State of Oregon in a United States land grant (Patent Number 1).² In April 1907, the State of Oregon then conveyed to Frank V. Swisher the 80 acres shown as Parcel B (Fig. 2). This transaction was recorded in Volume 4, Page 65 in the Deschutes County Clerk's Office. Parcel B is described as the southeast quarter of the

² This land grant was later recorded in Volume 2, Page 187 at the Deschutes County Clerk's Office.

southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) and the southwest quarter of the southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) in Section 33, Township 16 South, Range 11 East of the Willamette Meridian. This unit of land (Parcel B) is recognized as a legal lot of record.

On November 15, 1907, 160 acres was conveyed to the George W. Wimer, Assignee of Jerry Cramer, in a U.S. land grant (Certificate Number 77, Patent Number 142) and later recorded in Volume 1 of Patents, Page 669 at the Deschutes County Clerk's Office. This parcel is illustrated as **Parcel C** on Figure 2 and is described as the south half of the northwest quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$), the southwest quarter of the northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), and the northwest quarter of the southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. Parcel C is recognized as a legal lot of record.

As noted in Homestead Certificate No. 5626 (Patent Number 2902), the United States conveyed 160 acres to John B. Wimer on July 14, 1908. This land grant was later recorded at the Deschutes County Clerk's Office in Volume 1 of Patents, Page 461. This parcel is illustrated as **Parcel D** on Figure 2 and described as the southwest quarter (SW $\frac{1}{4}$) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. This unit of land (Parcel D) is recognized as a legal lot of record.

On July 14, 1908, 160 acres was also conveyed to Charles L. Wimer in a U.S. land grant (Homestead Certificate Number 5625, Patent Number 2901) and later recorded in Volume 1 of Patents, Page 462 at the Deschutes County Clerk's Office. This parcel is illustrated as **Parcel E** on Figure 2. Parcel E is described as the northeast quarter of the southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) and the south half of the southeast quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 32 and the southwest quarter of the southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 33, Township 16 South, Range 11 East of the Willamette Meridian. Parcel E is recognized as a legal lot of record.

Through a U.S. land grant dated February 25, 1909, 160 acres was conveyed to Thorwald A. Jensen (Patent Number 48056) and later recorded in Volume 2 of Patents, Page 227 at the Deschutes County Clerk's Office. This parcel is illustrated as **Parcel F** on Figure 2. Parcel F is described as the northeast quarter of the southwest quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), the southeast quarter of the northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), and the west half of the southwest quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 29, Township 16 South, Range 11 East of the Willamette Meridian. This unit of land (Parcel F) is recognized as a legal lot of record.

On October 27, 1910, 160 acres was conveyed to the Thorwald A. Jensen in a U.S. land grant (Patent Number 159356) and later recorded in Volume 2 of Patents, Page 386 at the Deschutes County Clerk's Office. This parcel is illustrated as **Parcel G** on Figure 2 and is described as the northeast quarter (NE $\frac{1}{4}$) of Section 31, Township 16 South, Range 11 East of the Willamette Meridian. Parcel G is recognized as a legal lot of record.

As specified in Patent Number 286678, the United States conveyed 160 acres to William D. Clark on August 1, 1912. This land grant was later recorded at the Deschutes County Clerk's Office in Volume 2 of Patents, Page 460. This parcel is shown as **Parcel H** on Figure 2. Parcel H is described as the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), the east half of the southeast quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$), and the southwest quarter of the southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 30, Township 16 South, Range 11 East of the Willamette Meridian. Parcel H is recognized as a legal lot of record.

Figure 3

Transactions involving Parcels A, C, and D (Figure 2)

In 1912 and 1913 several transactions occurred involving Parcels A, C, and D, shown on Figure 2. The first transaction occurred when John and Carolyn Wimer conveyed a portion of Parcel D to George and Delilah Wimer on November 11, 1912. This deed was recorded in Volume 12, Page 405 at the Deschutes County Clerk's Office. This parcel is shown as **Parcel J** on Figure 3. Parcel J, approximately 40 acres in size, is described as the east half of the east half of the southwest quarter (E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$), of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. This unit of land (Parcel J) is recognized as a legal lot of record. The result of this conveyance that separated the eastern 40 acres of Parcel D (Fig. 2) was that it left behind a remnant parcel of 120 acres with legally established boundaries. This remainder parcel is shown as **Parcel K** on Figure 3 and is described as the west half of the southwest quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) and the west half of the east half of the southwest quarter (W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$), of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. Parcel K is recognized as a legal lot of record.

On November 23, 1912, George and Delilah Wimer convey a portion of Parcel A (Fig. 2) to John B. Wimer (Vol. 12, Page 312, Deschutes County Clerk's Office). This parcel is illustrated as **Parcel L** on Figure 3 and is approximately 40 acres in size. Parcel L is described as the northwest quarter of the northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. Parcel L is recognized as a legal lot of record. Furthermore, the conveyance of Parcel L separated the southwestern 40 acres of Parcel A (Fig. 2) and thus a parcel with legally established boundaries remained. This remainder parcel of approximately 80 acres is shown as **Parcel M** on Figure 3 and is described as the southeast quarter of the southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 29 and the northeast quarter of the northwest quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. Parcel M is recognized as a legal lot of record.

John and Carolyn Wimer conveyed to G. F. Horner on November 29, 1912, approximately 200 acres that included Parcels K and L described above, together with the western 40 acres of Parcel C (Fig. 2). This deed was recorded in Volume 12, Page 316 at the Deschutes County Clerk's Office. Although the Parcels K and L were included in this deed, it did not eradicate the parcel's previously legally established boundaries as described above. Therefore, in this case, Parcels K and L remain in their configuration as separate legal lots. However, this conveyance did separate the western 40 acres of Parcel C, establishing discrete boundaries shown as **Parcel N** on Figure 3. Parcel N is described as the southwest quarter of the northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. This unit of land (Parcel N) is recognized as a legal lot of record. By conveying the western 40 acres (Parcel N), it created a remainder parcel of the eastern 120 acres of Parcel C, which was further separated as discussed below.

The remaining 120 acres of Parcel C was separated further in the following manner. On January 14, 1913, George and Delilah Wimer conveyed to John and Sarah Byers approximately 100 acres that included Parcel M (Fig. 3), described above, together with 20 acres of Parcel C (Vol. 14, Page 161). As noted previously and further explained below, including Parcel M with the 20 acres of Parcel C did not eradicate the legally established boundaries of Parcel M and thus Parcel M remains in its configuration as a separate legal lot. The conveyance of 20 acres that was originally part of Parcel C, however, established a new parcel with discrete boundaries. This parcel is illustrated as **Parcel O** on Figure 3 and is described as west half of the southeast

quarter of the northwest quarter (W ½ SE ¼ NW ¼), of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. Parcel O is recognized as a legal lot of record.

The conveyance of Parcel O separated out the remaining eastern 100 acres of Parcel C. Illustrated as **Parcel P** on Figure 3, the eastern 100 acres remained as a parcel with legally established boundaries. Parcel P is described as the east half of the southeast quarter of the northwest quarter (E ½ SE ¼ NW ¼), the southwest quarter of the northeast quarter (SW ¼ NE ¼), and the northwest quarter of the southeast quarter (NW ¼ SE ¼) all in Section 32, Township 16 South, Range 11 East of the Willamette Meridian. Parcel P is recognized as a legal lot of record.³

Transactions involving Parcels B and H (Figure 2)

In 1913 and 1914, Parcels B and H (Fig. 2) were separated in different transactions that conveyed land to the State of Oregon. Regarding Parcel B, in July 1913, Frank and Olga Swisher conveyed to the State of Oregon approximately 19.80 acres located in Section 33. This deed was later recorded in Volume 14, Page 3 at the Deschutes County Clerk's Office. This parcel is shown as **Parcel Q** on Figure 3.⁴ The result of this conveyance separated the western 19.80 acres of Parcel B (Fig. 2) located in Section 33, leaving behind a remnant parcel (approximately 60.2 acres) with legally established boundaries. Parcel Q is recognized as a legal lot of record. The remainder portion of Parcel B that was separated from Parcel Q is also a legal lot of record. However, it is not part of the subject property and further analysis is not included in this decision.

On January 5, 1914, William and Ada Clark conveyed to the State of Oregon approximately 55.96 acres located in Section 30 and thus dividing Parcel H (Fig. 2) into two separate parcels. The deed was recorded in Volume 14, Page 564 at the Deschutes County Clerk's Office. This parcel is illustrated as **Parcel R** on Figure 3.⁵ The result of the 1914 conveyance separated the eastern 55.96 acres of Parcel H (Fig. 2) located in Section 30, leaving behind a remnant parcel (approximately 104.04 acres) with legally established boundaries. Parcel R is recognized as a legal lot of record. The remainder portion of Parcel H that was separated from Parcel R is also a legal lot of record. However, it is not part of the subject property and further analysis is not included in this decision.

On July 14, 1913, Perry and Ida Woolley convey to the State of Oregon Parcels F and G, as illustrated on Figure 2, (Vol. 13, Page 612). Although the two parcels were included in a single deed from 1913, this did not eradicate the parcels' previously legally established boundaries as detailed in this decision. Therefore, **Parcel F** and **Parcel G** remain in their original configuration as separate legal lots. These parcels are illustrated on Figure 3 for reference.

Transactions involving Parcel E (Figure 2)

On January 4, 1913, Charles L. Wimer conveyed to Willard and Cora Triplett approximately 110.75 acres of Parcel E (Fig. 2). The deed was recorded at the Deschutes County Clerk's Office

³ Three months after the conveyance of Parcel O, on March 18, 1913, George and Delilah Wimer conveyed to Charles L. Wimer Parcel P and Parcel J in Volume 13, Page 481 of the Deschutes County Clerk's Office.

⁴ For the property description of Parcel Q, refer to the deed recorded in Vol. 14, Page 3.

⁵ For the property description of Parcel R, refer to the deed recorded in Vol. 14, Page 564.

in Volume 12, Page 511. This parcel is shown on Figure 3 as **Parcel S** and includes 30.75 acres in the southwest quarter of the southeast quarter (SW ¼ SE ¼) and all of the southeast quarter of the southeast quarter (SE ¼ SE ¼) of Section 32 and the southwest quarter of the southwest quarter (SW ¼ SW ¼) of Section 33, all in Township 16 South, Range 11 East of the Willamette Meridian.⁶ This unit of land, Parcel S, is recognized as a legal lot of record.

By conveying the 110.75 acres of Parcel S, it created two remainder parcels that were originally part of Parcel E. One remainder parcel is the northernmost 40 acres of Parcel E and is shown as **Parcel T** on Figure 3. Parcel T is described as the northeast quarter of the southeast quarter (NE ¼ SE ¼) of Section 32, Township 16 South, Range 11 East of the Willamette Meridian. The other remainder parcel is approximately 9.25 acres in the southwest quarter of the southeast quarter (SW ¼ SE ¼) of Section 32. This parcel is illustrated as **Parcel U** on Figure 3.⁷ These units of land, Parcel T and Parcel U, are recognized as separate legal lots of record.⁸

Figures 4 and 5

On September 8, 1988, the State of Oregon conveyed to Tumalo Irrigation District approximately 930 acres. The Statutory Quitclaim Deed was recorded at the Deschutes County Clerk's Office in Volume 170, Page 581. This unit of land is shown as **Parcel V** on Figure 4. The 1988 conveyance included all of Parcels F, G, L, M, N, O, Q, and R as shown on Figure 3. In addition, the deed included the partial conveyance of four units of land – Parcels K, P, T, and S.⁹ Although the Parcels F, G, L, M, N, O, Q, and R were included together in the 1988 deed, the conveyance did not eradicate the parcels' previously legally established boundaries as detailed in this decision. Therefore, these eight parcels remain in the configuration as described above and remain as separate legal lots of record.

As a result of partially conveying Parcels K, P, T, and S, it left behind four remnant parcels to the north of the property boundary.¹⁰ These units of land are illustrated on Figure 5 as **Parcels W, X, Y, and Z**. At the time of the 1988 conveyance to Tumalo Irrigation District, the subdivision and partition ordinance PL-14 was used to regulate all subdivisions and partitions. In addition, the zoning ordinance PL-15 regulated minimum lot sizes. The southern region of Parcel V, where four units of land were partially conveyed, was zoned Open Space and Conservation (OS&C), which did not have a specific minimum lot size.¹¹ However, the subject property did not receive the benefit of an approval for a partition or subdivision. Therefore, Parcels W, X, Y and Z are not recognized as separate legal lots of record.¹²

⁶ For the full property description of Parcel S, refer to the deed recorded in Vol. 12, Page 551.

⁷ Figure 3 illustrates only an approximate location for Parcel U. For the full property description of Parcel U, refer to the deed recorded in Vol. 13, Page 611.

⁸ It was several months later in July 1913 that Charles L. Wimer conveyed to the State of Oregon approximately 189.25 acres, which included Parcels J, P, T and U as described above (see Vol. 13, Page 611).

⁹ Based on the legal description, it appears that the units of land referred to as Parcels J and U (Fig. 3) were not included in the 1988 conveyance.

¹⁰ The conveyance left remnant parcels to the south of the property boundary. However, additional review of these remainder parcels is not necessary because they are not a part of the subject property.

¹¹ At the time, the minimum lot size of the OS&C Zone was to be "determined by the County Sanitarian to be necessary for the protection of public health and natural resources."

¹² Parcels W, X, Y, and Z may be recognized as legal lots of record using the discrete boundaries discussed with related parcels – Parcels K, P, T, and S.

Lot of Record Analysis

The applicant applied for verification of lot(s) of record under Deschutes County Code (DCC) 18.040.030(A), which is defined above. The applicant provided a complete application regarding the history of the parcel creation, which allowed staff to render a decision where only lots or parcels legally created are recognized by the County for development purposes. Based on the sequential conveyances of land, staff finds the subject property (tax lot 7891) wholly contains eight separate legal lots of record, five of which the applicant requested verification. The eight legal lots of record are shown on Figure 6 as Parcels 1 through 8, with Parcels 1, 2, 4, 5, and 6 being the five that the applicant requested verification. The noted legal lots of record are all at least 5,000 square feet in area and 50 feet wide. In addition, the sequential land conveyances for the eight legal lots of record occurred prior to the County's first subdivision ordinance and zoning ordinance (1970 and 1972, respectively). Since the applicant is not seeking to divide the subject property, the procedures set forth in the current county subdivision ordinance, Title 17, are not applicable.

Two legal lots of record, Parcels 1 and 2 on Figure 6 were established with discrete boundaries in federal conveyances from 1909 and 1910, respectively. These parcels have remained unchanged since first established. Although the two parcels were included in a single deed from 1913, the transaction did not eradicate the parcels' legally established boundaries (see comments below). Parcels 3 and 8 on Figure 6 were first established with discrete boundaries through two separate federal conveyances but were changed through transactions with the State of Oregon in 1914 and 1913, respectively. Both subsequent conveyances separated the parcels, leaving remnants not part of the subject property. Parcels 4, 5, 6, and 7 were first established with discrete boundaries through different federal conveyances but were changed through additional subsequent conveyances between 1912 and 1914. Some land transactions separated parcels and thus left a remnant of the parent parcels, such as Parcel 5, but were not altered further. Some remainder parcels were involved in additional land transactions such as Parcels 7.

There are four units of land – Parcels 9, 10, 11, and 12 – shown on Figure 6 that are not recognized as separate legal lots of record. As stated previously, a 1988 conveyance of Parcel V (Fig. 4) separated four units of land – Parcels K, P, T, and S (Fig. 3) and thus created remnant parcels – Parcels W, X, Y, and Z shown on Figure 5. Parcels W, X, Y, and Z are not recognized as separate legal lots of record because the partition and zoning ordinances were in effect at the time of the 1988 conveyance. These parcels are portions of the legal lots identified as Parcels K, P, T, and S (Fig. 3).

Most of the parcels reviewed here were included in subsequent deeds that described adjacent lands together in a single deed. Including the parcels in a single deed does not eradicate the boundary lines that legally established those properties in the past. Evidence was not found that indicated the subject legal lots of record were consolidated through a property line adjustment approval or platted as part of a subdivision or partition. In the decision LR-10-2 (A-10-3) and in LR-92-43, LR-92-44, LR-92-46, and LR-92-47, Deschutes County Hearing Officers found that the mere inclusion in a single deed of multiple parcels lawfully created by conveyances did not result in the eradication of the parcels' previous legally established boundary lines.

Furthermore, the remnant parcels reviewed here were first established as separate larger parcels with legally established boundaries, and were surrounded by legally established

boundaries of other parcels. Although the remainder parcels left behind do not meet the strict definition contained in DCC 18.040.030(A)(5) because the adjacent or surrounding lands have not been subdivided or partitioned, once altered by subsequent conveyances the remnants become legal remainder parcels. In decision LR-10-2 (A-10-3), the County Hearings Officer articulated that remainder lots are surrounded by legally created lots. Staff relies on this determination to identify remainder parcels created by deed prior to partition and subdivision requirements.

The subject property contains lands zoned Exclusive Farm Use – Tumalo/Bend/Redmond subzone (EFUTRB), Open Space and Conservation (OS&C), Forest Use (F1 and F2), and Flood Plain (FP). Portions of the property are also within the Landscape Management (LM), Wildlife Area (WA), and Sensitive Bird and Mammal Habitat (SBMH) Combining Zones. Any development of this property is subject to the requirements of Title 18, Deschutes County Zoning Ordinance. Development of this property is also subject to the requirements of the County Building and Environmental Soils Divisions.

This decision becomes final twelve (12) days from the date this decision is mailed unless appealed by a party of interest.

Sincerely,

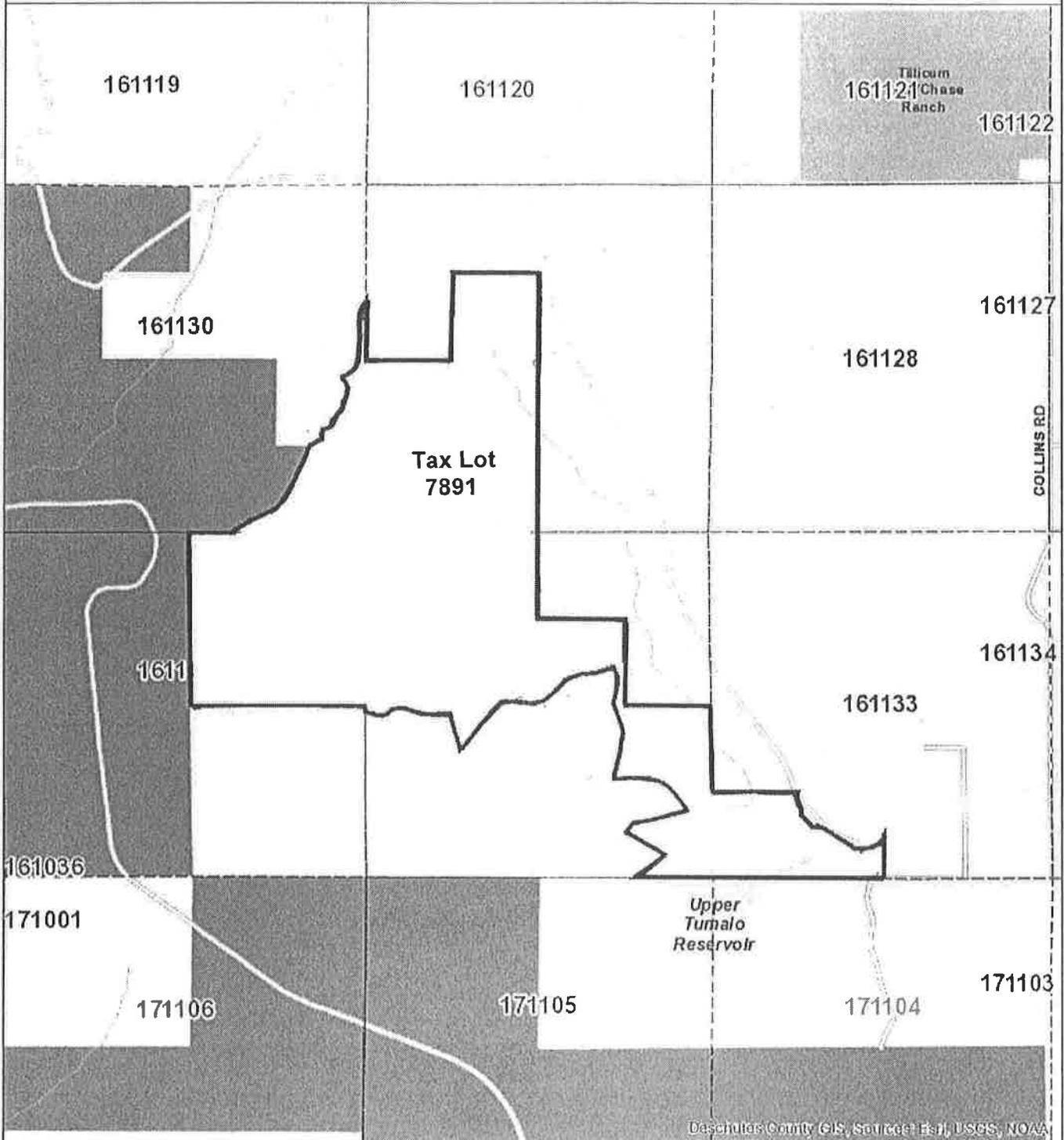
A handwritten signature in black ink that reads "Cynthia Smidt". The signature is written in a cursive, flowing style.

Cynthia Smidt, Associate Planner

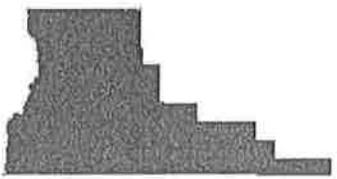
Enclosures

FIGURE 1

Deschutes County File 247-15-000222-LR



Deschutes County GIS, Sources: Esri, USGS, NOAA

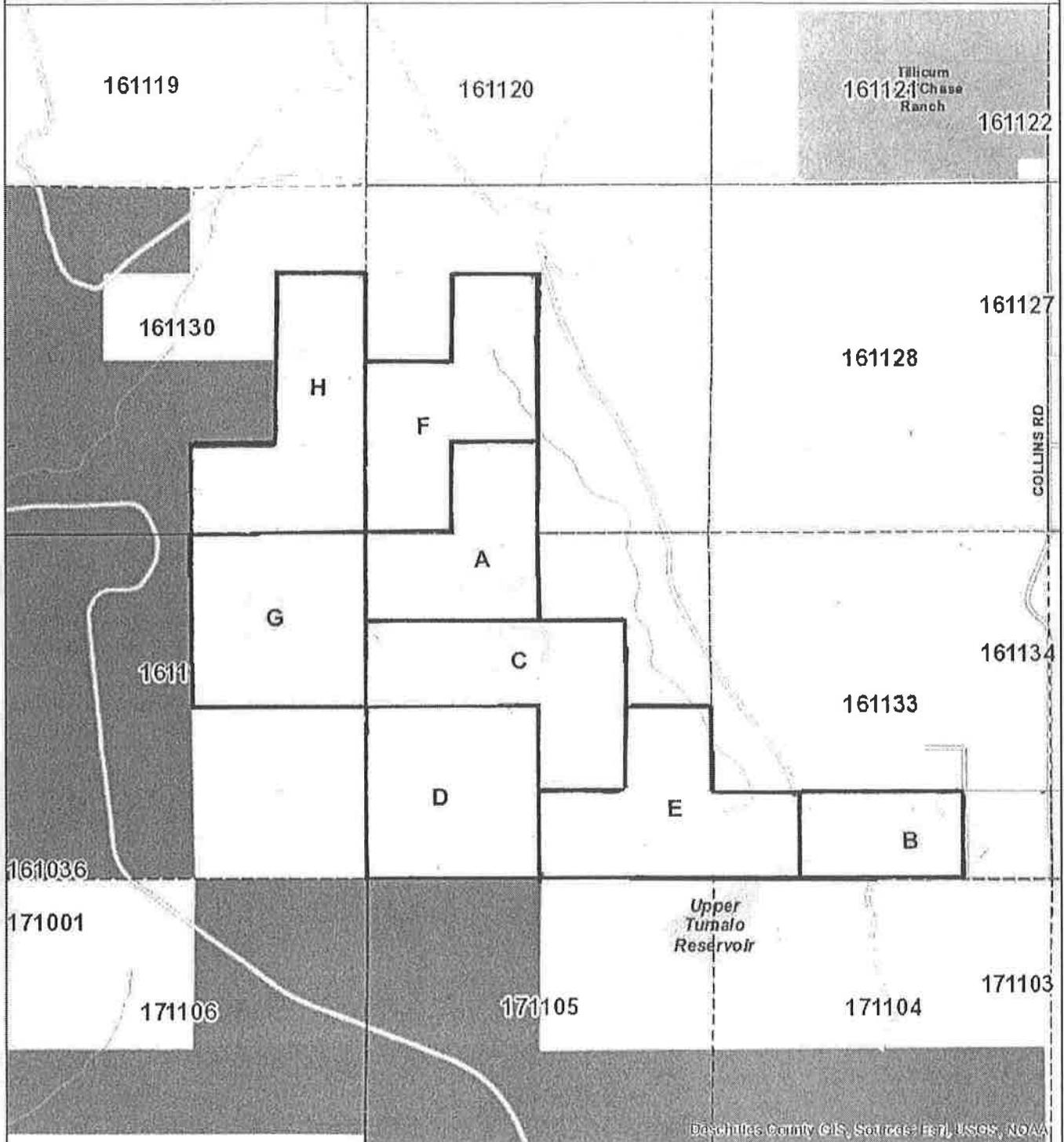


CURRENT CONFIGURATION



FIGURE 2

Deschutes County File 247-15-000222-LR



PARCEL A – 1906 U.S. LAND GRANT
PARCEL B – 1907 DEED
PARCEL C – 1907 U.S. LAND GRANT
PARCEL D – 1908 U.S. LAND GRANT

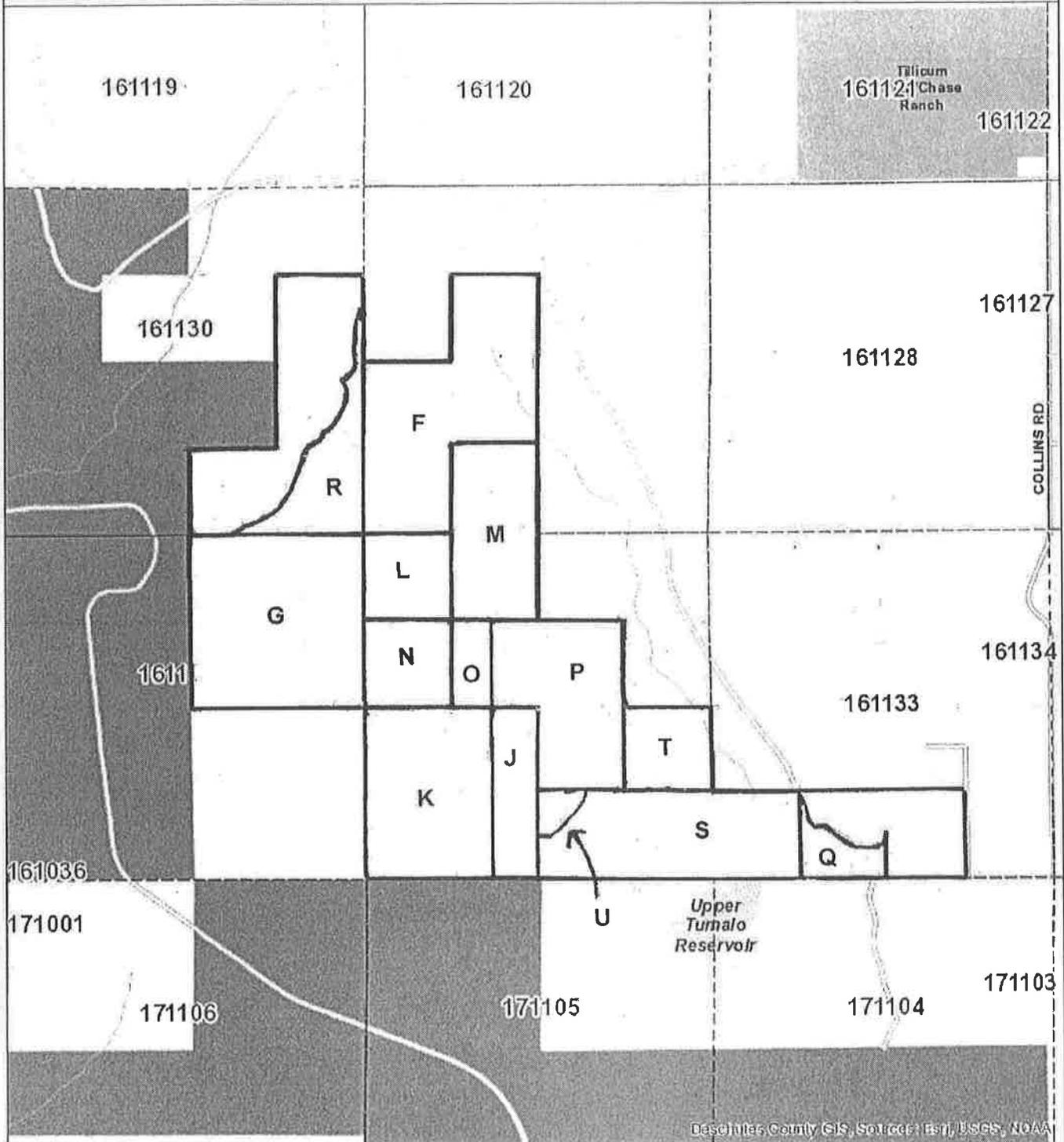
PARCEL E – 1908 U.S. LAND GRANT
PARCEL F – 1909 U.S. LAND GRANT
PARCEL G – 1910 U.S. LAND GRANT
PARCEL H – 1912 U.S. LAND GRANT



Deschutes County GIS, Sources: B7, USGS, NOAA

FIGURE 3

Deschutes County File 247-15-000222-LR



PARCEL J – 1912 DEED
 PARCEL K – REMAINDER
 PARCEL L – 1912 DEED
 PARCEL M – REMAINDER

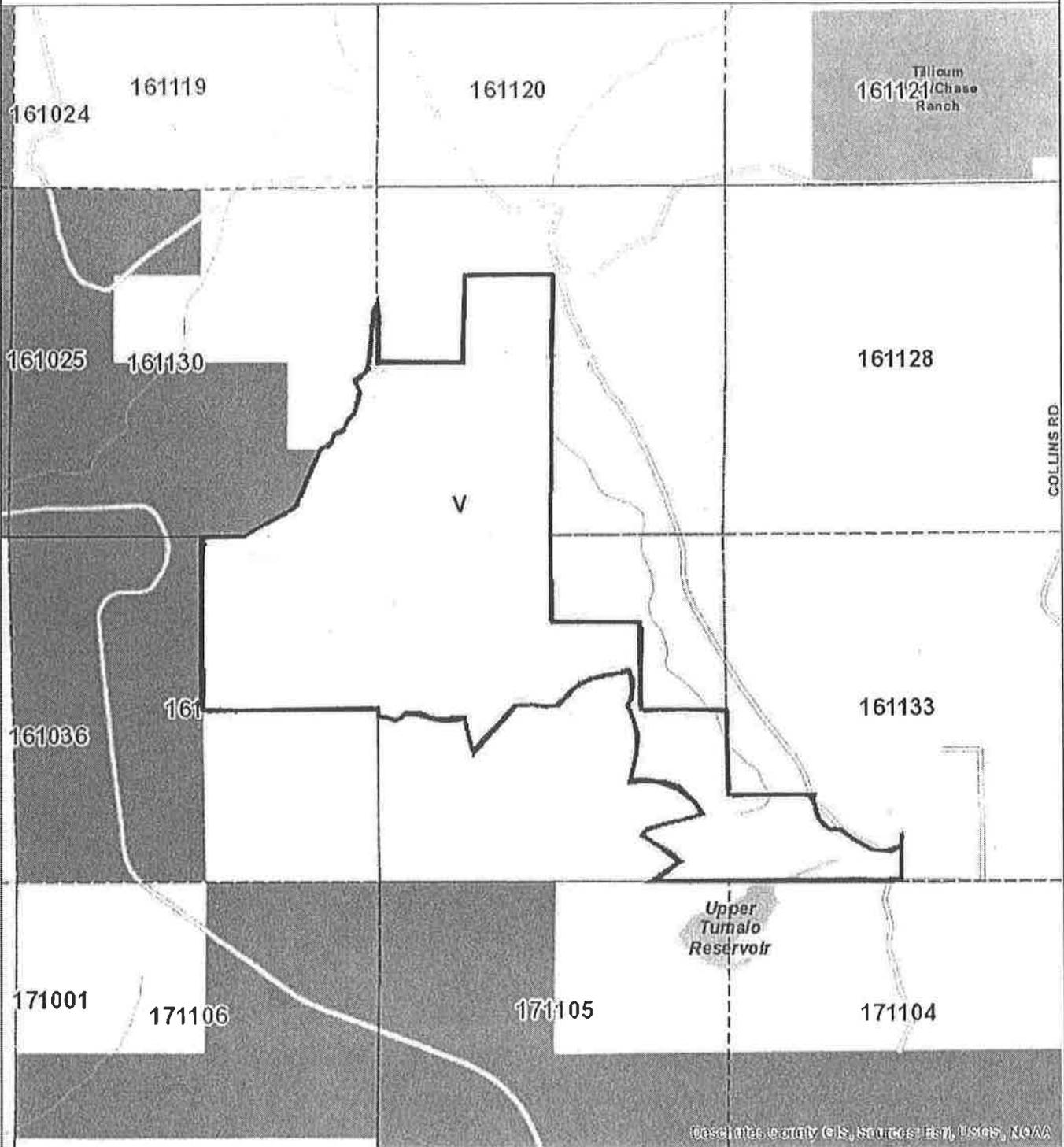
PARCEL N – 1912 DEED
 PARCEL O – 1913 DEED
 PARCEL P – REMAINDER
 PARCEL Q – 1913 DEED

PARCEL R – 1913 DEED
 PARCEL S – 1913 DEED
 PARCEL T – REMAINDER
 PARCEL U – REMAINDER



FIGURE 4

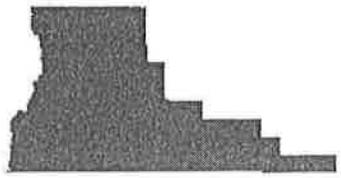
Deschutes County File 247-15-000222-LR



COLLINS RD

Upper
Tumalo
Reservoir

Deschutes County GIS, Sources: BLM, USGS, NOAA

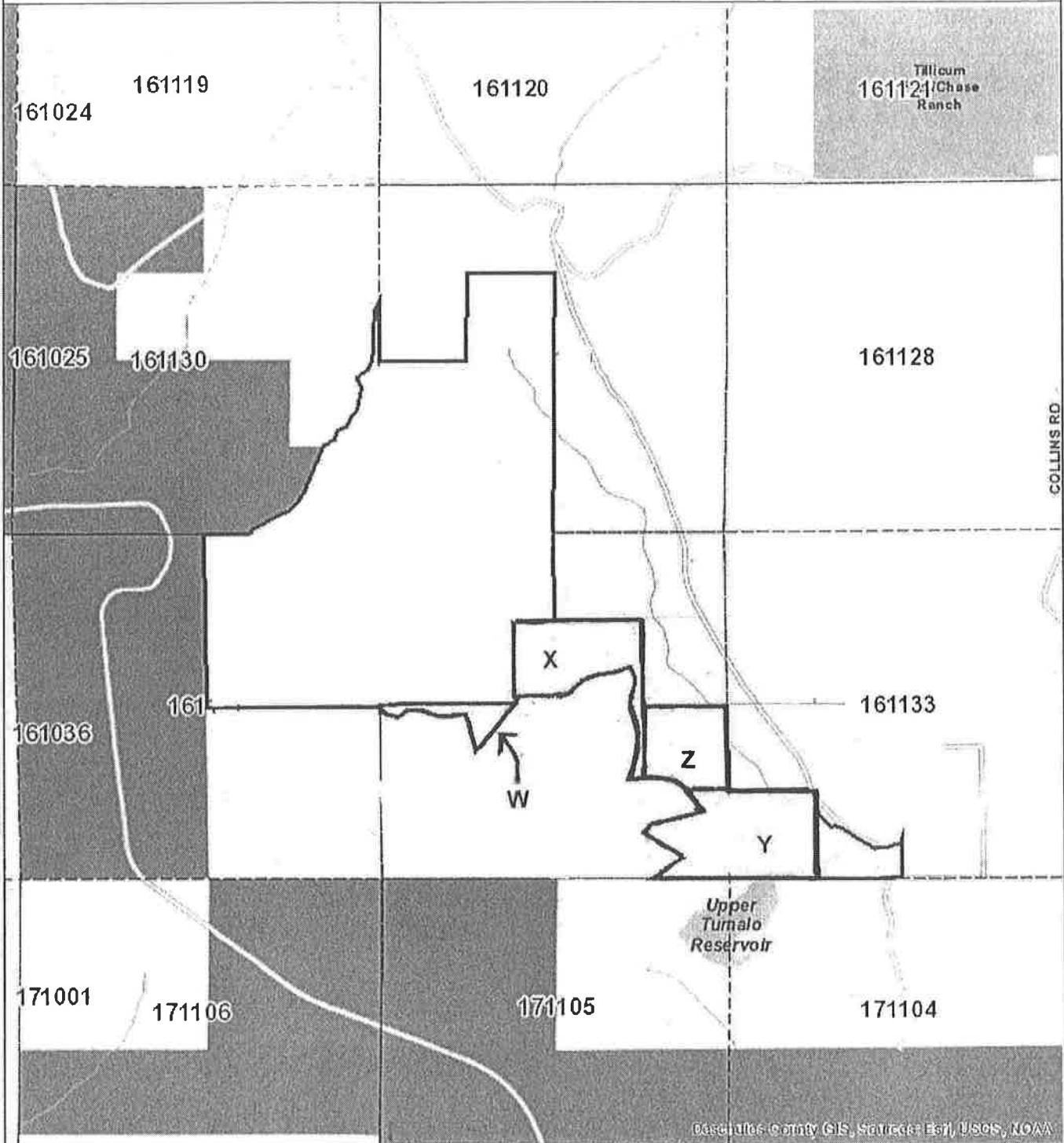


PARCEL V - 1988 DEED

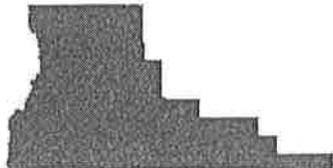


FIGURE 5

Deschutes County File 247-15-000222-LR



Deschutes County GIS, Sources: BLM, USGS, NOAA

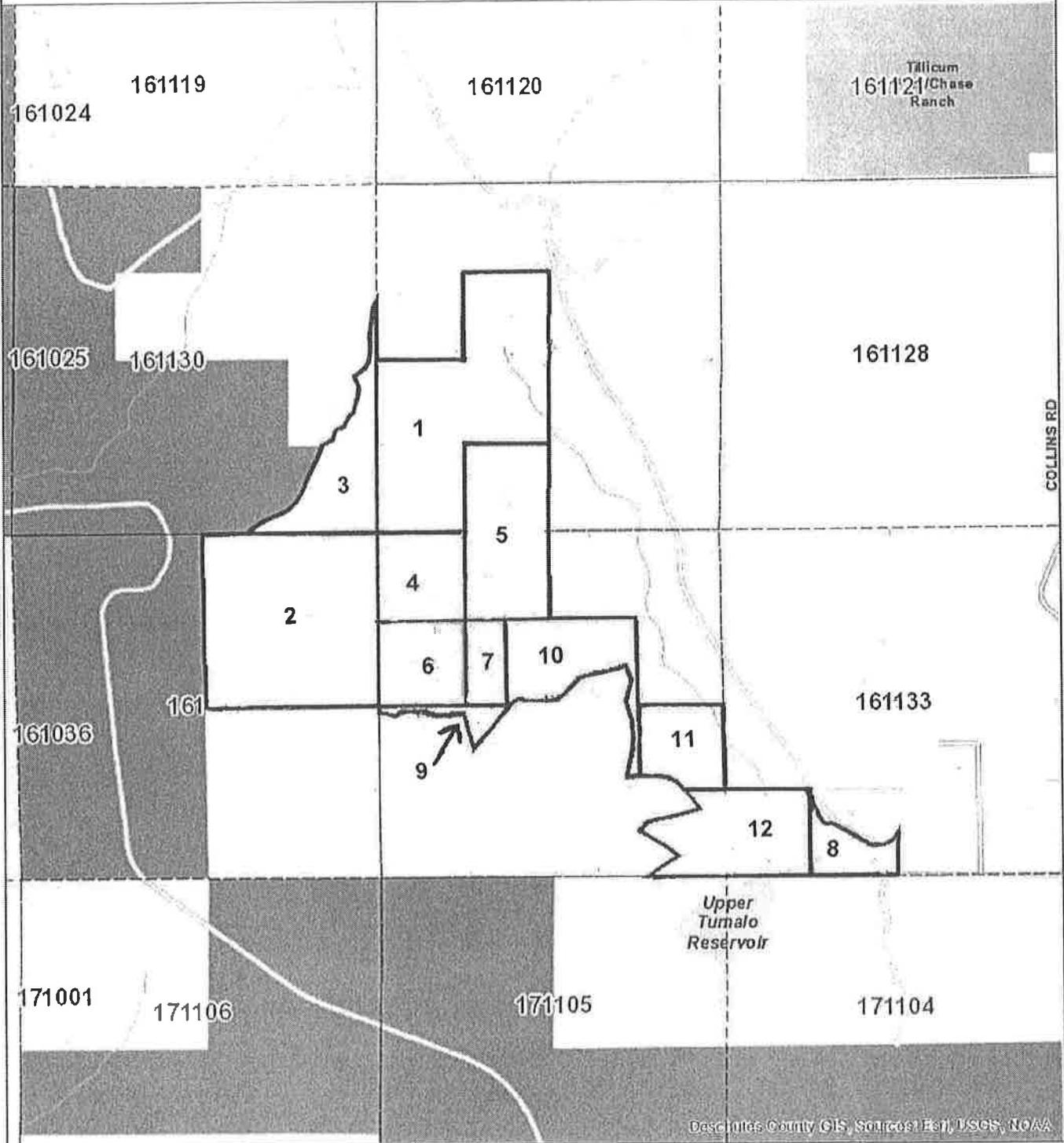


PARCEL W - REMAINDER
PARCEL X - REMAINDER
PARCEL Y - REMAINDER
PARCEL Z - REMAINDER

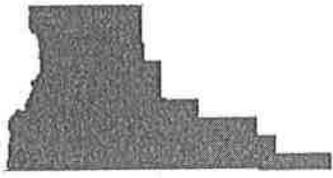


FIGURE 6

Deschutes County File 247-15-000222-LR



Deschutes County GIS, Sources: Esri, USGS, NOAA



LEGAL LOTS OF RECORD = 8

