



STAFF REPORT

FILE NUMBER: 247-23-000162-CU

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: TUMALO LAVENDER PROPERTY LLC
Map and Taxlot: 1612190000501
Account: 132493
Situs Address: 19825 CONNARN RD, BEND, OR 97703

**AGENT FOR
APPLICANT:**

Douglas White
Oregon Planning Solutions LLC

REQUEST:

Review of a Conditional Use Permit to establish a secondary accessory farm dwelling in an existing manufactured home in the Multiple Use Agricultural (MUA10) Zone and Airport Safety (AS) Combining Zone.

HEARING DATE:

Tuesday, May 16, 2023

HEARING START:

6:00 pm

STAFF CONTACT:

Haleigh King, Associate Planner
Phone: 541-383-6710
Email: Haleigh.King@deschutes.org

RECORD:

Record items can be viewed and downloaded from:
<https://www.deschutes.org/247-23-000162-CU>

Record items can also be viewed and downloaded from:
www.buildingpermits.oregon.gov

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

II. **BASIC FINDINGS**

LOT OF RECORD: The subject property has been verified as a legal lot of record pursuant to file no. LR-02-25.

SITE DESCRIPTION: The subject 9.70-acre property is currently in farm use consisting primarily of lavender plant production and pasture grasses. In the southern portion of the property, the property is developed with a stick-built single-family dwelling that is within the larger agricultural structure¹. The dwelling/barn structure has an attached greenhouse on its south side and there are three large detached greenhouses in the area². In the southeast region, development includes an irrigation pond, detached garage, and a manufactured home previously used as a medical hardship home (see below for land use history). The site is developed with other small accessory structures, including a 504 square foot building used for displaying lavender products available for purchase (permit AG-13-12). Connarn Road, which provides access to the site, is adjacent to the north property boundary. The subject property is served by an on-site septic disposal system, with domestic water provided by a private well. The subject property has at least 8.7 acres of irrigation water rights and includes an irrigation pond. According to the Flood Insurance Rate Map (FIRM) and National Wetlands Inventory for Deschutes County, the property is not located in the 100-year flood plain nor does it contain wetlands. The grade of the property is relatively even across the property.

REVIEW PERIOD: The subject application was submitted on March 7, 2023 and deemed complete by the Planning Division on April 6, 2023. The 150th day on which the County must take final action on this application is September 3, 2023.

PROPOSAL: The applicant requests a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling pursuant to DCC 18.32.030.G and DCC 18.128. The existing manufactured home was previously utilized as a temporary medical hardship dwelling.

¹ County building permit B59977 (2005) allowed for the central portion of an existing barn (originally reviewed under permit AG-04-3) to be converted into the primary residence (approximately 1,080 square feet).

² The attached and detached greenhouses were established around 2006. These structures do not appear meet the required 25-foot rear setback for the MUA10 Zone. The Staff Report findings made herein do not review or approve these potentially nonconforming setbacks. Furthermore, the proposed secondary accessory farm dwelling is proposed to occur in the existing manufactured home and not in the above noted greenhouses.

The applicant has provided the following statement in their Proposal section pg. 5 of their Burden of Proof:

The applicant is requesting a Conditional Use to establish an existing manufactured home (previously a medical hardship dwelling) as a secondary accessory farm dwelling pursuant to the requirements of the MUA-10 Zone. As stated above, the property is currently engaged in the growing of lavender and production of lavender products. The subject manufactured home was originally put in place and permitted as a temporary use for a medical hardship by the previous owners (see Attachment B showing the 2010 Land Use permit). The subject site was purchased in 2022 by present owners Tumalo Lavender Property LLC which is comprised of an equal 1/3 owner-operator split by the following parties: Holly Olson, Summer Hagedorn, and Marilyn Thompson (see Attachment C showing Property Deed and Attachment D showing operating agreement for Tumalo Lavender Property LLC). One of the owners and primary operators of the farm is currently residing in the subject manufactured home while the primary single-family dwelling is to be rented to farm help.

SURROUNDING LAND USES: The area surrounding the subject property consists of a mix of farm and rural residential properties. To the north, south, and east are properties primarily developed with residences and carry the same zoning as the subject property. To the west are properties, developed and undeveloped, zoned for farm use. A majority of the properties in the area exhibit some level of farm or agricultural use. The Deschutes River is approximately 0.5 miles to the east of the subject property. Zoning in the area is a mixture of Exclusive Farm Use (EFU), Multiple Use Agricultural (MUA10), Surface Mining (SM), and Flood Plain (FP).

LAND USE HISTORY: The applicant submitted the land use permit application in response to code enforcement case, file no. 247-22-000400-CE. In summary, the applicant did not decommission or remove the temporary manufactured home when the medical hardship previously approved in 2010 and again in 2015 ceased to exist and the property was sold, nor did the applicant apply for a new medical hardship dwelling under the new property ownership. The applicant is requesting an after-the-fact approval for the manufactured home as a secondary accessory farm dwelling. Although the secondary accessory farm dwelling use may have been operational on the subject property for some time, staff reviews it as new and thus refers to it as such in this decision.

- 247-18-000526-CU, 527-SP: Conditional Use and Site Plan Review to establish a commercial activity in conjunction with the existing lavender farm use
- 247-15-000238-TU: Temporary Use Medical Hardship Dwelling³
- TU-10-8: Temporary Use Medical Hardship Dwelling
- SMA-04-4: Surface Mining Impact Area (SMIA) review for single-family dwelling
- LR-02-25: Legal lot of record verification

³ The dwelling approved through file 247-15-000238-TU utilizes the same dwelling approved through file TU-10-8. The requirement for a new land use - 247-15-000238-TU - was based on the change of circumstances (change in family member using the dwelling).

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on March 21, 2023, to several public agencies and received the following comments:

Deschutes County Onsite Wastewater, Todd Cleveland

This proposal will require septic system review and permits. Upgrades to the existing system or a new system may be necessary.

STAFF COMMENT: Staff recommends the following condition of approval be included in any decision which approves the application:

Prior to the initiation of use, the property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for 247-23-000162-CU to change a manufactured home previously approved as a temporary medical hardship dwelling into an accessory farm dwelling on a 9.7-acre parcel in the Multiple Use Agricultural (MUA-10) and Airport Safety (AS) zones at 19825 Connarn Road, aka 16-12-19, Tax Lot 501. The result would be two permanent dwellings on the property, which contains Tumalo Lavender Farm.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family home (Land Use #210) produces approximately nine weekday trips. Thus the site's two dwellings would produce approximately 20 weekday trips (9.43 + 9.43). Under DCC 18.116.310(C), no further traffic analysis is required for a use of less than 50 new weekday trips. Staff notes the burden of proof states the farm would have workers ranging in four to 10 in number. Even with 10 employees, which would equal 20 new daily weekday trips, the combination of the roughly 30 weekday trips from the two dwellings (20 from the farm worker dwelling, 9.43 from the main home) would not exceed the 50-trip threshold.

The property accesses Connarn Road, a public road maintained by Deschutes County and functionally classified as local. The property has two driveway permits approved by Deschutes County (#247-19-001534-DA and #247-SW4543) and thus complies with the access permit requirements of DCC 17.48.210(A).

The property is approximately nine miles west-southwest of the Redmond Airport. Between the distance to the airport and the height limit in the zone, the use will not penetrate any imaginary surfaces related to Roberts Field.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. peak hour trip. From an SDC perspective, staff finds the proposed use would in effect establish the trip generation equivalent of a new second dwelling on the property. Staff notes the burden of proof on Page 5 describes the intensity of the use as

"...year-round farm help, seven days a week, with part-time and full-time staff varying in between four and up to 10 employees throughout the year." On Page 6, the burden of proof it states "...it is necessary to have farm help reside in both dwellings." County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$4,115 (\$5,080 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS SUBMITTED.

ON JULY 1, 2023, THE SDC BECOMES \$5,406 PER PEAK HOUR TRIP AND THIS RATE WILL BE VALID UNTIL JUNE 30, 2024. THIS WILL INCREASE THE SDC FROM \$4,115 TO \$4,379 (\$5,406 X 0.81).

Deschutes County Building Safety Division, Randy Scheid

NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

The following agencies did not respond to the notice: Bend Fire Department, Deschutes County Assessor, Deschutes Code Enforcement, Deschutes Road Department, Oregon Department of Aviation, Tumalo Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the public hearing to all property owners within 250 feet of the subject property on March 21, 2023. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the public hearing on March 22, 2023. Notice of the public hearing was published in *The Bulletin* newspaper on March 22, 2023.

Staff received two public comments from nearby property owners.

The first comment was received from David Arnold, resident and owner of property located at 19830 Connarn Road, Bend, OR 97703 on March 16, 2023:

I see that a conditional use application has been submitted by Tumalo Lavender to add a secondary farm dwelling (the medical hardship manufactured trailer) to their property. Please include me with all correspondence at this email address and at my physical address, David

Arnold, 19830 Connarn Rd, Bend, OR 97703. I will asking that this application be denied.

Mr. Arnold sent a follow-up comment on March 16, 2023,

Haleigh,

I have read the Conditional Use applications from Tumalo Lavender Properties LLC and feel that the application is incomplete. Specifically the plot map provided is incomplete. The applicants have failed to meet the applicants responsibilities for required documentation as required when a conditional use application is submitted to the county. Here is a list of information I feel that needs to be provided for me to respond.

Driveways (existing and proposed).

Location of all existing and proposed structures on the property.

Distance from all existing and proposed structures to property lines (setbacks).

Location of water source.

Location of septic tank, drainfield and replacement area.

Location of major features such as rivers, streams, canals, irrigation ditches, and/or rock ledges/outcrops.

Specifically I am most concerned about location of the water source. This property is registered with the Oregon Department of Agriculture with a Food Processing License and Nsy Stk Growers Collectors of Native Plants license (nursery). Both of these licenses require specific permits from the Oregon Water Resources Department (OWRD). For this reason I request the application be returned to the applicants as incomplete and not be accepted until all the requirements are met.

Thank you David Arnold

The second comment was received from Gail Burton and Gregg Riegel, residents and owners of property located at 19816 Connarn Road, Bend, OR 97703 on March 16, 2023.

To whom it may concern in the Deschutes County Planning Department:

We recently became aware the Tumalo Lavender property at 19825 Connarn Road, Bend OR 97703 has applied for a conditional use permit for a secondary farm dwelling.

We are opposed to their attempt to change the designation of the 'medical hardship' manufactured home (granted to the previous owners), which should have been removed, per their agreement with the county, when Judy Knight's mother died.

Instead, she and her husband, Gordon, were able to finagle its continued existence on the property, by pretending he needed help, ostensibly for a medical condition. Instead, they rented it out, while he was overseeing the operations, driving the tractor, and working on the farm.

The current owners are living in the 'medical hardship' manufactured home, rather than in the primary dwelling. As this is zoned MUA-10, where one single family home is allowed, they should be required to remove the manufactured home and bring the property into compliance.

Many of us farm in Tumalo, yet we don't request county approval for a secondary dwelling to house our 'farm workers.' Historically, their farm workers have been seasonal, few in numbers, and have lived elsewhere, except for the illegal travel trailer, which was finally removed, following a code violation complaint.

In the survey records, it appears the south and east property lines were never surveyed. This should be required before determining the actual setbacks, as the manufactured home, its adjacent stick built garage, the primary residence, and the large greenhouses are all very close to the south and east property lines.

In fact, Gordon Knight had a boundary dispute with the neighbor to the south, when he realized the primary residence was laid out incorrectly, and a part of it was too close to the property line.

In conclusion, we formally request a public hearing on this application, and to be informed, via email, and in paper correspondence, of any matters pertaining to the application.

*Thank you,
Gail Burton and Gregg Riegel
19816 Connarn Road
Bend, OR 97703*

III. FINDINGS & CONCLUSIONS

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.20 Review of Land Use Action Applications

Section 22.20.015, Code Enforcement and Land Use.

- A. *Except as described in (D) below, if any property is in violation of applicable land use regulations and/or conditions of approval of any previous land use decisions or building permits previously issued by the County, the County shall not:***
- 1. *Approve any application for land use development;***
 - 2. *Make any other land use decision, including land divisions and/or property line adjustments;***
 - 3. *Issue a building permit.***
- B. *As part of the application process, the applicant shall certify:***
- 1. *That to the best of the applicant's knowledge, the property in question, including any prior development phases of the property, is currently in compliance with both the Deschutes County Code and any prior land use approvals for the development of the property; or***
 - 2. *That the application is for the purposes of bringing the property into compliance with the Deschutes County land use regulations and/or prior land use approvals.***

- C. A violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement (“VCA”).**
- D. A permit or other approval, including building permit applications, may be authorized if:**
 - 1. It results in the property coming into full compliance with all applicable provisions of the federal, state, or local laws, and Deschutes County Code, including sequencing of permits or other approvals as part of a voluntary compliance agreement;**
 - 2. It is necessary to protect the public health or safety;**
 - 3. It is for work related to and within a valid easement over, on, or under the affected property; or**
 - 4. It is for emergency repairs to make a structure habitable or a road or bridge to bear traffic.**
- E. Public Health and Safety.**
 - 1. For the purposes of this section, public health and safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.**
 - 2. Examples of that situation include, but are not limited to issuance of permits to replace faulty electrical wiring, repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel or power; and actions necessary to stop earth slope failure.**

FINDING: The Board provided interpretive guidance to all Deschutes County Hearings Bodies related to DCC 22.20.015 in *Tumalo Irrigation District* (247-17-000775-ZC, 247-17-000776-PA). Staff finds the following Board comments to be relevant to this case and decision:

“As DCC 22.20.015 is a relatively new provision first adopted in 2015 and frequently arises in contested land use hearings, the Board takes this opportunity to provide interpretation and guidance on the implementation of this provision.

As discussed more fully below, the Board interprets DCC 22.20.015 to require a sequential three-step analysis.

- 1. Is there a previously “adjudicated violation” on the property?
- 2. Does the subject land use application present the best forum for adjudicating a new allegation, i.e. is there time to investigate something more than a vague allegation?
- 3. When there is an “adjudicated violation” or the property is found to be in violation as part of the land use application process, can the land use permit nevertheless be issued pursuant to DCC 22.20.015(D) and (E)?

First, the Board starts by noting that the primary purpose (and benefit) of DCC 22.20.015 is to address “adjudicated violations,” i.e. violations that were already conclusively determined

through the normal applicable code enforcement process prior to an applicant submitting a land use application. This interpretation is supported by the use of the past tense in the codified definition of “violation” in DCC 22.20.015(C): “[a] violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, ... or through an acknowledgment by the alleged violator in a signed voluntary compliance agreement (‘VCA’)” (emphasis added).

Second, differing from the “adjudicated violations” scenario described above, there are cases where the Board anticipates that a County hearings body will need to determine if a property is in violation during the land use application process. DCC 22.20.015(C) addresses this possibility by including in the definition of “violation” the phrase “or through the review process of the current application.” However, the Board cautions that County hearings bodies should take up this inquiry in rare cases because of the obvious practical difficulties born from comingling the County’s land use application process with the separate and distinct code enforcement process. For example, when a vague allegation is alleged by an opponent late in the land use application process, there rarely will be time to comprehensively investigate and appropriately adjudicate that violation due to the 150-day time limit for issuing final decisions per ORS 215.427. Nothing within DCC 22.20.015 requires a County hearings body to process a code complaint pursuant to the County’s adopted Code Enforcement Policy and Procedures Manual and conclusively determine the status of a previously un-adjudicated violation solely on the basis that an opponent submits a vague and unsubstantiated allegation during the land use application process.

As such, the Board interprets DCC 22.20.015 to require something more than a vague allegation (i.e., clear evidence of a violation) to compel the County hearings body to determine if a property is in violation and the pending land use application process is the appropriate forum in which to determine whether a violation exists. As discussed below, this case does not provide a sufficient basis for determining what more is needed and the Board thereby will wait for a subsequent case to establish a bright-line rule. Further, prior to electing to adjudicate an allegation as part of the land use application process, the Board interprets DCC 22.20.015 as necessitating the County hearings body to likewise consider procedural, equitable, and legal issues, including but not limited to the time it will take to conduct an investigation pursuant to the Code Enforcement Policy and Procedures Manual, the severity of the alleged violation (i.e., clear cutting vegetation in a wetland is severe while minimal solid waste that is not creating a public health hazard is not), and the 150-day land use decision making clock.

Third, the Board takes this opportunity to reiterate what is self-evident in DCC 22.20.015. A County hearings body’s inquiry is not completed by simply noting a past “adjudicated violation” or finding that a property is in violation. DCC 22.20.015(D) and (E) compel a subsequent analysis to determine, for example, if the permit “protect[s] the public health and safety” or “results in the property coming into full compliance.” Further, the final phrase of DCC 22.20.015(D)(1) notes that “coming into full compliance” also “include[s] sequencing of permits or other approvals as part of a voluntary compliance agreement.” The Board thereby interprets that aforementioned language to specifically allow a County hearings

body to approve a land use permit conditioned on the applicant subsequently executing and complying with a voluntary compliance agreement even for an unrelated violation on the same property.”

As discussed above, the subject property has active code compliance cases, 247-22-000400-CE, 247-22-000399-CE, and 247-22-000398-CE for multiple dwellings, non-approved disposal and RV occupancy. It is staff’s understanding that the RV occupancy has ceased on the property. With consideration to the above-mentioned interpretive guidance from the BOCC, Staff finds it appropriate to use this land use application to resolve the outstanding violation(s). However, Staff notes there are many options for the property owners to achieve compliance with the zoning regulations of the MUA10 Zone; the request to establish the manufactured home as a secondary accessory farm dwelling is one potential pathway. Other options include but are not limited to; removal of the manufactured home from the subject property, decommission the manufactured home to a non-residential use, decommission the existing stick-built dwelling to a non-residential use, or remove the existing stick-built dwelling from the subject property. The applicant has proposed, through the submittal of the subject application, to establish the manufactured home as a secondary accessory farm dwelling. If approved this land use application will address the Code Violation, in addition, comments from the Onsite Wastewater Division would be included as conditions of approval to ensure the property owner receives any necessary permits as it pertains to the onsite wastewater system.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Section 18.32.030, Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

...

G. Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in DCC 18.116.070.

FINDING: The applicant provided the following response in the submitted Burden of Proof statement:

The applicant is requesting a Conditional Use to establish an existing manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070 (one dwelling was permitted by Deschutes County in 2007, as the primary residence of the subject property). The subject manufactured home was originally permitted in 2010 by Deschutes County on the grounds of a temporary hardship permit for a relative (TU-10-8). There was a change of circumstances with a different family member needing to reside in the manufactured home. The manufactured home was approved as a second hardship dwelling in 2015 (247-15-000238-TU).

The proposed use of the subject manufactured home, as a secondary accessory farm dwelling, may be allowed as a Conditional Use in the MUA-10 Zone. The terms used in County Zoning are defined in DCC 18.04.30, Definitions. The following definitions are relied upon in this burden of proof:

"Accessory use or accessory structure means a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use. Accessory uses include drilling for, and utilization of, low-temperature geothermal fluid in conjunction with the main use of the property."

"Farm use means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of the land for the primary purpose of obtaining a profit in money by stabling or training equines, including but not limited to, providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described above. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3). Current employment of the land for farm use also includes those uses listed under ORS 215.203(2)(b)."

The applicant is proposing to keep the existing manufactured home as an accessory farm dwelling. The subject manufactured dwelling will be "incidental and subordinate to the main farm use of the property." Incidental means to "being likely to ensue as a chance or minor consequences." Webster's New Collegiate Dictionary. Subordinate means "inferior, submissive to or controlled by authority." Id. The use of these terms suggests in the definition of accessory use or structure that there be a connection of the proposed use or structure with the main use of the property.⁴

The definition also requires the "main use of the property" be identified. The main use of the subject property is currently an established lavender farm (Tumalo Lavender) that has gross annual sales exceeding \$80,000 (see Attachment E showing profit and loss for Tumalo Lavender farm operations in 2021). The farm at the subject site consists of approximately 5 acres of established lavender fields, greenhouses for plant propagation/nursery growing of

⁴ Source: Findings and Decision of Deschutes County Hearings Officer (File # CU-95-122), page 3.

potted plants, commercial activity in conjunction with the lavender farm with an operated store (open to the public with set hours during the spring, summer, and fall months and by appointment during the winter months), a production area for distillation of lavender plants and for making lavender products. The activities described above require year-round farm help, seven days a week, with part-time and full-time staff varying between 4 and up to 10 employees throughout the year.

One of the owners of the subject site who also serves primarily as a farm operator will be residing within the existing manufactured home, while employee(s) of the farm will be residing in the existing single-family dwelling. The manufactured home is supplied with domestic water from the onsite private well and is connected to the on-site septic disposal system servicing the primary single-family dwelling (see Attachment F showing certificate of completion for septic system). The applicant is aware that the existing manufactured home's use of the on-site septic disposal system was temporarily allowed under the medical hardship permit; thus, Deschutes County approval of the manufactured home as an accessory farm dwelling be conditionally based upon installment of an additional county-approved on-site septic disposal system solely for the manufactured home. The existing on-site disposal system will be used only by the existing primary dwelling that will be used for farm help.

The applicant is employing the property for the primary purpose of obtaining a profit by growing and harvesting lavender. The proposed accessory farm dwelling will be an integral part of the current and future lavender farm operation as it serves as the farm operator's residence, in addition to the primary single-family dwelling being utilized as residence for farm help. Because of the daily year-round activities required for the success and profitability of the farm, it is necessary to have farm help reside in both dwellings (the accessory dwelling manufactured home in conjunction with the primary single-family dwelling).

Similar to a family medical hardship dwelling, the applicant is applying for a conditional use to allow a different type of "temporary use" for a manufactured home as an accessory farm dwelling and as allowed in the acknowledged MUA-10 Zone.

The applicant has submitted a request for a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070. As noted above, in 2005, the County approved a building permit to convert a portion of a larger agricultural structure⁵ to a residence. The MUA10 Zone permits a single family dwelling, or a manufactured home subject to DCC 18.116.070, as a use permitted outright.

Subsequently, the subject manufactured home was permitted by Deschutes County as a temporary medical hardship dwelling in 2010 and 2015 along with the Manufactured Home Placement Permit MH15871, finalized in 2010. The Manufactured Home Placement permit categorizes the

⁵ County building permit B59977 (2005) allowed for the central portion of an existing barn (originally reviewed under permit AG-04-3) to be converted into the primary residence (approximately 1,080 square feet).

manufactured home as a Class A. The applicant is now requesting the existing manufactured home be utilized as a secondary accessory farm dwelling.

At the outset, Staff notes that the proposed use category in the MUA10 Zone is similar to a similarly-described use in the EFU Zone which is subject to specific criteria and may be the subject of extensive discussion and case law. However, the MUA10 Zone is a non-resource zone and is not subject to the statutory protections EFU zones are. The EFU Zone use is provided in a different context and staff believes that case law on that use are not dispositive on the MUA10 use.

Staff notes, the Title 18 definitions, Section DCC 18.04.030 do not define "secondary accessory farm dwelling." Further, Staff notes that "farm use" is not an identified use category in the MUA10 Zone, pursuant to DCC 18.32.020 and 18.32.030. However, "agricultural uses as defined in DCC Title 18" are permitted outright and the definition is included below.

Staff includes other definitions below which the Hearings Officer may find relevant to this application.

"Accessory use or accessory structure" means a use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use. Accessory uses include drilling for, and utilization of, low-temperature geothermal fluid in conjunction with the main use of the property.

"Agricultural use" means any use of land, whether for profit or not, related to raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof not specifically covered elsewhere in the applicable zone. Agricultural use includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. Agricultural use also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Agricultural use does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees.

"Dwelling unit" means one or more rooms in a building designed for occupancy by one family and having not more than one cooking area or kitchen.

"Family" means an individual or two or more persons related by blood, marriage, legal adoption, or legal guardianship living together as one housekeeping unit using a common kitchen and providing meals or lodging to not more than three additional unrelated persons, excluding servants; or a group of not more than five unrelated persons living together as one housekeeping unit using a common kitchen.

"Manufactured home" shall have the meaning as set forth in ORS 446.003.

"Primary or principal use" means the first use to which property is or may be devoted, and to which all other uses on the premises are accessory or secondary uses. As used relative to dwelling

units, the primary dwelling would be the first dwelling unit to be located on a specific parcel or lot.

Staff searched County records for similar approved facilities in the MUA10 Zone and found the following reviews:

File Nos.	Proposed Use	Property Size	Final Reviewing Body	Decision
CU-90-163	Secondary accessory farm dwelling	4.85 acres (part of a 30-acre farm operation)	Director (Administrative)	Approved
CU-95-122	Secondary accessory farm dwelling	4.88 acres	Hearings Officer	Denied

Staff references excerpts below but notes the entirety of the decisions are included as Attachments A and B to this staff report. Staff notes that while these decisions are not binding on the subject application, they may be utilized as guidance.

As part of Staff's review of the secondary accessory farm dwelling in file no. CU-90-163, Staff found on pg. 3 of the decision:

The applicant has an established farm operation with livestock and has shown a need for an accessory dwelling in conjunction with the farm use for the entire 30 acres.

This application was ultimately approved by the Deschutes County Planning Director.

As part of the Hearings Officer's review of the secondary accessory farm dwelling in file no. CU-95-122, the Hearings Officer found on pg. 4 of the decision:

In order to satisfy this criterion, the applicant must show that farm use of the property is the main use of the property and that there is connection between the farm use and the proposed accessory use or structure. Or in the words of the applicants' counsel, the issue is "whether or not the dwelling will be necessary for the farm use."

The Hearing's Officer ultimately denied the subject application and further noted the following on pg. 4 of the decision:

In addition, the circumstances warrant a critical review of the proposal. First, the proposed dwelling was sited on the property pursuant to a medical hardship permit that expired upon the death of its occupant in August of 1995. (The applicants have not argued nor does it seem likely that the temporary home was necessary to the production of their past and current hay production.) Second, the applicants' son is living in the dwelling while he attends Central Oregon Community College. This is not a situation where a structure is proposed to be sited as an integral part of an [sic] involving a non-related employee who would be offered board as part of a compensation package.

The applicants are free to pursue their existing and proposed farm uses. In other words, the lack of the accessory dwelling does not mean that the applicants cannot pursue their plans.

In regards to the subject application, the applicant's burden of proof states on pg. 5 that the farm contains approximately five (5) acres of lavender fields, greenhouses for plant propagation/nursery growing of potted plants, commercial activity in conjunction with the lavender farm with an operated store (open to the public with set hours during the spring, summer, and fall months and by appointment during the winter months), a production area for distillation of lavender plants and for making lavender products. Based on the description of uses and prior land use history, it is clear to Staff that there is an agricultural use⁶, a lavender farm, on the subject property as well as a commercial use provided in conjunction with the lavender farm. There is nothing in the record that questions the validity of the existing agricultural use or associated commercial use on the property.

According to the applicant's burden of proof, it is their intent to have the primary farm operator reside in the manufactured home and the farm help or farm employee(s) reside in the stick-built home. Further, the applicant states on Pg. 5 and 6 of the Burden of Proof that the daily year-round activities required for the success and profitability of the farm require farm help to reside in both dwellings.

Staff finds that the applicant's proposal raises a number of interpretative questions and the Code gives little to no guidance on how to interpret and apply the use category.

Staff asks the Hearings Officer to make specific findings on the following issue areas:

1. How does a "secondary accessory farm dwelling" relate to a property's primary use or primary residence?
2. Can a primary farm operator reside in a "secondary accessory farm dwelling?"
3. Can a stick-built dwelling or primary dwelling, as defined in DCC 18.04.030, be occupied by farm help or employees?
4. Does an applicant need to demonstrate a need for the "secondary accessory farm dwelling?" and if so, has the applicant demonstrated a need for the "secondary accessory farm dwelling?"

The MUA10 Zoning Code, Chapter 18.32 Section 18.32.030, Conditional Uses Permitted was originally adopted via PL-15 on November 1, 1979, where a "mobile home as a secondary accessory farm dwelling subject to the requirements set forth in section 5.120 of this ordinance, or other farm use building" was listed as a Conditional Use.

Barring section number amendments that have occurred since, the current regulations related to the proposed use were adopted via Ordinance No. 91-005, effective on March 4, 1991. The latest

⁶ As defined in DCC 18.040.030

version of Section 18.32.030 was adopted by Ordinance 2021-013 on April 5, 2022.

Section 18.32.040. Dimensional Standards

In an MUA Zone, the following dimensional standards shall apply:

...

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

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The proposed accessory farm dwelling does not include buildings or structures to be erected or enlarged. Therefore, this criterion does not apply.

As noted above, the applicant did not include height information for the manufactured home as part of this application record. As discussed above, staff is reviewing this proposal as new despite the manufactured home's pre-existing condition. Therefore, staff finds this criterion is applicable to the application. As noted in the Staff Findings and Decision for the 2015 Temporary Use Permit (File No. 247-15-000238-TU), "According to County Records, the existing manufactured home, proposed for use as the temporary medical hardship unit, was established under County permit MH-15871. The unit is a 2010 Gallatin Woodsman, double-wide, Class A manufactured home and has a height that is well below the 30 foot limit."

There is nothing in the record to suggest that the previously approved temporary manufactured home has been altered since its placement in 2010. The same 30-foot height standard applied in 2010 as does today. Therefore, staff finds the manufactured home complies with this requirement.

Staff recommends the following condition of approval be included in any decision which approves the application:

Building Height

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

Section 18.32.050. Yards

- A. The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.***
- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall***

- be a minimum of 100 feet.*
- C. *Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.***
 - D. *The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.***
 - E. *In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

FINDING: The applicant provided the following response in the submitted burden of proof statement:

The proposed accessory farm dwelling will occupy the existing manufactured home previously approved on the property as a family medical hardship dwelling. In its approval of the hardship dwelling, the county found that the submitted plot plan for the hardship manufactured home met the required setbacks of DCC 18.32.040. The location of the proposed use will remain on the exact same structure and footprint as the existing manufactured home. Therefore, this section does not apply.

As discussed above, staff is reviewing this proposal as new despite the manufactured home pre-existing condition. Therefore, staff finds this criterion is applicable to the application.

The application materials include a site plan which shows the location of the manufactured home on the subject property. The site plan shows the manufactured home is setback 30 feet from the side (east) property line. The site plan did not include dimensions for other setbacks. However, staff notes the Manufactured Home Placement permit depicts a ±460-foot front (north) yard setback, ±550-foot side (west) yard setback, and a ±107-foot rear (south) yard setback. There is nothing in the record to suggest the location of the manufactured home has changed since permitted in 2010. For these reasons, staff finds the proposed manufactured dwelling complies with setbacks in (A) through (C).

Under DCC 18.116.180, the purpose of the solar setback is, "...to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings..." The northern lot line of the subject property abuts Connarn Road, where future structural development is impracticable. Therefore, Staff finds that the area immediately adjacent to the north lot line, is not a location of a "Potential Structure," as defined in DCC 18.04.030. Staff finds that the solar protections of DCC 18.116.180 do not apply to this area and, therefore, the solar setback does not apply to the manufactured dwelling.

Staff recommends the following conditions of approval be included in any decision which approves the application:

General Setbacks All buildings or structures shall meet the setback standards as outlined in DCC 18.16.070 (A – C).

Building and Structural Code Setbacks

All buildings or structures shall comply with any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

Section 18.32.060. Stream Setbacks

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

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

FINDING: There are no streams or lakes in the project vicinity.

Section 18.32.070. Rimrock Setback

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: There is no rimrock in the project vicinity.

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)

FINDING: The subject property is located within the SMIA-X Zone in association with mine site 368. Mining at this site was completed in 1998 and subsequently mine site 368 was reclaimed as confirmed by the Oregon Department of Geology and Mineral Industries on March 17, 2000. Therefore, staff finds the application is not subject to the provisions of Chapter 18.56.

Chapter 18.80, Airport Safety Combining Zone (AS)

Section 18.80.020. Application of Provisions.

The provisions of DCC 18.80.020 shall only apply to unincorporated areas located under airport imaginary surfaces and zones, including approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces and runway protection zones. While DCC 18.80 identifies dimensions for the entire imaginary surface and zone, parts of the surfaces and/or zones do not apply within the Redmond, Bend or Sisters Urban Growth Boundaries.

The Redmond Airport is owned and operated by the City of Redmond, and located wholly within the Redmond City Limits.

Imaginary surface dimensions vary for each airport covered by DCC 18.80.020. Based on the classification of each individual airport, only those portions (of the AS Zone) that overlay existing County zones are relevant.

Public use airports covered by DCC 18.80.020 include Redmond Municipal, Bend Municipal, Sunriver and Sisters Eagle Air. Although it is a public-use airport, due to its size and other factors, the County treats land uses surrounding the Sisters Eagle Air Airport based on the ORS 836.608 requirements for private-use airports. The Oregon Department of Aviation is still studying what land use requirements will ultimately be applied to Sisters. However, contrary to the requirements of ORS 836.608, as will all public-use airports, federal law requires that the FAA Part 77 surfaces must be applied. The private-use airports covered by DCC 18.80.020 include Cline Falls Airpark and Juniper Airpark.

FINDING: The proposed development is located beneath the approach surface for the Redmond Municipal Airport. Therefore, the provisions of this chapter apply.

Section 18.80.028. Height Limitations.

All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]

- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]***
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.***
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)***

FINDING: The proposed structure will have a maximum elevation of 3,302 feet above sea level. Per DCC 18.80.022, the Redmond Municipal Airport has a runway elevation of 3,077 feet and the approach surface for Airport above the subject property has an approximate elevation 4,485 feet. Therefore, staff finds the proposed development will not penetrate the imaginary surfaces. This criterion will be met.

Section 18.80.044. Land Use Compatibility.

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080]

- A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38D provides that interior noise levels should not exceed 45 decibels in all habitable zones.]***

FINDING: The subject property is not within the noise impact boundary associated with the Airport. This criterion does not apply.

- B. Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.***

FINDING: The proposed use is not an industrial, commercial, or recreational use. This criterion also requires that no use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

Staff recommends the following condition of approval be included in any decision which approves

the application:

Outdoor Lighting: No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

- C. *Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.***

FINDING: Staff recommends the following condition of approval be included in any decision which approves the application:

Glare: No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

- D. *Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

FINDING: The proposed use is not an industrial, mining or similar use, or expansion of an existing industrial, mining or similar use. This criterion does not apply.

- E. *Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.***

FINDING: Staff finds that the proposed use will not cause or create electrical interference. This criterion will be met.

- F. *Limitations and Restrictions on Allowed Uses in the RPZ, Transitional Surface, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in***

DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.

FINDING: The subject property is located within the approach surface associated with the Redmond Airport. The proposal includes a secondary accessory farm dwelling which staff characterizes as a residential use. Based on DCC 18.80, Table 1, the proposed residential use may be allowed under limited circumstances as outlined in note L(10) of Table 1. The subject property is approximately 29,000 feet from the outer edge of the Runway Protection Zone (RPZ). At this distance from the RPZ, there is no limitation on the density of residential development. Therefore, the proposed residential use will comply with DCC 18.80, Table 1 and staff finds the criterion is met.

Section 18.80.054. Conditional Uses.

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.

FINDING: The proposed use is permitted conditionally in the underlying zone. Therefore, staff finds the applicant's proposal is also permitted conditionally in the AS Zone. Further, DCC 18.80.044 does not prohibit the proposed use.

Chapter 18.116, Supplementary Provisions

Section 18.116.050, Manufactured Homes

Manufactured Home Classes. For purposes of these regulations, manufactured homes are divided into the following types:

A. A Class A manufactured home shall:

- 1. Have more than 1,000 square feet of occupied space in a double section or larger multi-section unit;***
- 2. Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;***
- 3. Have wheels, axles and hitch mechanisms removed;***
- 4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;***
- 5. Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;***
- 6. Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated mat finish colored metal and tile materials, but not including high***

gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and

7. *Have siding materials of a type customarily used on site-constructed residences such as clapboard, horizontal vinyl or aluminum lap-siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.*

B. A Class B manufactured home shall:

1. *Have at least 750 square feet of occupied space in a single, double, expand or multi-section unit;*
2. *Be placed on a foundation, as specified by the manufacturer. Skirting shall be required;*
3. *Have wheels, axles and hitch mechanisms removed;*
4. *Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;*
5. *Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;*
6. *Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and*
7. *Have siding materials of a type customarily used on site constructed residences such as clapboard, horizontal vinyl or aluminum lap siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.*

C. A Class C manufactured home shall:

1. *Have at least 576 square feet of occupied space, excluding tipouts and hitches;*
2. *Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;*
3. *Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976, or bear the Oregon Department of Commerce "Insignia of Compliance"; and*
4. *Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications.*

FINDING: The Burden of Proof states,

The placement of the manufactured dwelling had its final inspection approved in 2010. The applicant believes the subject manufactured home still meets the code as required for a

Class A manufactured home described above.

Staff notes Deschutes County DIAL indicates the federal classification of the manufactured home placed in 2010⁷ is noted as "A" and the home contains 1,726-square-feet. There is nothing in the record to suggest the class type has changed. Staff finds the subject manufactured home is a Class A.

However, staff asks the Hearings Officer to make specific findings on this issue.

Section 18.116.070, Placement Standards for Manufactured Homes.

- A. As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zone:**
- 1. In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA 10, F-1, F 2, RR 10, any area zoned as an unincorporated community (as that term is defined herein), RSR M, RSR 5, and FP as the primary dwelling, and R I and SM as a caretaker's residence.**

FINDING: The Burden of Proof states,

The manufactured home is located in the MUA-10 Zone.

It is not clear to staff if the standards above allow a Class A manufactured home to be utilized as a secondary accessory farm dwelling, or if only a Class C manufactured home may be utilized as a secondary accessory farm dwelling, as discussed below.

Staff agrees that the manufactured home is located within the MUA10 Zone, but notes the criterion under A.1 above notes the "...as the primary dwelling" at the conclusion of the sentence. The property owner is requesting the manufactured home be utilized as a secondary accessory farm dwelling. Therefore, it is not clear to staff if the existing Class A manufactured home can be utilized as a secondary accessory farm dwelling or if Class A or B can only be for the primary dwelling pursuant to DCC 18.116.070(A)(1).

It can also be read that Class A and B manufactured homes in the FP Zone must only be established as primary dwellings and that the requirement does not apply to the other zones listed in the criterion, just as in RI and SM a Class A or B is only permitted as a caretakers residence.

Staff asks the Hearings Officer to make specific findings on this issue.

Staff recommends the following condition of approval be included in any decision which finds a Class A or B can be utilized as a secondary accessory farm dwelling:

Class A, B, or C Manufactured Home. Only a Class A, B, or C manufactured home may be utilized as

⁷ Deschutes County Permit Number: 247-MH15871.

a secondary accessory farm dwelling pursuant to DCC 18.116.050 and 18.116.070.

2. In manufactured home parks and subdivisions.

FINDING: The Burden of Proof states,

The subject site and existing manufactured home is not located in or adjacent to a manufactured home park or subdivision.

Staff agrees.

3. As permitted in DCC 18.116.080 and 18.116.090.

FINDING: The Burden of Proof states,

The manufactured home has obtained a placement permit. The applicant is requesting that the manufactured home be approved as a “temporary” accessory farm dwelling, similar to temporary housing allowed during construction of a permanent dwelling under DCC 18.116.080, and to temporary housing allowed for medical hardship under DCC 18.116.090. The applicant believes this request is similar to these two dwelling types, and would be consistent with county policy.

According to staff, there are only two cases that they are aware of where conditional uses for accessory farm dwellings under the MUA-10 Zone were requested. The first decision approved the second dwelling as the property was made up of several legal lots of record (CU-90-163). The second decision was denied by the hearings officer as the applicant could not make the requisite connection between the current farm use, proposing to grow kiwi, and the proposed accessory dwelling (CU-95-122). As stated above in response to DCCA 18.32.030(G), there is a direct connection between the commercial nature of the lavender farm and the need for the proposed accessory manufactured home⁸.

Staff notes the above criterion references DCC 18.116.080 and 18.116.090 which is specific to a “manufactured home or RV as a temporary residence on an individual lot” which is placed upon a lot for which a building permit for a housing unit has been obtained. The intent of this use category is to allow temporary occupancy of an RV or manufactured home during satisfactory progress towards construction of a permanent dwelling.

Further, DCC 18.116.090, contains standards specific to a temporary medical hardship dwelling.

The applicant has not applied for a manufactured home under the standards applicable in DCC 18.116.080 or 18.116.090. Therefore, staff finds the above standard does not apply.

⁸ The applicant is aware that approval of a manufactured home as a “temporary” accessory farm dwelling would be conditioned upon the subject property being currently employed in farm use and the dwelling be principle engaged in the farm use of the property. Otherwise, the subject manufactured home would have to be removed or decommissioned to a nonresidential use. (Staff notes this footnote is Footnote #3 as stated in the applicant’s burden of proof)

However, staff asks the Hearings Officer to make specific findings on this issue.

4. ***Class A and B manufactured homes are not permitted in any historic district or on any historic site.***

FINDING: The Burden of Proof states,

The subject site and the existing manufactured home are not located in or adjacent to a historic district or historic site.

The subject property is not an inventoried historic site and is not located in a historic district. Therefore, staff agrees with the applicant's response.

B. *Class C manufactured homes shall be permitted as follows:*

1. ***Except as otherwise allowed in DCC 18.116.070, on parcels 10 acres in size or larger.***
2. ***As a secondary accessory farm dwelling.***
3. ***In manufactured home parks and manufactured home subdivisions.***
4. ***As permitted in DCC 18.116.080 and 18.116.090.***
5. ***As a replacement to an existing non-conforming manufactured home destroyed by fire or other natural act, or as an upgrade to an existing manufactured home.***
6. ***In the following subdivisions: Rockview II, Tetherow Crossing, Chaparral Estates, Crystal Acres, Hidden Valley Mobile Estates, Johnson Acres, Seven Peaks, Sun Mountain Ranches, Deschutes River Homesites Rimrock Addition, Happy Acres, Rancho El Sereno, Whispering Pines, Bend Cascade View Estates, Raintree, Holmes Acres, La Pine Meadows North, Pine Crest Ranchettes, Dora's Acres, Pierce Tracts, Roan Park, South Forty, Tomes, Crooked River Ranch, Dale Acres, Replat/Hillman, Lake Park Estates, Mary K. Falls Estates.***
7. ***Class C manufactured homes are not permitted in any historic district or on any historic site.***

FINDING: The applicant proposes to establish an existing Class A manufactured home as a secondary accessory farm dwelling. Staff finds that the section above allows a Class C manufactured home to be permitted as a secondary accessory farm dwelling. However, the applicant has requested the existing Class A manufactured home be permitted as such. As discussed above, it is not clear to staff if a Class A manufactured home can be utilized as a secondary accessory farm dwelling or if it can only be established as a primary dwelling pursuant to DCC 18.116.070(A).

Staff asks the Hearings Officer to make specific findings on this issue.

Staff recommends the following condition of approval be included in any decision which finds only a Class C can be utilized as a secondary accessory farm dwelling:

Class C Manufactured Home. Only a Class C manufactured home may be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.050 and 18.116.070.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

- A. A conditional use listed in DCC Title 18 shall be permitted, altered or denied in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.**
- B. In the case of a use existing prior to the effective date of DCC Title 18 and classified in DCC Title 18 as a conditional use, any change in use or lot area or an alteration of structure shall conform with the requirements for a conditional use.**

FINDING: The proposed conditional use is reviewed in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan. No prior use now classified as a conditional use is being modified by this proposal.

Section 18.128.015, General Standards Governing Conditional Uses.

Except for those conditional uses permitting individual single family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:

FINDING: The use subject to conditional use review is a manufactured home as a secondary accessory farm dwelling.

- A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:**
 - 1. Site, design and operating characteristics of the use;**

FINDING: The conditional use proposed under this application is the establishment of an existing manufactured home as a secondary accessory farm dwelling.

The applicant provided the following response in the submitted Burden of Proof statement:

The site is suitable for the proposed conditional use as an accessory farm dwelling because of its on-site proximity to the use of the property as a commercial lavender farm. The operating characteristic of the proposed use of the manufactured home is to serve as the on-site residence for the primary farm operators and part owner of the lavender farm. The site is accessed by an existing driveway off of Connarn Road. The location of the proposed conditional use of the for accessory farm dwelling is within the same existing manufactured home placed on the same location of the property and found suitable for a temporary dwelling.

Comments from other agencies and the general public did not identify any site, design, or operating characteristic deficiencies related to the proposed secondary accessory farm dwelling.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

2. Adequacy of transportation access to the site; and

FINDING: Transportation access is provided to the site by Connarn Road, a County-maintained rural local roadway. Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. As noted by the Deschutes County Transportation Planner, the subject property has two driveway permits approved by Deschutes County (#247-19-001534-DA and #247-SW4543) and thus complies with the access permit requirements of DCC 17.48.210(A). The subject application does not propose additional driveways.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.

FINDING: The site is generally level and presents no topographical constraints on the proposed use. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. There are no Goal 5 inventoried natural resources on the site that merit protection. Further, the property does not contain any mapped wetlands or special flood hazard areas.

Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).

FINDING: The applicant provided the following response to DCC 18.128.015(B&C) in the submitted Burden of Proof statement:

The proposed use is compatible with existing and projected uses on surrounding properties based on the existing location of the manufactured home, driveway and its operating characteristics as the on-site home of the primary farm operator and partial owner.

The applicant and owners understand that approval of the proposed accessory farm dwelling may include conditions ensuring that the standards will be met. This may include a

limitation that only farm help may occupy the dwellings.

Pursuant to the factors listed in DCC 18.128.015(A), staff notes that the proposed use would be unsuitable if the siting, design, and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts could include visual, noise, dust, and odor impacts. Staff also notes the proposed use would be unsuitable if access to the site would significantly adversely impact existing and projected uses on surrounding properties. Lastly, staff notes the proposed use would be unsuitable if it significantly adversely impacts off-site topography, natural hazards, or natural resource values.

Staff requests the Hearings Officer make specific findings on whether this criterion is met.

C. *These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.*

FINDING: To the extent this decision is conditioned under DCC 18.128 criterion, Staff notes such conditions are authorized by this criterion.

Section 18.128.020, Conditions.

In addition to the standards and conditions set forth in a specific zone or in DCC 18.124, the Planning Director or the Hearings Body may impose the following conditions upon a finding that additional restrictions are warranted.

- A. *Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. *Require a special yard or other open space or a change in lot area or lot dimension.***
- C. *Require a limitation on the height, size or location of a structure.***
- D. *Specify the size, number, location and nature of vehicle access points.***
- E. *Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. *Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. *Limit or specify the number, size, location, height and lighting of signs.***
- H. *Limit the location and intensity of outdoor lighting and require shielding.***
- I. *Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.***
- J. *Specify the size, height and location of any materials to be used for fencing.***
- K. *Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.***
- L. *Require that a site plan be prepared in conformance with DCC 18.124.***

FINDING: To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, staff finds such conditions

are authorized by this section.

Section 18.128.040, Specific Use Standards.

A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.

FINDING: As described herein, the proposed conditional use is reviewed in accordance with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370, as applicable.

SYSTEM DEVELOPMENT CHARGE

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. peak hour trip. From an SDC perspective, staff finds the proposed use would in effect establish the trip generation equivalent of a new second dwelling on the property. Staff notes the burden of proof on Page 5 describes the intensity of the use as "...year-round farm help, seven days a week, with part-time and full-time staff varying in between four and up to 10 employees throughout the year." On Page 6, the burden of proof it states "...it is necessary to have farm help reside in both dwellings." County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$4,115 (\$5,080 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS SUBMITTED.

ON JULY 1, 2023, THE SDC BECOMES \$5,406 PER PEAK HOUR TRIP AND THIS RATE WILL BE VALID UNTIL JUNE 30, 2024. THIS WILL INCREASE THE SDC FROM \$4,115 TO \$4,379 (\$5,406 X 0.81).

IV. CONCLUSION

As noted above, Staff raises a number of interpretive issue areas to the Hearings Officer specific to the standards. Staff requests the Hearings Officer to determine:

- How does a "secondary accessory farm dwelling" relate to a property's primary use or primary residence?
- Can a primary farm operator reside in a "secondary accessory farm dwelling?"
- Can a stick-built dwelling or primary dwelling, as defined in DCC 18.04.030, be occupied by farm help or employees?

- Does an applicant need to demonstrate a need for the “secondary accessory farm dwelling?” and if so, has the applicant demonstrated a need for the “secondary accessory farm dwelling?”
- Can a Class A manufactured home be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.070?

Staff recommends the following conditions of any approval:

V. RECOMMENDED CONDITIONS OF APPROVAL

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** **Prior to the initiation of use**, the property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.
- C.** Building Height: No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.
- D.** General Setbacks: All buildings or structures shall meet the setback standards as outlined in DCC 18.16.070 (A – C).
- E.** Building and Structural Code Setbacks: All buildings or structures shall comply with any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- F.** Outdoor Lighting: No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- G.** Glare: No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.
- H.** Class A, B, or C Manufactured Home. Only a Class A, B, or C manufactured home may be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.050 and 18.116.070.

or;

Class C Manufactured Home. Only a Class C manufactured home may be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.050 and 18.116.070.

VI. DURATION OF APPROVAL, NOTICE, AND APPEALS

Staff recommends the Hearings Officer include the following statement as part of any approval:

The applicant shall initiate the use for the proposed development within two (2) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

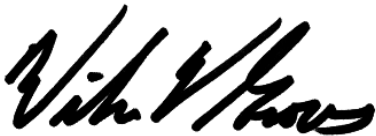
Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

DESCHUTES COUNTY PLANNING DIVISION



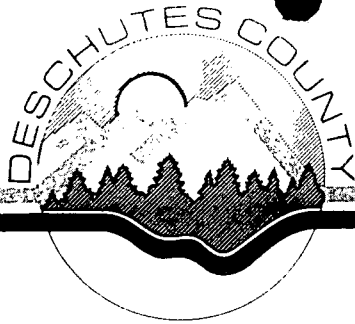
Written by: Haleigh King, Associate Planner



Reviewed by: Will Groves, Planning Manager

Attachment(s):

- Attachment A: Deschutes County Land Use File No. CU-90-163, Findings and Decision
- Attachment B: Deschutes County Land Use File No. CU-95-122, Findings and Decision
- Attachment C: Deschutes County Manufactured Home Placement Permit – MH15871 (2010)
- Attachment D: Deschutes County Land Use File No. 247-15-000238-TU, Findings and Decision



Community Development Department

Administration Bldg. / 1130 N.W. Harriman / Bend, Oregon 97701

(503) 388-6575

Planning Division
Building Safety Division
Environmental Health Division

FINDINGS AND DECISION

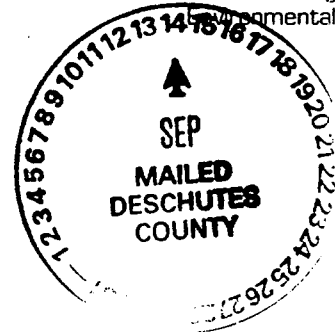
FILE NUMBER: CU-90-163

**APPLICANT/
PROPERTY OWNER:** Raymond L. Curry
68252 Gist Road
Bend, Oregon 97701

REQUEST: Conditional Use for an accessory farm dwelling in a MUA-10.

REVIEWER: Jim Raisanen

BURDEN OF PROOF:



1. PL-15. The Deschutes County Zoning Ordinance.
 - Section 4.060. Multiple Use Agriculture - MUA-10.
 - Article 8. Conditional Uses.
2. PL-20. The Deschutes County Comprehensive Plan.
3. Ordinance 82-011. Deschutes County Procedures Ordinance.

BASIC FINDINGS:

1. **LOCATION:** The subject property is located at 67216 Gist Road, Bend; and is further described as Tax Lot 3000 in Township 15S, Range 11E, Section 30C.
2. **ZONING:** The subject property is zoned MUA-10 and is designated as Rural Residential by the Deschutes County Comprehensive Plan Year 2000. The surrounding area consists of MUA-10 and EFU-20 zoning.

3. **SITE DESCRIPTION:** The parcel is 4.85 acres and is relatively flat with a vegetative covering of drygrass, irrigated grasses and small areas of natural vegetation. The applicant owns five (5) adjoining parcels that effectively makes the property a 30-acre farm. There is a mobile home, shop/barn and corral area on the farm. There is livestock on the property and the property appeared to be entirely fenced.
4. The applicant is proposing to construct a secondary accessory farm dwelling over the shop/barn near the existing primary dwelling. The construction has already begun and is awaiting final approval of the building permit.
5. The surrounding parcels are irrigated pasture lands with dwellings, vacant lands and rural residential homesites.
6. There are 20 acres of irrigation water utilized on this property from a well.
7. The soil type is Lundgren Sandy Loam which has its principal uses for irrigated crops and pasture. Soil capability is VI(s).
8. The Planning Division received the following comments:
 - a. **Deschutes County Public Works Department:**

An access permit is required for any new access to Gist Road which is a County Road.
 - b. **Environmental Health Division:**

A Septic Site Evaluation is required.
 - c. **State Watermaster's Office:**

There are Squaw Creek Irrigation District water rights allocated to this parcel. The applicant needs to contact our office to clear any water issues before final approval.
 - d. **Cloverdale Rural Fire Protection District.**

This application will have little impact on the RFPD to deliver fire suppression services to the premises. The new residence should be assigned an address by the Property Address Coordinator.
 - e. The Property Address Coordinator assigned the address of 67216 Gist Road.

- f. The County Building Division had no comments.
9. There was one letter received from the public. The respondent was concerned about the applicant having too many dwellings on the property and location of the dwellings meeting the setbacks of the zone.

CONCLUSIONARY FINDINGS:

1. The applicant has an established farm operation with livestock and has shown a need for an accessory dwelling in conjunction with the farm use for the entire 30 acres.
2. This approval is being based on the use of the entire 30 acres, therefore, the applicant will not be allowed any other dwellings on any of the six (6) parcels, unless the accessory dwelling is removed. Because there is potential for six (6) dwellings on the 30 acres, it is felt this accessory dwelling will meet the intent of the Ordinance as only two (2) are being allowed without further action by the applicant.
3. While the accessory dwelling being approved is not for a mobile home, the current "primary" residence is a double-wide manufactured home. This home, because of its less permanent nature, could be considered the "accessory" dwelling for removal at a later date.
4. A site visit did not show more than one mobile home on the property.

CONCLUSIONS:

Based upon the above findings and the applicant's Burden of Proof Statement, it appears that all relevant criteria and standards established for a Conditional Use of this type have been satisfied by the applicant or can be satisfied if certain conditions are met.

DECISION:

APPROVAL

CONDITIONS OF APPROVAL:

1. The applicant shall meet all the requirements of the Deschutes County Building Safety Division, Environmental Health Division, and/or State of Oregon.

2. The applicant shall obtain an access permit for any new access to Gist Road from the Public Works Department.
3. No other building permits will be issued for dwellings on tax lots 2000, 2100, 2700, 2800, 2900 and 3000 unless the accessory dwelling is first removed.
4. The applicant shall provide written verification from the State Watermaster's Office that all water rights issues have been resolved prior to issuance of the building permit.
5. All conditions of preliminary approval shall be completed within one (1) year from the date this decision is mailed or the preliminary approval shall be void.

This decision becomes final ten (10) days after the date mailed unless appealed by a party of interest.

DESCHUTES COUNTY PLANNING DIVISION

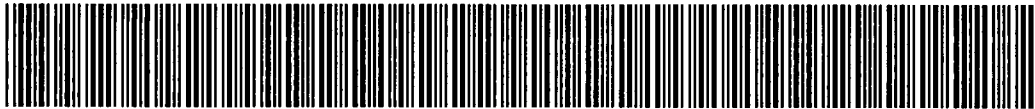


George J. Read, Planning Director

JR:mic

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DIVISION	PL
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HOUSE#	63960
STREET	OLD BEND REDMOND
CONTENT	CU95122 H.O. Decision
RECORD ID	CU95122
LOCATED IN	DATE FILE

Cover Sheet Identifier

AHJKMTWX

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBER: CU-95-122

APPLICANTS: Mack and Diana Hopson
63690 Old Bend Redmond Highway
Bend, Oregon 97701

PROPERTY OWNERS: Mack and Diana Hopson

REQUEST: The applicants are requesting a Conditional Use permit to establish an existing manufactured home as a secondary accessory farm dwelling in the MUA-10, Multiple Use Agricultural Zone.

STAFF: Damian P. Syrnyk, Assistant Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, the County Zoning Ordinance.

- Chapter 18.32, Multiple Use Agricultural Zone.
- Chapter 18.128, Conditional Use:

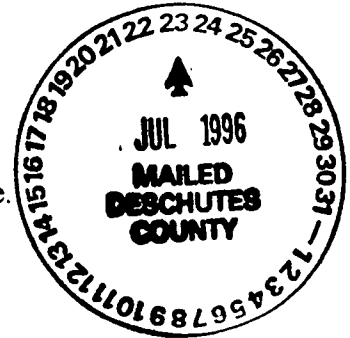
Section 18.128.015, General Standards Governing Conditional Uses.

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

The Deschutes County Year 2000 Comprehensive Plan.

II. FINDINGS OF FACT:

1. **LOCATION:** The subject property is located at 63690 Old Bend Redmond Highway. The property is identified as Tax Lot 200 on Deschutes County Assessor's Map #17-12-8B.
2. **ZONING:** The property is zoned MUA-10, Multiple Use Agricultural and LM, Landscape Management Combining. The property is designated Rural Residential Exception Area on the November 25, 1992 Deschutes County Comprehensive Plan Map. The applicant is not proposing new construction with this application that would be subject to the requirements of the Landscape Management Combining Zone.
3. **SITE DESCRIPTION:** The property is 4.88 acres in size, and fronts the Old Bend Redmond Highway on the west. The site is developed with an two manufactured homes, two small sheds, two septic drainfields, a gravel driveway, an irrigation pond and a wood fence. The two dwellings have been located towards the center of the property. During site visits on December 14, 1995 and February 12, 1996, Staff observed the vegetation occurring on the subject site consisted of a row of juniper trees occurring along the property frontage, juniper trees occurring along the northern property line and near the eastern portions of the property.



Staff further observed grasses grown in the front portion of the property, and toward the rear of the property. Staff observed irrigation pipes were in place in the western portion of the site nearest the Old Bend Redmond Highway.

4. **SURROUNDING LAND USES:** The property is located within an area zoned MUA-10. With the exception of the Old Bend Redmond Highway to the west, the site abuts property zoned MUA-10 on the north, the south, and the east. To the north and the south, properties which abut Old Bend Redmond Highway are four to five acres in size. These properties are developed with dwellings and accessory structures. Two properties fronting the west right-of-way line of the Old Bend Redmond Highway are also zoned MUA-10. These properties are five to six acres in area, and are developed with the Crossroads Community Church on one property and a dwelling on the other. Several properties to the east, and abutting Scenic Drive, are also zoned MUA-10, and are five to six acres in size. These properties are developed primarily with rural residences and accessory structures.
5. **PROPOSAL:** The applicants propose to establish an existing manufactured home as a secondary accessory farm dwelling pursuant to the requirements of the MUA - 10 zone. The application submitted indicates the property is currently engaged in the production of pasture grass as animal food. The application submitted indicates a future farm crop, a hardy variety of kiwi, will be planted on the property. The purpose of the secondary accessory farm dwelling will be to house farm help.

The subject manufactured home was permitted as a temporary use for a medical hardship pursuant to Section 18.116.090 in 1992 through Temporary Use Permit TU-92-42. The subject manufactured home was also legally permitted through Manufactured Home Permit MH12062 and Septic Installation Permit S33899.

The proposed use of the subject manufactured home, as a secondary accessory farm dwelling, may be allowed as a Conditional Use in the MUA-10 zone. The terms used in Title 18 of the County Code are defined in Section 18.040.30, Definitions. The following definitions are included in this report for the purpose of this review:

Accessory Use or Accessory Structure. A use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use.

Farm Use. The current employment of land for the primary purpose of obtaining profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use of animal husbandry or any combination thereof. Farm use includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. "Farm Use" also includes the current employment of land for the primary purpose of obtaining profit in money by stabling or training of equine. Farm use also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Farm use does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

6. **PUBLIC AGENCY COMMENTS:** The Planning Division sent written notice of the February 21, 1996 public hearing to potentially affected public agencies. The

Planning Division received the written comments as set forth in the staff report.

7. **PUBLIC NOTICE AND COMMENTS:** Pursuant to Section 22.24.030 of the Development Procedures Ordinance, the Planning Division sent notice of the February 20, 1996 public hearing to owners of record as shown on the most recent property tax assessment roll of property located within 250 feet of the subject property, as the subject property is outside of an urban growth boundary and not within a farm or forest zone.

Pursuant to Section 22.24.030(B), the applicants posted notice of the February 20, 1996 hearing and submitted the required Land Use Action Sign Affidavit which shows the Notice of Land Use Action Sign was posted on the property January 29, 1996.

8. **LOT OF RECORD:** The subject property is a legal, Lot of Record, as determined by the County through Lot of Record Determination LR-90-208.
9. **HEARING RECORD:** As a result of new information submitted by the applicants at the hearing and certain deficiencies in the record regarding the concerns raised at the hearing by staff, opponents and the hearings officer, the record was left open through May 31, 1996.

III. CONCLUSIONS OF LAW:

1. **Conformance with Chapter 18.32, Multiple Use Agricultural (MUA-10) Zone.**

Section 18.32.030, Conditional Uses Permitted:

The following uses may be allowed subject to Chapter 18.128 of this title.

- G. Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070.**

FINDING: The applicants have submitted a request for a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070. (One manufactured home was permitted by the County in 1991, as the primary residence of the property.) The subject manufactured home was permitted in 1993 by Deschutes County through Manufactured Home Placement Permit #MH12062, on the grounds of a temporary medical hardship permit for a relative.

The applicants propose to keep the existing second manufactured as a secondary accessory farm dwelling. An accessory use or structure is that which is "incidental and subordinate to the main use of the property." Incidental means to "being likely to ensue as a chance or minor consequence." Webster's New Collegiate Dictionary. Subordinate means "inferior; submissive to or controlled by authority." Id. The use of these terms in the definition of accessory use or structure suggests that there be a connection of the proposed use or structure with the main use of the property.

The definition also requires the "main use of the property" be identified. The application submitted indicates farm use as the main use of the property. Farm use means the current employment of land for the primary purpose of obtaining profit

in money by raising crops or livestock. The applicants state that the growing of grasses for animal food is already occurring on the site. The record also includes substantial material related to the proposed commercial production of hardy kiwi fruit.

In order to satisfy this criterion, the applicant must show that farm use of the property is the main use of the property and that there is connection between the farm use and the proposed accessory use or structure. Or, in the words of the applicants' counsel, the issue is "whether or not the dwelling will be necessary for the farm use."

The Hearings Officer is satisfied that the evidence in the record shows that the applicants are employing their land for the primary purpose of obtaining a profit by raising and harvesting crops. However, the materials the applicants submitted do not support a finding that there is the requisite connection between the current and proposed farm uses and the proposed accessory dwelling. In fact, some of the materials refute the need for such an accessory dwelling.

For instance, Exhibit 6 to applicants' March 21, 1996 submission, contains an article in the Woodburn Independent which states that kiwi are "relatively easy to grow" and require "little summer time maintenance other than watering and thinning." The vines remain dormant all winter long. The applicants' statements that the crop is labor intensive are not corroborated by the scientific and market materials they submitted in support of their request. This seems especially true where the initial planned crop will cover only one-half acre.

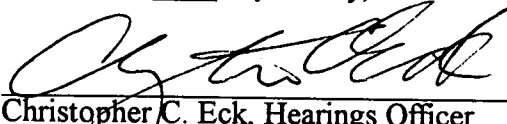
In addition, the circumstances warrant a critical review of the proposal. First, the proposed dwelling was sited on the property pursuant to a medical hardship permit that expired upon the death of its occupant in August of 1995. (The applicants have not argued nor does it seem likely that the temporary home was necessary to the production of their past and current hay production.) Second, the applicants' son is living in the dwelling while he attends Central Oregon Community College. This is not a situation where a structure is proposed to be sited as an integral part of an involving a non-related employee who would be offered board as part of a compensation package.

The applicants are free to pursue their existing and proposed farm uses. In other words, the lack of the accessory dwelling does not mean that the applicants cannot pursue their plans.

IV. DECISION.

The applicants' request for a conditional use permit for a secondary accessory farm dwelling is denied.

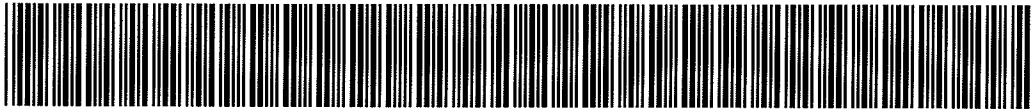
Mailed this 23rd day of July, 1996.


Christopher C. Eck, Hearings Officer

**THIS DECISION BECOMES FINAL TEN DAYS AFTER MAILING,
UNLESS TIMELY APPEALED.**

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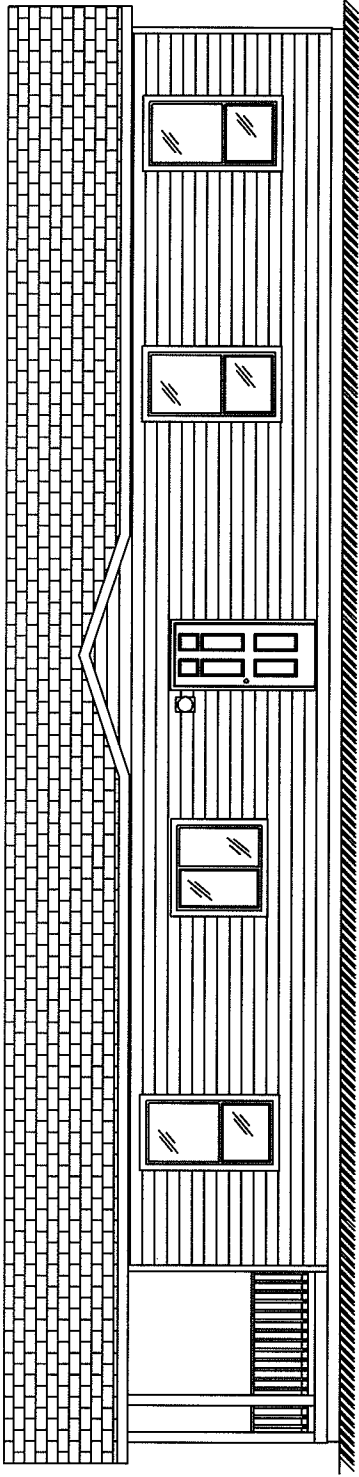
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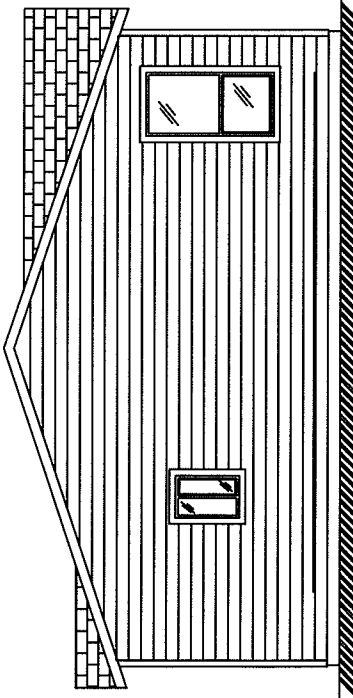
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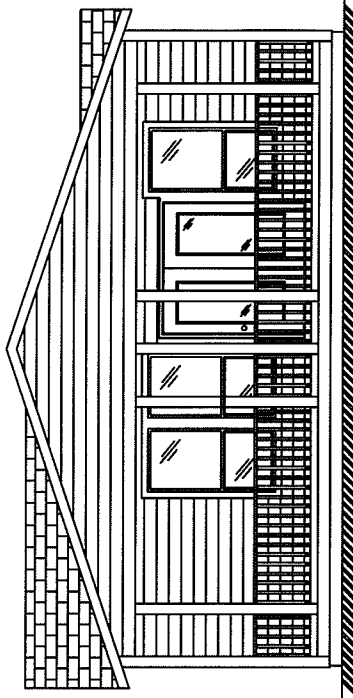
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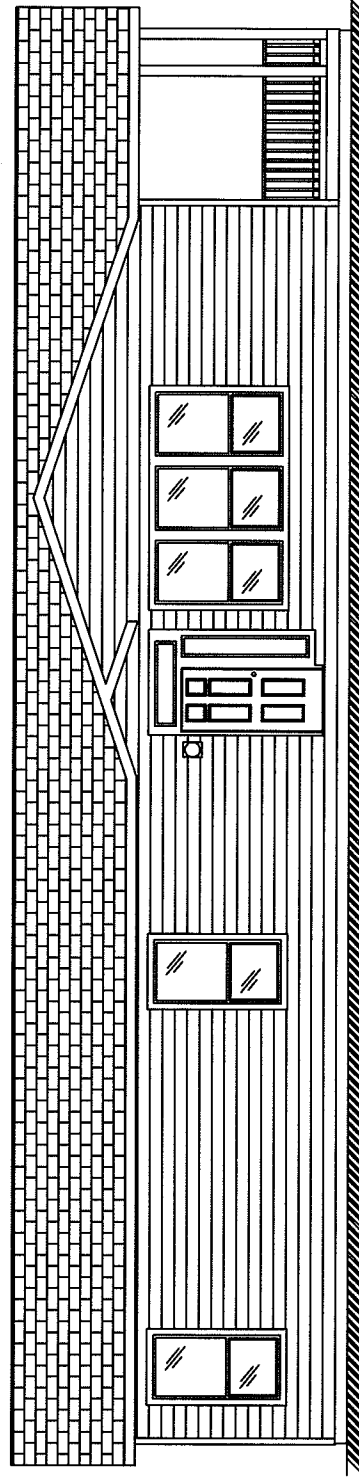
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LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



FRONT ELEVATION

BY	DATE
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TITLE EXTERIOR

CUSTOMER: KNIGHT

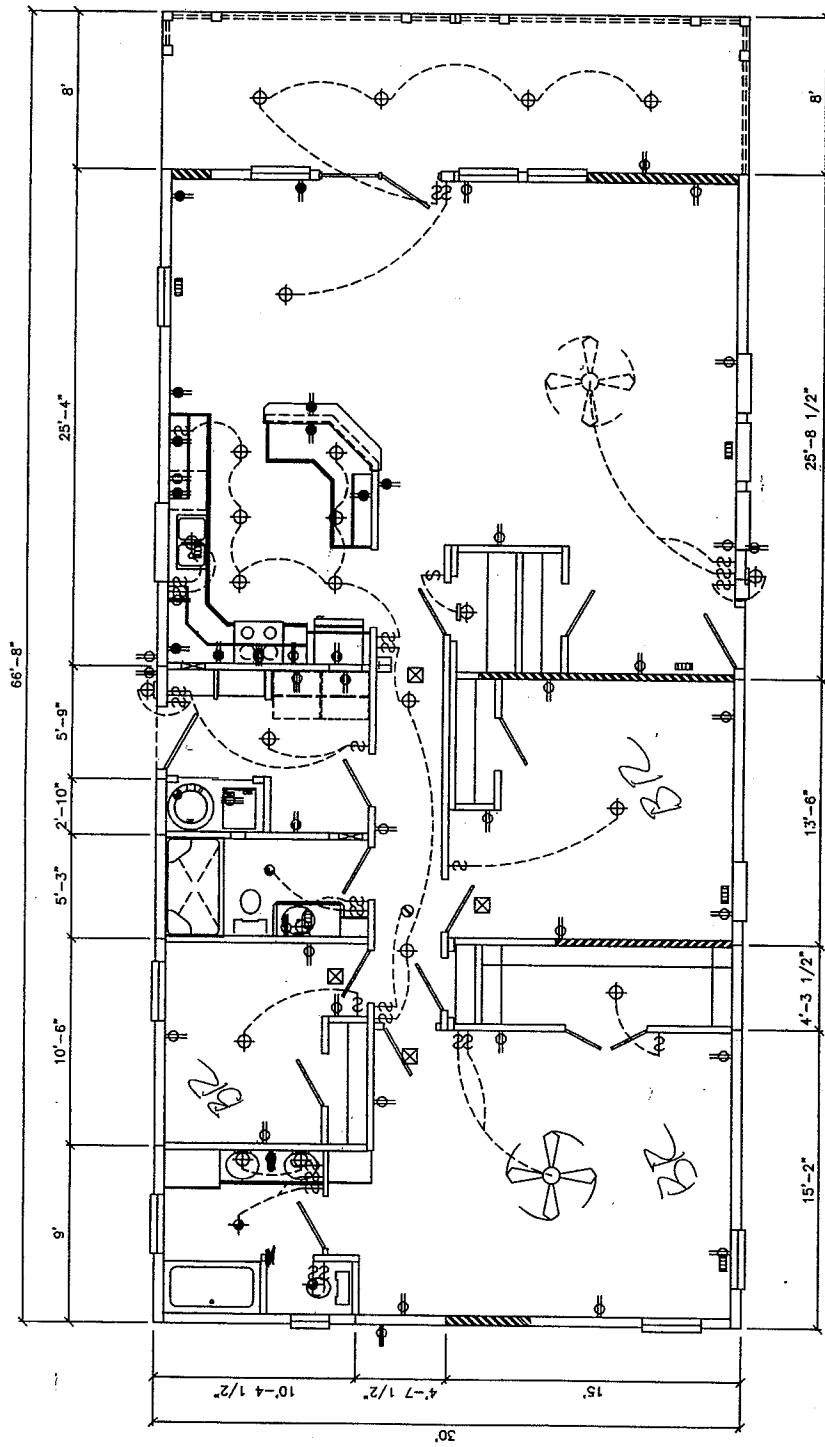
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MH15871



GALLATIN WOODSMAN
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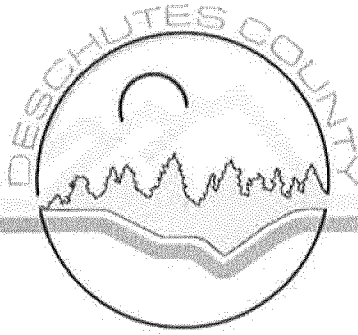
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BY	DATE
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SCALE	3/16"=1'-0"

TITLE
FUQUA HOMES INC.
FLOOR PLAN

NO. 3067DF02-EEF



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/>

July 13, 2015

Gordon Knight
19825 Connarn Road
Bend, OR 97701

Re: Temporary Use Permit to allow a Medical Hardship Dwelling, 19825 Connarn Road,
Bend; File #247-15-000238-TU

Dear Mr. Knight:

The Deschutes County Planning Division has reviewed and approved the request for a temporary use permit for the authorization of a manufactured home on property located at 19825 Connarn Road, Bend; Tax Lot 501 on County Assessor's Map 16-12-19. The application indicates that Gordon Knight's daughter, Michelle Summers, will reside on the subject property so that she can provide assistance to her father Gordon Knight, the medical hardship applicant. The subject property is zoned Multiple Use Agricultural Zone (MUA-10) and is within the Airport Safety (AS) combining zone, as well as the Surface Mining Impact Area (SMIA) combining zone. A portion of the southwest corner of the property is outside of the AS combining zone associated with the Redmond Airport. The existing manufactured home, proposed for use as the medical hardship unit, will have no impact on the imaginary zone associated with the Redmond Airport.

In the approval letter for Land Use File TU-10-8, establishing the existing manufactured home on the property as a temporary use for a medical hardship manufactured home to accommodate Glenn and Lenna Smith, Mr. Knight's father and mother-in-law, it states:

Surface Mining Impact Area review is required for all new dwellings. This property was approved for a dwelling through application no. SMA-04-4. That approval determined that there were at least two dwellings between the property and the surface mining site (County site no. 368). Because the proposed dwelling is at least one-quarter mile from the mining site, and there are two dwellings between the property and the mining site, the proposed dwelling is allowed in the SMIA zone under Deschutes County Code 18.56.110. Because a waiver of remonstrance has already been recorded for the subject property (under the County Clerk's recording number 2004-14276), no additional waiver is required.

Due to this, SMIA site plan review is not required for proposed temporary use permit involving the existing manufactured home. DCC Section 18.116.090 provides specific standards for temporary residence of a medical condition. Those standards are as follows:

Section 18.32.040, Dimensional Standards

In an MUA-10 Zone, the following dimensional standards shall apply:

- D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height.**

FINDING: According to County records, the existing manufactured home, proposed for use as the temporary medical hardship unit, was established under County permit MH-15871. The unit is a 2010 Gallatin Woodsman, double-wide, Class A manufactured home and has a height that is well below the 30 foot limit. Therefore, the proposal meets this standard.

Section 18.32.050, Yards

- A. The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.**
- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.**
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

FINDING: The subject manufactured home exists on the property and was lawfully established pursuant to Land Use File TU-10-8, a Manufactured Home Placement Permit (MH-15871) and a Septic Permit (S61076). A new location for the manufactured home is not proposed. Thus, the above yard requirements continue to be met through this proposal.

Deschutes County Code (DCC) Section 18.116.090 provides specific standards for temporary residence of a medical condition. Those standards are as follows:

Section 18.116.090. A Manufactured Home or RV as a Temporary Residence for Medical Condition

- A. A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists.**

FINDING: The proposed manufactured home is already in place from a previous temporary use approval (File No. TU-10-8) and is proposed to remain in the existing location. The application indicates that Gordon Knight's daughter, Michelle Summers, will reside on the subject property so that she can provide assistance to her father Gordon Knight, the medical hardship applicant. The applicant has a medical condition as demonstrated in the letter, dated April 28, 2015, from Dr. Sanaz W. Askari, D.O. documenting the existence of the medical hardship of the applicant, Gordon B. Knight. Therefore, the proposal meets this criterion.

- B. *The person with a medical condition must be either one of the property owners or a relative of one of the property owners.***
- C. *For the purposes of this section, a relative is defined as a grandparent, parent, child, brother or sister, either blood or legal relationship.***

FINDING: The property owners of record are Gordon Knight and Judy Knight. The applicant has submitted a letter from Dr. Sanaz W. Askari, D.O., dated April 28, 2015, documenting the existence of a medical hardship of the applicant, Gordon B. Knight. Based on this, these criteria are met.

- D. *The temporary use permit shall be reviewed annually for compliance with the terms of DCC 18.116.090.***
- E. *The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist.***

FINDING: The provisions of Sections 18.116.090(E) and (F) do not contain approval criteria. These requirements will be made conditions of approval.

- F. *If a recreational vehicle is used as a medical hardship dwelling, it shall have a bathroom, and shall meet the minimum setbacks for the zone in which it is located.***

FINDING: According to the submitted application materials and County records and data, the medical hardship dwelling is a manufactured home. Therefore, this criterion is not applicable.

- G. *The applicant shall obtain all necessary permits from the County Building and Environmental Soils Divisions prior to initiating the use.***

FINDING: As a condition of approval, the applicant shall obtain all necessary permits, if any, from the County Environmental Soils Division prior to initiating the use.

Approval is subject to the following Conditions of Approval of Section 18.116.090 of the Deschutes County Zoning Ordinance:

1. This approval is based upon the application, site plan, specifications and supporting documentation submitted by the applicant. Any substantial change in the approved use will require a new land use application.

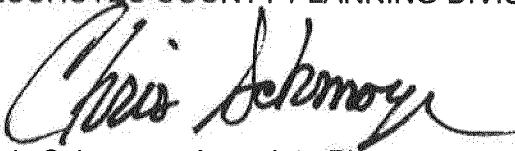
2. The permit must be updated annually by your submittal of a doctor's written statement, which confirms the continuance of a medical need for the manufactured home on the property.
3. The manufactured home placement shall meet the minimum setback standards under section 18.32.050 of Title 18 of the Deschutes County Code.
4. The proposed manufactured home shall not exceed 30 feet in height.
5. This permit is valid for as long as the medical condition requiring the permit exists.
6. The manufactured home shall be vacated and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than ninety (90) days following the date the medical condition requiring this permit ceases to exist.
7. The applicant shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.
8. Applicant shall sign and record a Conditions of Approval Agreement to ensure compliance with Conditions 1 thru 7.

This decision becomes final twelve (12) days from the date this decision is mailed unless appealed by a party of interest. The Applicant shall meet all conditions of this approval within one (1) year following the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

If you have any questions regarding this matter, please feel free to contact me at (541) 317-3164.

Sincerely,

DESCHUTES COUNTY PLANNING DIVISION

A handwritten signature in black ink, appearing to read "Chris Schmoyer". The signature is fluid and cursive, written over the typed name below.

Chris Schmoyer, Associate Planner

Return to: Chris Schmoyer, Associate Planner
Community Development Dept.
117 NW Lafayette, P.O. Box 6005
Bend, OR 97708-6005

CONDITIONS OF APPROVAL AGREEMENT

THIS AGREEMENT, made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, ("County"), and Gordon Knight and Judy Knight ("Developer"), owners of certain real property described 19825 Connarn Road, Deschutes County, Oregon, as set forth in that certain Warranty Deed, dated June 18, 2010, as recorded in Document 2010-24695, of Deschutes County Book of Records ("Real Property").

WITNESSETH:

WHEREAS County has granted approval of Land Use Permit 247-15-000238-TU ("Permit") for the Real Property upon the condition that Developer construct and maintain certain requirements as specified therein; now, therefore,

IT IS HEREBY AGREED, by and between the parties, for and in consideration of the mutual covenants and agreements herein, as a condition precedent to the granting of final approval or occupancy, as follows:

Scope of Agreement. This Agreement affects the Real Property described above. This Agreement shall cover those improvements and requirements described in the section of this Agreement entitled "Conditions of Final Approval." Nothing in this Agreement shall require Developer to construct any improvements under the Permit, but if Developer undertakes the construction of buildings or structures, the division of real property or otherwise exercises the Permit, Developer shall be required to complete and maintain all improvements, as defined herein, in accordance with applicable County Ordinances and the Permit.

Definition of Improvement. As used herein, "improvement" means any private or public facility or service such as roadways, bike paths, access ways, pedestrian walkways, landscape areas, sewage collection and disposal systems, water systems, lighting systems, parking lots, cable utilities, circulation areas, outdoor storage areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut-and-fill areas, buffering and screening measures, street furniture, drainage facilities, or other similar improvements as approved and required in the Permit.

Definition of Permanent Maintenance. As used herein, "permanent maintenance" generally means maintenance of the structures, improvements, and landscaping that are the subject of this Agreement in a manner that will keep such structures, improvements, and landscaping in good repair or good condition and in a condition that is not a hazard to public safety. With respect to landscaping, Developer's obligations shall include, without limitation, continued irrigation of landscaping and, where applicable, pruning of landscaping to guarantee required sight distances and to otherwise protect against hazardous conditions. With respect to drainage facilities, Developer's obligations shall include, without limitation, periodic cleaning of drainage ponds, drywells, or other drainage facilities of obstructions or silt that would limit the performance or effectiveness of drainage facilities. With respect to improvements, such as

pavement and sidewalks, Developer's obligations shall include, without limitation, maintenance of the impervious nature of impervious surfaces, maintenance of evenness of surfaces so that such surfaces are not hazardous to the operation of vehicles or use by pedestrians.

Construction and Permanent Maintenance. If Developer is required under the Permit to construct improvements of any kind or to install landscaping or plantings and Developer elects to proceed with development under the permit, Developer agrees: (1) to undertake the construction and landscaping required under the land use permit, as more specifically set forth in the conditions set out herein and in the land use permit; and, (2) in the event that this Agreement and the Permit do not expire as set forth herein, to the permanent maintenance of required landscaping and improvements.

Enforcement. This Agreement shall be enforceable against any person bound by this Agreement in possession of or having fee title to the property. If any party bound by this Agreement defaults on the obligations set forth herein, the County shall be entitled to enforce this Agreement in equity. The prevailing party at trial or on appeal in any enforcement action shall be entitled to reasonable attorney fees and costs. This provision shall not limit County's rights to use other means provided by law, including but not limited to issuing a civil citation, to enforce the conditions of the Permit.

Authority of Signatories. By their signatures, all signatories to this Agreement signing in a representative capacity certify that they are authorized to sign on behalf of and bind their respective principals.

Expiration. This Agreement and the Permit shall expire on its expiration date or by the revocation of the Permit or by the explicit release by the County from this Agreement granted as part of an approval for a change of use of the Real Property. Additionally, this Agreement and the Permit shall automatically expire upon the foreclosure of any prior encumbrance upon the Real Property which results in the extinguishment of this Agreement.

No Partnership. County is not, by virtue of this Agreement, a partner or joint venture of Developer in connection with activities carried on under this Agreement, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature, and is not a guarantor of the Developer, the project, or the work to be performed.

Limitations. Should this Agreement violate any constitutional or statutory provision, it shall be void.

Persons Bound by Agreement. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall run with the land. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties, the parties' successors, heirs, executors, administrators, and assigns, or any other parties deriving any right, title or interest or use in or to the Real Property, including any person who holds such interests as security for the payment on any obligation, including the Mortgagee or other secured party in actual possession of the Real Property by foreclosure or otherwise or any person taking title from such security holder.

Conditions of Final Approval. The following are the required conditions of final approval for the Permit:

1. This approval is based upon the application, site plan, specifications and supporting documentation submitted by the applicant. Any substantial change in the approved use will require a new land use application.

2. The permit must be updated annually by your submittal of a doctor's written statement, which confirms the continuance of a medical need for the manufactured home on the property.
3. The manufactured home placement shall meet the minimum setback standards under section 18.32.050 of Title 18 of the Deschutes County Code.
4. The proposed manufactured home shall not exceed 30 feet in height.
5. This permit is valid for as long as the medical condition requiring the permit exists.
6. The manufactured home shall be vacated and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than ninety (90) days following the date the medical condition requiring this permit ceases to exist.
7. The applicant shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.

Dated this _____ day of _____, 2015.

DESCHUTES COUNTY COMMUNITY
DEVELOPMENT DEPARTMENT

Nick Lelack, Planning Director

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

On this _____ day of _____, 2015, before me, a Notary Public, personally appeared Nick Lelack, Planning Director of the Deschutes County Community Development Department, who executed the foregoing document on behalf of Deschutes County, Oregon.

Notary Public for Oregon
My commission expires: _____

Dated this _____ day of _____, 2015.

DEVELOPER

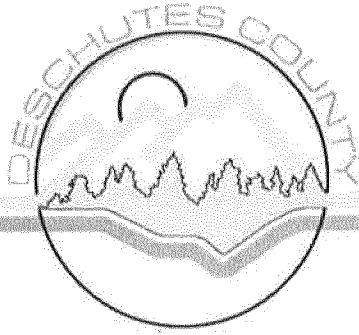
Gordon Knight

Judy Knight

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

On this ____ day of _____, 2015, before me, a Notary Public, personally appeared Gordon Knight and Judy Knight, known to me to be the persons described in the above document, who acknowledged to me that they executed the same freely and voluntarily.

Notary Public for Oregon
My commission expires: _____



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/>

CERTIFICATE OF MAILING

FILE NUMBER: 247-15-000238-TU

DOCUMENTS MAILED: Decision Letter
Conditions of Approval Agreement
(Owners only)

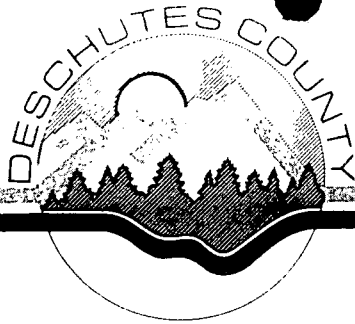
I certify that on the 13th day of July, 2015, the attached notice(s)/report(s), dated July 13, 2015, were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth below.

Dated this 13th day of July, 2015.

COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

Applicant/Owner: Gordon Knight 19825 Connarn Road Bend, OR 97701	Brent Wright 19816 Powers Rd. Bend, OR 97702
Deschutes County Assessor	



Community Development Department

Administration Bldg. / 1130 N.W. Harriman / Bend, Oregon 97701

(503) 388-6575

Planning Division
Building Safety Division
Environmental Health Division

FINDINGS AND DECISION

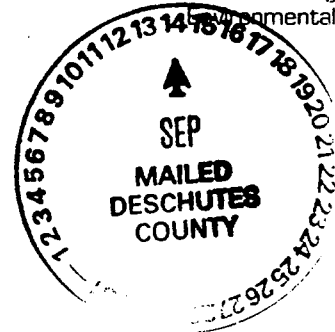
FILE NUMBER: CU-90-163

**APPLICANT/
PROPERTY OWNER:** Raymond L. Curry
68252 Gist Road
Bend, Oregon 97701

REQUEST: Conditional Use for an accessory farm dwelling in a MUA-10.

REVIEWER: Jim Raisanen

BURDEN OF PROOF:



1. PL-15. The Deschutes County Zoning Ordinance.
 - Section 4.060. Multiple Use Agriculture - MUA-10.
 - Article 8. Conditional Uses.
2. PL-20. The Deschutes County Comprehensive Plan.
3. Ordinance 82-011. Deschutes County Procedures Ordinance.

BASIC FINDINGS:

1. **LOCATION:** The subject property is located at 67216 Gist Road, Bend; and is further described as Tax Lot 3000 in Township 15S, Range 11E, Section 30C.
2. **ZONING:** The subject property is zoned MUA-10 and is designated as Rural Residential by the Deschutes County Comprehensive Plan Year 2000. The surrounding area consists of MUA-10 and EFU-20 zoning.

3. **SITE DESCRIPTION:** The parcel is 4.85 acres and is relatively flat with a vegetative covering of drygrass, irrigated grasses and small areas of natural vegetation. The applicant owns five (5) adjoining parcels that effectively makes the property a 30-acre farm. There is a mobile home, shop/barn and corral area on the farm. There is livestock on the property and the property appeared to be entirely fenced.
4. The applicant is proposing to construct a secondary accessory farm dwelling over the shop/barn near the existing primary dwelling. The construction has already begun and is awaiting final approval of the building permit.
5. The surrounding parcels are irrigated pasture lands with dwellings, vacant lands and rural residential homesites.
6. There are 20 acres of irrigation water utilized on this property from a well.
7. The soil type is Lundgren Sandy Loam which has its principal uses for irrigated crops and pasture. Soil capability is VI(s).
8. The Planning Division received the following comments:
 - a. **Deschutes County Public Works Department:**

An access permit is required for any new access to Gist Road which is a County Road.
 - b. **Environmental Health Division:**

A Septic Site Evaluation is required.
 - c. **State Watermaster's Office:**

There are Squaw Creek Irrigation District water rights allocated to this parcel. The applicant needs to contact our office to clear any water issues before final approval.
 - d. **Cloverdale Rural Fire Protection District.**

This application will have little impact on the RFPD to deliver fire suppression services to the premises. The new residence should be assigned an address by the Property Address Coordinator.
 - e. The Property Address Coordinator assigned the address of 67216 Gist Road.

- f. The County Building Division had no comments.
9. There was one letter received from the public. The respondent was concerned about the applicant having too many dwellings on the property and location of the dwellings meeting the setbacks of the zone.

CONCLUSIONARY FINDINGS:

1. The applicant has an established farm operation with livestock and has shown a need for an accessory dwelling in conjunction with the farm use for the entire 30 acres.
2. This approval is being based on the use of the entire 30 acres, therefore, the applicant will not be allowed any other dwellings on any of the six (6) parcels, unless the accessory dwelling is removed. Because there is potential for six (6) dwellings on the 30 acres, it is felt this accessory dwelling will meet the intent of the Ordinance as only two (2) are being allowed without further action by the applicant.
3. While the accessory dwelling being approved is not for a mobile home, the current "primary" residence is a double-wide manufactured home. This home, because of its less permanent nature, could be considered the "accessory" dwelling for removal at a later date.
4. A site visit did not show more than one mobile home on the property.

CONCLUSIONS:

Based upon the above findings and the applicant's Burden of Proof Statement, it appears that all relevant criteria and standards established for a Conditional Use of this type have been satisfied by the applicant or can be satisfied if certain conditions are met.

DECISION:

APPROVAL

CONDITIONS OF APPROVAL:

1. The applicant shall meet all the requirements of the Deschutes County Building Safety Division, Environmental Health Division, and/or State of Oregon.

2. The applicant shall obtain an access permit for any new access to Gist Road from the Public Works Department.
3. No other building permits will be issued for dwellings on tax lots 2000, 2100, 2700, 2800, 2900 and 3000 unless the accessory dwelling is first removed.
4. The applicant shall provide written verification from the State Watermaster's Office that all water rights issues have been resolved prior to issuance of the building permit.
5. All conditions of preliminary approval shall be completed within one (1) year from the date this decision is mailed or the preliminary approval shall be void.

This decision becomes final ten (10) days after the date mailed unless appealed by a party of interest.

DESCHUTES COUNTY PLANNING DIVISION

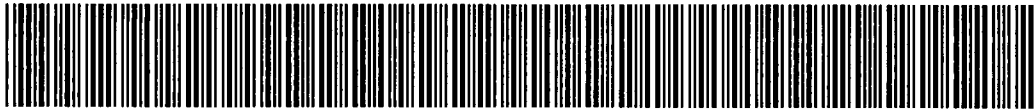


George J. Read, Planning Director

JR:mic

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12/28/2006 15:44:03

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1 PAGES



FILE ID	171208B000200PL20061228154403
TAXMAP	171208B000200
SERIAL	113142
DIVISION	PL
SITUS	63960 OLD BEND REDMOND HWY
HOUSE#	63960
STREET	OLD BEND REDMOND
CONTENT	CU95122 H.O. Decision
RECORD ID	CU95122
LOCATED IN	DATE FILE

Cover Sheet Identifier

AHJKMTWX

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER

FILE NUMBER: CU-95-122

APPLICANTS: Mack and Diana Hopson
63690 Old Bend Redmond Highway
Bend, Oregon 97701

PROPERTY OWNERS: Mack and Diana Hopson

REQUEST: The applicants are requesting a Conditional Use permit to establish an existing manufactured home as a secondary accessory farm dwelling in the MUA-10, Multiple Use Agricultural Zone.

STAFF: Damian P. Syrnyk, Assistant Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, the County Zoning Ordinance.

- Chapter 18.32, Multiple Use Agricultural Zone.
- Chapter 18.128, Conditional Use:

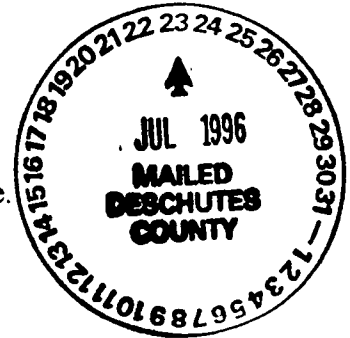
Section 18.128.015, General Standards Governing Conditional Uses.

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

The Deschutes County Year 2000 Comprehensive Plan.

II. FINDINGS OF FACT:

1. **LOCATION:** The subject property is located at 63690 Old Bend Redmond Highway. The property is identified as Tax Lot 200 on Deschutes County Assessor's Map #17-12-8B.
2. **ZONING:** The property is zoned MUA-10, Multiple Use Agricultural and LM, Landscape Management Combining. The property is designated Rural Residential Exception Area on the November 25, 1992 Deschutes County Comprehensive Plan Map. The applicant is not proposing new construction with this application that would be subject to the requirements of the Landscape Management Combining Zone.
3. **SITE DESCRIPTION:** The property is 4.88 acres in size, and fronts the Old Bend Redmond Highway on the west. The site is developed with an two manufactured homes, two small sheds, two septic drainfields, a gravel driveway, an irrigation pond and a wood fence. The two dwellings have been located towards the center of the property. During site visits on December 14, 1995 and February 12, 1996, Staff observed the vegetation occurring on the subject site consisted of a row of juniper trees occurring along the property frontage, juniper trees occurring along the northern property line and near the eastern portions of the property.



Staff further observed grasses grown in the front portion of the property, and toward the rear of the property. Staff observed irrigation pipes were in place in the western portion of the site nearest the Old Bend Redmond Highway.

4. **SURROUNDING LAND USES:** The property is located within an area zoned MUA-10. With the exception of the Old Bend Redmond Highway to the west, the site abuts property zoned MUA-10 on the north, the south, and the east. To the north and the south, properties which abut Old Bend Redmond Highway are four to five acres in size. These properties are developed with dwellings and accessory structures. Two properties fronting the west right-of-way line of the Old Bend Redmond Highway are also zoned MUA-10. These properties are five to six acres in area, and are developed with the Crossroads Community Church on one property and a dwelling on the other. Several properties to the east, and abutting Scenic Drive, are also zoned MUA-10, and are five to six acres in size. These properties are developed primarily with rural residences and accessory structures.
5. **PROPOSAL:** The applicants propose to establish an existing manufactured home as a secondary accessory farm dwelling pursuant to the requirements of the MUA - 10 zone. The application submitted indicates the property is currently engaged in the production of pasture grass as animal food. The application submitted indicates a future farm crop, a hardy variety of kiwi, will be planted on the property. The purpose of the secondary accessory farm dwelling will be to house farm help.

The subject manufactured home was permitted as a temporary use for a medical hardship pursuant to Section 18.116.090 in 1992 through Temporary Use Permit TU-92-42. The subject manufactured home was also legally permitted through Manufactured Home Permit MH12062 and Septic Installation Permit S33899.

The proposed use of the subject manufactured home, as a secondary accessory farm dwelling, may be allowed as a Conditional Use in the MUA-10 zone. The terms used in Title 18 of the County Code are defined in Section 18.040.30, Definitions. The following definitions are included in this report for the purpose of this review:

Accessory Use or Accessory Structure. A use or structure incidental and subordinate to the main use of the property, and located on the same lot as the main use.

Farm Use. The current employment of land for the primary purpose of obtaining profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use of animal husbandry or any combination thereof. Farm use includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. "Farm Use" also includes the current employment of land for the primary purpose of obtaining profit in money by stabling or training of equine. Farm use also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Farm use does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

6. **PUBLIC AGENCY COMMENTS:** The Planning Division sent written notice of the February 21, 1996 public hearing to potentially affected public agencies. The

Planning Division received the written comments as set forth in the staff report.

7. **PUBLIC NOTICE AND COMMENTS:** Pursuant to Section 22.24.030 of the Development Procedures Ordinance, the Planning Division sent notice of the February 20, 1996 public hearing to owners of record as shown on the most recent property tax assessment roll of property located within 250 feet of the subject property, as the subject property is outside of an urban growth boundary and not within a farm or forest zone.

Pursuant to Section 22.24.030(B), the applicants posted notice of the February 20, 1996 hearing and submitted the required Land Use Action Sign Affidavit which shows the Notice of Land Use Action Sign was posted on the property January 29, 1996.

8. **LOT OF RECORD:** The subject property is a legal, Lot of Record, as determined by the County through Lot of Record Determination LR-90-208.
9. **HEARING RECORD:** As a result of new information submitted by the applicants at the hearing and certain deficiencies in the record regarding the concerns raised at the hearing by staff, opponents and the hearings officer, the record was left open through May 31, 1996.

III. CONCLUSIONS OF LAW:

1. **Conformance with Chapter 18.32, Multiple Use Agricultural (MUA-10) Zone.**

Section 18.32.030, Conditional Uses Permitted:

The following uses may be allowed subject to Chapter 18.128 of this title.

- G. Manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070.**

FINDING: The applicants have submitted a request for a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling, subject to the requirements set forth in Section 18.116.070. (One manufactured home was permitted by the County in 1991, as the primary residence of the property.) The subject manufactured home was permitted in 1993 by Deschutes County through Manufactured Home Placement Permit #MH12062, on the grounds of a temporary medical hardship permit for a relative.

The applicants propose to keep the existing second manufactured as a secondary accessory farm dwelling. An accessory use or structure is that which is "incidental and subordinate to the main use of the property." Incidental means to "being likely to ensue as a chance or minor consequence." Webster's New Collegiate Dictionary. Subordinate means "inferior; submissive to or controlled by authority." Id. The use of these terms in the definition of accessory use or structure suggests that there be a connection of the proposed use or structure with the main use of the property.

The definition also requires the "main use of the property" be identified. The application submitted indicates farm use as the main use of the property. Farm use means the current employment of land for the primary purpose of obtaining profit

in money by raising crops or livestock. The applicants state that the growing of grasses for animal food is already occurring on the site. The record also includes substantial material related to the proposed commercial production of hardy kiwi fruit.

In order to satisfy this criterion, the applicant must show that farm use of the property is the main use of the property and that there is connection between the farm use and the proposed accessory use or structure. Or, in the words of the applicants' counsel, the issue is "whether or not the dwelling will be necessary for the farm use."

The Hearings Officer is satisfied that the evidence in the record shows that the applicants are employing their land for the primary purpose of obtaining a profit by raising and harvesting crops. However, the materials the applicants submitted do not support a finding that there is the requisite connection between the current and proposed farm uses and the proposed accessory dwelling. In fact, some of the materials refute the need for such an accessory dwelling.

For instance, Exhibit 6 to applicants' March 21, 1996 submission, contains an article in the Woodburn Independent which states that kiwi are "relatively easy to grow" and require "little summer time maintenance other than watering and thinning." The vines remain dormant all winter long. The applicants' statements that the crop is labor intensive are not corroborated by the scientific and market materials they submitted in support of their request. This seems especially true where the initial planned crop will cover only one-half acre.


In addition, the circumstances warrant a critical review of the proposal. First, the proposed dwelling was sited on the property pursuant to a medical hardship permit that expired upon the death of its occupant in August of 1995. (The applicants have not argued nor does it seem likely that the temporary home was necessary to the production of their past and current hay production.) Second, the applicants' son is living in the dwelling while he attends Central Oregon Community College. This is not a situation where a structure is proposed to be sited as an integral part of an involving a non-related employee who would be offered board as part of a compensation package.

The applicants are free to pursue their existing and proposed farm uses. In other words, the lack of the accessory dwelling does not mean that the applicants cannot pursue their plans.

IV. DECISION.

The applicants' request for a conditional use permit for a secondary accessory farm dwelling is denied.

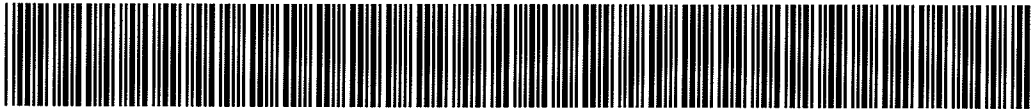
Mailed this 23rd day of July, 1996.


Christopher C. Eck, Hearings Officer

**THIS DECISION BECOMES FINAL TEN DAYS AFTER MAILING,
UNLESS TIMELY APPEALED.**

CDD COVER SHEET FOR MUM
08/19/2010 11:45:19

BU
1 PAGES



FILE ID	1612190000501BU20100819114519
TAXMAP	1612190000501
SERIAL	132493
DIVISION	BU
SITUS	19825 CONNARN RD
HOUSE#	19825
STREET	CONNARN
CONTENT	MH15871 MAHO PLAN
RECORD ID	MH15871

Cover Sheet Identifier

AHJKMTWX

14
↑

19825 CONNARD ROAD

659.46

 The inspector's review of this work is based on information provided by the applicant. Only a licensed land surveyor can determine the correct location of this building on this lot. The County Community Development Department strongly recommends that the applicant obtain a licensed land surveyor to verify the zoning setback applicable to this lot. Accuracy of building setbacks is the sole responsibility of the applicant and the applicant accepts all risks associated with any inaccurate information contained in the County's setback review because the county is relying on information provided by the applicant.

Inspector's signature: Shawn [Signature] Date: 30 JUL 10

COMMUNITY DEVELOPMENT DEPT.
 PLANNING RA DATE 8/19/10
 ENV. HEALTH DATE 7/30/10
 BUILDING WUM DATE 7/30/10

Address: 19825 Connard Rd
 Bu. Permit # MH 15871
 Septic # S 61076 (AN)

657.53'

Driveway 100'

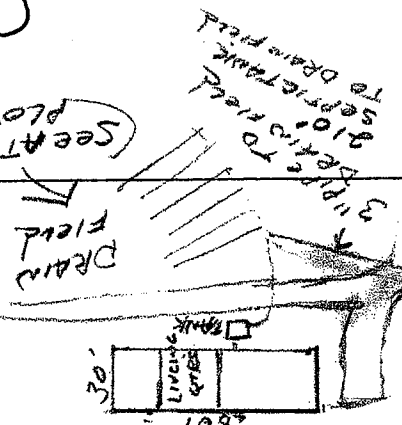
100'

16-12-1900
TL# 501

Gordon Knigh
 19825 CONNARD
 Bend OR 97701
 541 383-2441
 541 419-9449
 cell

650'

(See ATTACHED
DRAIN
FIELD
3" pipe to
septic tank
to drain field)

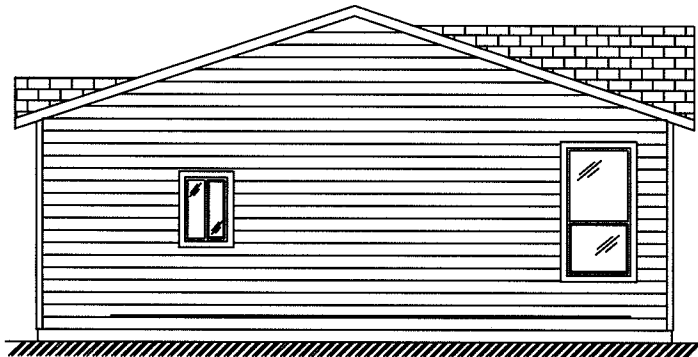


Proposed MED HANDSHIP MARY HOME
 Proposed NEW TANK
 SEPTIC TANK

SCALE
1" = 100'



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



FRONT ELEVATION

CUSTOMER: KNIGHT

	BY	DATE
DRAWN	SGJ	7/29/10
CHECKED	3067DF02DC	
SCALE	3/16"=1'-0"	



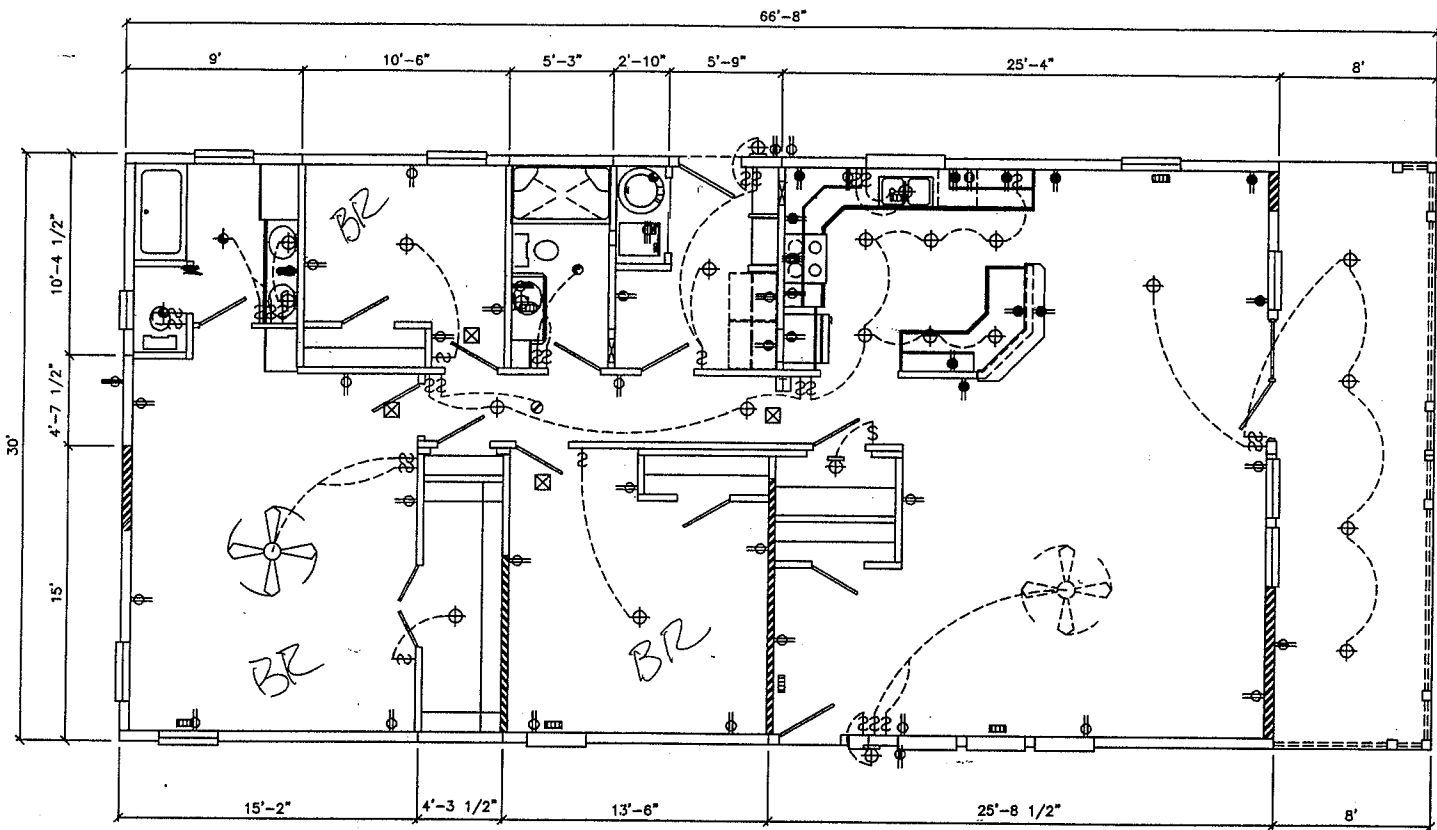
FUQUA HOMES INC.	
TITLE	NO.
EXTERIOR	3067DF02-EEF9

SN 132493

1726 SF

2010

MH15871



GALLATIN WOODSMAN
1726 SQ. FT.

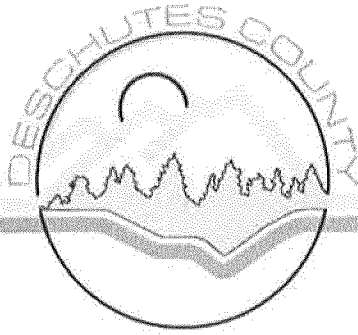
MA15871

S/N #20966

	BY	DATE
DRAWN	DRT	7/26/08
LAYER	APPROVAL	
SCALE	3/16"=1'-0"	



FUQUA HOMES INC.	
TITLE	FLOOR PLAN
NO.	3067DF02-EEF



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/>

July 13, 2015

Gordon Knight
19825 Connarn Road
Bend, OR 97701

Re: Temporary Use Permit to allow a Medical Hardship Dwelling, 19825 Connarn Road,
Bend; File #247-15-000238-TU

Dear Mr. Knight:

The Deschutes County Planning Division has reviewed and approved the request for a temporary use permit for the authorization of a manufactured home on property located at 19825 Connarn Road, Bend; Tax Lot 501 on County Assessor's Map 16-12-19. The application indicates that Gordon Knight's daughter, Michelle Summers, will reside on the subject property so that she can provide assistance to her father Gordon Knight, the medical hardship applicant. The subject property is zoned Multiple Use Agricultural Zone (MUA-10) and is within the Airport Safety (AS) combining zone, as well as the Surface Mining Impact Area (SMIA) combining zone. A portion of the southwest corner of the property is outside of the AS combining zone associated with the Redmond Airport. The existing manufactured home, proposed for use as the medical hardship unit, will have no impact on the imaginary zone associated with the Redmond Airport.

In the approval letter for Land Use File TU-10-8, establishing the existing manufactured home on the property as a temporary use for a medical hardship manufactured home to accommodate Glenn and Lenna Smith, Mr. Knight's father and mother-in-law, it states:

Surface Mining Impact Area review is required for all new dwellings. This property was approved for a dwelling through application no. SMA-04-4. That approval determined that there were at least two dwellings between the property and the surface mining site (County site no. 368). Because the proposed dwelling is at least one-quarter mile from the mining site, and there are two dwellings between the property and the mining site, the proposed dwelling is allowed in the SMIA zone under Deschutes County Code 18.56.110. Because a waiver of remonstrance has already been recorded for the subject property (under the County Clerk's recording number 2004-14276), no additional waiver is required.

Due to this, SMIA site plan review is not required for proposed temporary use permit involving the existing manufactured home. DCC Section 18.116.090 provides specific standards for temporary residence of a medical condition. Those standards are as follows:

Section 18.32.040, Dimensional Standards

In an MUA-10 Zone, the following dimensional standards shall apply:

- D. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height.**

FINDING: According to County records, the existing manufactured home, proposed for use as the temporary medical hardship unit, was established under County permit MH-15871. The unit is a 2010 Gallatin Woodsman, double-wide, Class A manufactured home and has a height that is well below the 30 foot limit. Therefore, the proposal meets this standard.

Section 18.32.050, Yards

- A. The front yard setback from the property line shall be a minimum of 20 feet for property fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way, and 80 feet from an arterial right of way unless other provisions for combining accesses are provided and approved by the County.**
- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.**
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

FINDING: The subject manufactured home exists on the property and was lawfully established pursuant to Land Use File TU-10-8, a Manufactured Home Placement Permit (MH-15871) and a Septic Permit (S61076). A new location for the manufactured home is not proposed. Thus, the above yard requirements continue to be met through this proposal.

Deschutes County Code (DCC) Section 18.116.090 provides specific standards for temporary residence of a medical condition. Those standards are as follows:

Section 18.116.090. A Manufactured Home or RV as a Temporary Residence for Medical Condition

- A. A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists.**

FINDING: The proposed manufactured home is already in place from a previous temporary use approval (File No. TU-10-8) and is proposed to remain in the existing location. The application indicates that Gordon Knight's daughter, Michelle Summers, will reside on the subject property so that she can provide assistance to her father Gordon Knight, the medical hardship applicant. The applicant has a medical condition as demonstrated in the letter, dated April 28, 2015, from Dr. Sanaz W. Askari, D.O. documenting the existence of the medical hardship of the applicant, Gordon B. Knight. Therefore, the proposal meets this criterion.

- B. *The person with a medical condition must be either one of the property owners or a relative of one of the property owners.***
- C. *For the purposes of this section, a relative is defined as a grandparent, parent, child, brother or sister, either blood or legal relationship.***

FINDING: The property owners of record are Gordon Knight and Judy Knight. The applicant has submitted a letter from Dr. Sanaz W. Askari, D.O., dated April 28, 2015, documenting the existence of a medical hardship of the applicant, Gordon B. Knight. Based on this, these criteria are met.

- D. *The temporary use permit shall be reviewed annually for compliance with the terms of DCC 18.116.090.***
- E. *The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist.***

FINDING: The provisions of Sections 18.116.090(E) and (F) do not contain approval criteria. These requirements will be made conditions of approval.

- F. *If a recreational vehicle is used as a medical hardship dwelling, it shall have a bathroom, and shall meet the minimum setbacks for the zone in which it is located.***

FINDING: According to the submitted application materials and County records and data, the medical hardship dwelling is a manufactured home. Therefore, this criterion is not applicable.

- G. *The applicant shall obtain all necessary permits from the County Building and Environmental Soils Divisions prior to initiating the use.***

FINDING: As a condition of approval, the applicant shall obtain all necessary permits, if any, from the County Environmental Soils Division prior to initiating the use.

Approval is subject to the following Conditions of Approval of Section 18.116.090 of the Deschutes County Zoning Ordinance:

1. This approval is based upon the application, site plan, specifications and supporting documentation submitted by the applicant. Any substantial change in the approved use will require a new land use application.

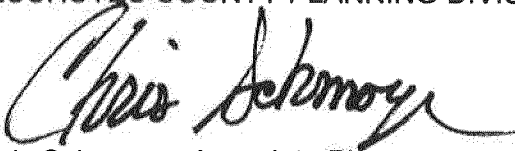
2. The permit must be updated annually by your submittal of a doctor's written statement, which confirms the continuance of a medical need for the manufactured home on the property.
3. The manufactured home placement shall meet the minimum setback standards under section 18.32.050 of Title 18 of the Deschutes County Code.
4. The proposed manufactured home shall not exceed 30 feet in height.
5. This permit is valid for as long as the medical condition requiring the permit exists.
6. The manufactured home shall be vacated and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than ninety (90) days following the date the medical condition requiring this permit ceases to exist.
7. The applicant shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.
8. Applicant shall sign and record a Conditions of Approval Agreement to ensure compliance with Conditions 1 thru 7.

This decision becomes final twelve (12) days from the date this decision is mailed unless appealed by a party of interest. The Applicant shall meet all conditions of this approval within one (1) year following the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this approval shall be void.

If you have any questions regarding this matter, please feel free to contact me at (541) 317-3164.

Sincerely,

DESCHUTES COUNTY PLANNING DIVISION

A handwritten signature in black ink, appearing to read "Chris Schmoyer". The signature is fluid and cursive, written over the typed name below.

Chris Schmoyer, Associate Planner

Return to: Chris Schmoyer, Associate Planner
Community Development Dept.
117 NW Lafayette, P.O. Box 6005
Bend, OR 97708-6005

CONDITIONS OF APPROVAL AGREEMENT

THIS AGREEMENT, made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, ("County"), and Gordon Knight and Judy Knight ("Developer"), owners of certain real property described 19825 Connarn Road, Deschutes County, Oregon, as set forth in that certain Warranty Deed, dated June 18, 2010, as recorded in Document 2010-24695, of Deschutes County Book of Records ("Real Property").

WITNESSETH:

WHEREAS County has granted approval of Land Use Permit 247-15-000238-TU ("Permit") for the Real Property upon the condition that Developer construct and maintain certain requirements as specified therein; now, therefore,

IT IS HEREBY AGREED, by and between the parties, for and in consideration of the mutual covenants and agreements herein, as a condition precedent to the granting of final approval or occupancy, as follows:

Scope of Agreement. This Agreement affects the Real Property described above. This Agreement shall cover those improvements and requirements described in the section of this Agreement entitled "Conditions of Final Approval." Nothing in this Agreement shall require Developer to construct any improvements under the Permit, but if Developer undertakes the construction of buildings or structures, the division of real property or otherwise exercises the Permit, Developer shall be required to complete and maintain all improvements, as defined herein, in accordance with applicable County Ordinances and the Permit.

Definition of Improvement. As used herein, "improvement" means any private or public facility or service such as roadways, bike paths, access ways, pedestrian walkways, landscape areas, sewage collection and disposal systems, water systems, lighting systems, parking lots, cable utilities, circulation areas, outdoor storage areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut-and-fill areas, buffering and screening measures, street furniture, drainage facilities, or other similar improvements as approved and required in the Permit.

Definition of Permanent Maintenance. As used herein, "permanent maintenance" generally means maintenance of the structures, improvements, and landscaping that are the subject of this Agreement in a manner that will keep such structures, improvements, and landscaping in good repair or good condition and in a condition that is not a hazard to public safety. With respect to landscaping, Developer's obligations shall include, without limitation, continued irrigation of landscaping and, where applicable, pruning of landscaping to guarantee required sight distances and to otherwise protect against hazardous conditions. With respect to drainage facilities, Developer's obligations shall include, without limitation, periodic cleaning of drainage ponds, drywells, or other drainage facilities of obstructions or silt that would limit the performance or effectiveness of drainage facilities. With respect to improvements, such as

pavement and sidewalks, Developer's obligations shall include, without limitation, maintenance of the impervious nature of impervious surfaces, maintenance of evenness of surfaces so that such surfaces are not hazardous to the operation of vehicles or use by pedestrians.

Construction and Permanent Maintenance. If Developer is required under the Permit to construct improvements of any kind or to install landscaping or plantings and Developer elects to proceed with development under the permit, Developer agrees: (1) to undertake the construction and landscaping required under the land use permit, as more specifically set forth in the conditions set out herein and in the land use permit; and, (2) in the event that this Agreement and the Permit do not expire as set forth herein, to the permanent maintenance of required landscaping and improvements.

Enforcement. This Agreement shall be enforceable against any person bound by this Agreement in possession of or having fee title to the property. If any party bound by this Agreement defaults on the obligations set forth herein, the County shall be entitled to enforce this Agreement in equity. The prevailing party at trial or on appeal in any enforcement action shall be entitled to reasonable attorney fees and costs. This provision shall not limit County's rights to use other means provided by law, including but not limited to issuing a civil citation, to enforce the conditions of the Permit.

Authority of Signatories. By their signatures, all signatories to this Agreement signing in a representative capacity certify that they are authorized to sign on behalf of and bind their respective principals.

Expiration. This Agreement and the Permit shall expire on its expiration date or by the revocation of the Permit or by the explicit release by the County from this Agreement granted as part of an approval for a change of use of the Real Property. Additionally, this Agreement and the Permit shall automatically expire upon the foreclosure of any prior encumbrance upon the Real Property which results in the extinguishment of this Agreement.

No Partnership. County is not, by virtue of this Agreement, a partner or joint venture of Developer in connection with activities carried on under this Agreement, and shall have no obligation with respect to Developer's debts or any other liabilities of each and every nature, and is not a guarantor of the Developer, the project, or the work to be performed.

Limitations. Should this Agreement violate any constitutional or statutory provision, it shall be void.

Persons Bound by Agreement. The original of this Agreement shall be recorded with the Deschutes County Clerk and shall run with the land. It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties, the parties' successors, heirs, executors, administrators, and assigns, or any other parties deriving any right, title or interest or use in or to the Real Property, including any person who holds such interests as security for the payment on any obligation, including the Mortgagee or other secured party in actual possession of the Real Property by foreclosure or otherwise or any person taking title from such security holder.

Conditions of Final Approval. The following are the required conditions of final approval for the Permit:

1. This approval is based upon the application, site plan, specifications and supporting documentation submitted by the applicant. Any substantial change in the approved use will require a new land use application.

2. The permit must be updated annually by your submittal of a doctor's written statement, which confirms the continuance of a medical need for the manufactured home on the property.
3. The manufactured home placement shall meet the minimum setback standards under section 18.32.050 of Title 18 of the Deschutes County Code.
4. The proposed manufactured home shall not exceed 30 feet in height.
5. This permit is valid for as long as the medical condition requiring the permit exists.
6. The manufactured home shall be vacated and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than ninety (90) days following the date the medical condition requiring this permit ceases to exist.
7. The applicant shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.

Dated this _____ day of _____, 2015.

DESCHUTES COUNTY COMMUNITY
DEVELOPMENT DEPARTMENT

Nick Lelack, Planning Director

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

On this _____ day of _____, 2015, before me, a Notary Public, personally appeared Nick Lelack, Planning Director of the Deschutes County Community Development Department, who executed the foregoing document on behalf of Deschutes County, Oregon.

Notary Public for Oregon
My commission expires: _____

Dated this _____ day of _____, 2015.

DEVELOPER

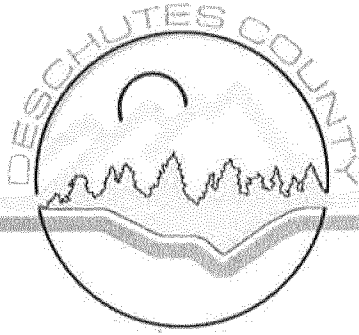
Gordon Knight

Judy Knight

STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

On this ____ day of _____, 2015, before me, a Notary Public, personally appeared Gordon Knight and Judy Knight, known to me to be the persons described in the above document, who acknowledged to me that they executed the same freely and voluntarily.

Notary Public for Oregon
My commission expires: _____



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/>

CERTIFICATE OF MAILING

FILE NUMBER: 247-15-000238-TU

DOCUMENTS MAILED: Decision Letter
Conditions of Approval Agreement
(Owners only)

I certify that on the 13th day of July, 2015, the attached notice(s)/report(s), dated July 13, 2015, were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth below.

Dated this 13th day of July, 2015.

COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

Applicant/Owner: Gordon Knight 19825 Connarn Road Bend, OR 97701	Brent Wright 19816 Powers Rd. Bend, OR 97702
Deschutes County Assessor	