



Mailing Date:
Friday, August 25, 2023

COMMUNITY DEVELOPMENT

FINDINGS AND DECISION

FILE NUMBER: 247-23-000438-RD

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511000003303
Account: 133950
Situs Address: **NO SITUS ADDRESS**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001200
Account: 133968
Situs Address: **NO SITUS ADDRESS**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001000
Account: 133952
Situs Address: **NO SITUS ADDRESS**

APPLICANT'S ATTORNEY: Myles Conway Law PC

REQUEST: The applicant requests approval to dedicate an additional segment of Fryrear Butte Road, extending through Tax Lots 1000 and 1200 (County Assessor's Map 15-11-17) and Tax Lot 3303 (County Assessor's Map 15-11-00) in the Exclusive Farm Use Zone (EFU).

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

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

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)
Title 17, Subdivision and Partition Ordinance
Chapter 17.52, Road Dedications

Title 18, Deschutes County Zoning Ordinance:
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

II. **BASIC FINDINGS**

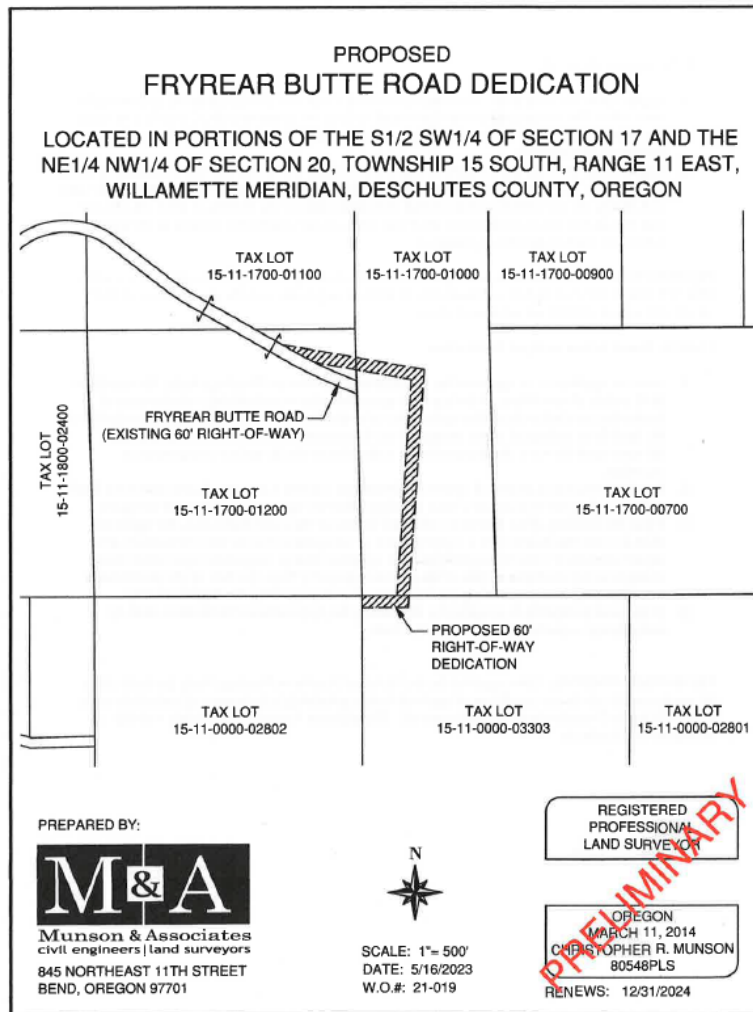
LOT OF RECORD: The three tax lots ("Subject Property") included in this application, Tax Lots 1000, 1200, and 3303, have each been verified as legal lots of record pursuant to County Land Use File Nos. 247-22-000600-LR, 599-LR, and 505-LR, respectively.

SITE DESCRIPTION: The applicant provided the following site description in their narrative:

Tax Lot 1200, County Assessor's Map 15-11-17 ("Tax Lot 1200") is an approximately 40-acre quarter-quarter section. The property is undeveloped and is bisected by the previously dedicated "Fryrear Butte Road". This property does not contain any water rights and is vegetated with juniper trees, sagebrush and native grasses. Tax Lot 1000, County Assessor's Map 15-11-17 ("Tax Lot 1000") lies to the east, does not contain any water rights and is vegetated with juniper trees, sagebrush and native grasses. Tax Lot 3303, County Assessor's Map 15-11-00 ("Tax Lot 3303") lies to the south and the affected portions of said lot are not irrigated and are vegetated with juniper trees, sagebrush and native grasses.

Staff agrees with this depiction of the subject property. The subject property also contains a 20-foot-wide, north-south Central Electric powerline easement located in the approximate center. As noted by the applicant, the subject property is undeveloped. The proposed Road Dedication is depicted in *Figure 1*, below.

Figure 1 – Proposed Road Dedication

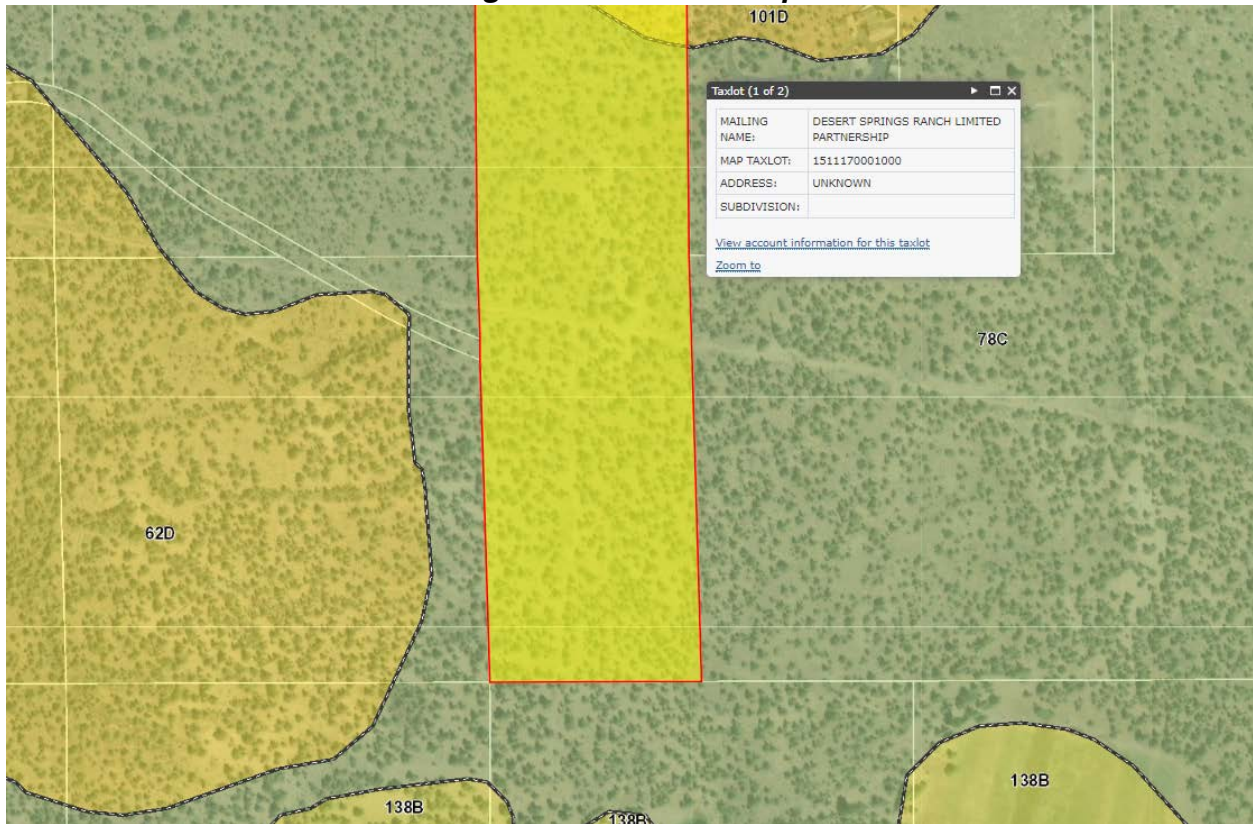


REVIEW PERIOD: The subject application was submitted on May 30, 2023 and deemed complete by the Planning Division on June 29, 2023. This is the date the application was deemed complete and accepted for review. Per Deschutes County Code (DCC) Chapter 17.52.090(B), staff calculates the 120th day on which the County must take final action on this application as October 27, 2023.

SURROUNDING LAND USES: Immediately surrounding properties to the north, west, east, and south are all EFU-zoned lots in similar sizes and shapes to the subject property. Properties to the northeast are developed with rural residential uses and are over 1,500 feet from the northern extent of the road dedication. Surrounding EFU-zoned property is generally vacant and contains juniper scrub woodland. There are some areas of irrigated fields to the west of Tax Lot 3303. The Forked Horn Estates residential subdivision, zoned Multiple Use Agriculture – 10 (MUA10) lies farther west with lots developed with single-family dwellings.

SOILS: According to the Natural Resources Conservation Service (NRCS) maps of the area, there is one soil unit mapped within the boundaries of the proposed right-of-way. See Figure 1 below:

Figure 2 – NRCS Soil Map



78C Lickskillet-Deschutes complex, 0 to 15 percent slopes: The agricultural capability rating for this soil is 6e/7e for nonirrigated and no rating for irrigated land. This soil is not considered high value farmland when irrigated.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 13, 2023, to several public agencies and received the following comments:

Deschutes County Road Department, Cody Smith

I have reviewed the application materials for the above-referenced file number, proposing the dedication of a public right of way to provide for the extension of Fryrear Butte Road across Tax Lots 1000 and 1200 on County Assessor's Map 15-11-17 and Tax Lot 3303 on County Assessor's Map 15-11-00. The proposed right of way dedication will provide for public road frontage and connectivity to Tax Lot 2802 on County Assessor's Map 15-11-00 to meet requirements under other pending land use applications (File Nos. 247-22-000372-MP and 247-22-000373-CU) for Tax Lot 4001 on County Assessor's Map 15-11-00; all tax lots referenced herein are under the Applicant's ownership. The application materials indicate that no road improvements are planned within the proposed dedication area. Road Department staff conclude that road surface improvement requirements are not warranted until such time as any tract of land abutting or accessed by the proposed right of way dedication is divided under applicable Deschutes County Code (DCC).

Deschutes County Road Department requests that approval of the proposed road dedication be subject to the following conditions:

- The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- All parties with an ownership interest in the property subject to the road dedication shall execute a dedication deed pursuant to DCC 17.52.090(A). The dedication shall be granted to the public. The dedication deed shall be in a form acceptable to the Deschutes County Road Department pursuant to DCC 17.52.040 and shall include a legal description and exhibit map prepared by a licensed professional land surveyor.
- Applicant shall submit the executed dedication deed and a current preliminary title report for the proposed dedication to the Deschutes County Community Development Department pursuant to DCC 17.52.090(A) and (C). Upon final review and approval of the dedication deed by the Road Department, the Community Development Department shall present the dedication deed to the Board of County Commissioners for acceptance pursuant to DCC 17.52.090(B).
- Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk's Office pursuant to DCC 17.52.090(D).
- Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

Deschutes County Senior Transportation Planner, Peter Russell, Tarik Rawlings

I have reviewed the transmittal materials for file 247-23-000438-RD to dedicate a 60-foot-wide right of way to extend Fryrear Butte Road through 15-11-17, Tax Lots 1000 and 1200 and 15-11-00, Tax Lot 15-11-00, Tax Lot 3303. Tax lots 1000 and 1200 are zoned Exclusive Farm Use (EFU) while 3300 is Multiple Use Agriculture (MUA-10). I have no adverse comments on the road dedications. I will defer to the Road Dept. to see if the two right angle curves are acceptable and comply with Deschutes County Code (DCC) 17.48.070 for horizontal curves. One is the right angle in the middle of Tax Lot 1000 where the Fryrear Butte Road dedication changes from west-east to a north-south orientation. The second is in the northeast corner of Tax Lot 3303 where the north-south orientation makes another 90-degree turn to an east-west alignment.

The following agencies did not respond to the notice: Deschutes County Assessor, Cloverdale Fire Department, Three Sisters Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on June 13, 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 land use action on June 10, 2023. No public comments were received.

III. FINDINGS & CONCLUSIONS

Title 17, Deschutes County Subdivision Ordinance

Chapter 17.52. Road Dedications

Section 17.52.010. Purpose.

The purpose of DCC 17.52.010 is to establish procedures for the dedication of more than minor amounts of road right of way to the public where the dedication will not be reviewed as part of another land use application. Minor amounts of road right of way means rights of way no greater than those required for modernization, traffic safety improvement, maintenance or repair of an existing road or street. DCC 17.52.010 applies to road dedications which occur outside of urban growth boundaries in Deschutes County. DCC 17.52.010 requires that road dedications be reviewed for consistency with the Transportation Policies for new roads or major road modifications of the Comprehensive Plan.

FINDING: Staff has reviewed the proposal for consistency with the Transportation Policies for new roads or major road modifications of the Comprehensive Plan in subsequent findings.

Section 17.52.030. Application.

Any person proposing the dedication of more than minor amounts of road right of way, where the proposed dedication will not be reviewed as part of another land use application, shall submit a written application for a land use permit to the Planning Director. The land use permit application shall include a completed request form, a written burden of proof statement which indicates the proposal complies with the applicable criteria, a map showing the location of the land to be dedicated, a preliminary title report covering the land to be dedicated, and the appropriate filing fee.

FINDING: Staff finds the proposed dedication of the roadway constitutes more than a minor amount of road right-of-way. The applicant has submitted a map showing the location of the land to be dedicated, a preliminary title report covering the land to be dedicated, and the appropriate filing fee in support of this application.

Section 17.52.050. Approval Criteria.

- A. Applications for road dedications in zones where Class I or II road projects, as defined by DCC 18.04.030, are permitted outright shall address the criteria in DCC 18.116.230. Such applications shall also address any applicable criteria in the zone in which the road dedication is proposed.***
- B. Applications for road dedications in zones where Class I or II road projects defined by DCC 18.04.030, or public road or highway projects defined by ORS 215.283(2)(p) through (r) and 215.283(3), are permitted as conditional uses shall address the***

criteria in DCC 18.116.230 and 18.128.015. Such applications shall also address any applicable criteria in the zone in which the road dedication is proposed.

FINDING: The applicant's burden of proof provides the following proposed findings:

The proposed right-of-way dedication is permitted as a conditional use under ORS 215.283(3), DCC 18.16.030 and OAR 660-12-0065. Compliance with the requirements of DCC 18.116.230 and 18.128.015 are referenced above.

Staff agrees and finds the subject application is a conditional use and must address the criteria in DCC 18.116.230 and 18.128.015.

Section 17.52.090. Board Action on Road Dedication.

- A. Once an application is approved by the Planning Director or Hearings Body, the applicant shall satisfy all conditions of the land use approval prior to submitting a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, the Planning Director shall forward the declaration of dedication to the Board for acceptance or rejection.***
- B. Except as otherwise provided under the Deschutes County Code, the Board shall take final action on the road dedication within 120 days after the application is deemed complete.***
- C. Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.***
- D. If the road dedication is accepted by the Board, the declaration of dedication shall be immediately recorded with the County Clerk.***

FINDING: The applicant will be required to submit a declaration of dedication and legal descriptions for the proposed road dedication, which must be signed by the property owner(s), and include a title report. If the road dedication is accepted by the Board, the declaration of dedication must be recorded with the County Clerk's Office. The declaration of dedication for the proposed road shall be completed and recorded with the County Clerk's Office within 120 days of the application being deemed complete. Staff calculates this day to be October 27, 2023. To ensure compliance, staff has added these actions as Conditions of Approval.

Section 17.52.100. Maintenance of Dedicated Roads.

Any public road created in conjunction with the dedication of public road right of way under DCC 17.52 shall be designated as a Local Access Road, as defined by ORS 368.001(3), which shall not be maintained by the County unless and until that road right of way is established

as a County road, as defined by ORS 368.001(1), by order or resolution of the County governing body as authorized by ORS 368.016(2)(c).

FINDING: Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road. Staff will include this requirement as a condition of approval.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.16, Exclusive Farm Use Zones (EFU)

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

...

U. Roads, highways and other transportation facilities, and improvements not otherwise allowed under DCC 18.16, if an exception to Goal 3, Agricultural Lands, and to any other applicable goal is first granted under state law. Transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

FINDING: The applicant's burden of proof provides the following proposed findings:

DCC 18.36.080 requires the extension of public rights-of-way in connection with any subdivision or partition in the EFU Zone. As noted above, the applicant seeks to extend a right-of-way connection from Fryrear Butte Road to Tax Lot 2802 in connection with pending County land use files 247-22-000372-MP and 247-22-000373-CU. OAR 660-12-0065 identifies transportation facilities, services and improvements that are permitted on rural lands consistent with Goals 3, 4, 11 and 14 without a goal exception, including low volume public "Access Roads" that provide access to property. The proposed dedication is authorized under OAR 660-12-0065.

Staff agrees with the applicant's statement. The proposed road dedication is reviewed as a Conditional Use. Applicable standards are addressed below.

Section 18.16.040. Limitations on Conditional Uses

A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296, applicable provisions in DCC 18.128, and upon a finding by the Planning Director or Hearings Body that the proposed use:

1. ***Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***
2. ***Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and***
3. ***That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

FINDING: The applicant's burden of proof provides the following proposed findings:

The subject property does not contain any water rights and is not actively utilized for agricultural production. The subject property is comprised entirely of Class 7 soils that are not suitable for agricultural production. In addition, the property is encumbered by power and utility easements granted to the Central Electric Cooperative (recorded in the Deschutes County public records as documents 2001-61301 and 2015-22594). The applicant seeks to extend a public right-of-way south along the eastern boundary of the property in an area comprised of Class 7 soils (classified by NRCS as 78C) that is encumbered by the existing power line easements. A depiction of the proposed right-of-way dedication segment is depicted on Exhibit A attached hereto. The proposed right-of-way area is vegetated by juniper and sagebrush. The dedication of public right-of-way in this location will not have any effect on agricultural use or production on the Desert Springs Ranch and/or any surrounding parcels. The neighboring properties are also comprised of Class 7 soils, do not have any irrigation water rights and are not utilized for ongoing agricultural production. The proposed right-of-way is located in the least suitable area for the production of farm crops and livestock and will not impact agricultural production on any surrounding parcel as required by this section.

Staff agrees with the applicant's response. Further, staff notes the proposed road dedication application does not include the construction of a physical road within the proposed dedication area; therefore, no construction or traffic impacts are expected in association with the dedication.

Chapter 18.116, Supplementary Provisions

Section 18.116.230, Standards for Class I and II Road Projects

Class I and II road or street projects shall be reviewed against the applicable Comprehensive Plan Transportation Plan element, shall be consistent with applicable road standards and shall meet the following criteria:

- A. ***Compatibility with existing land use and social patterns, including noise generation, safety hazards (e.g. children in a residential area), and zoning.***
- B. ***Environmental impacts, including hazards imposed to and by wildlife (e.g. migration or water use patterns).***
- C. ***Retention of scenic quality, including tree preservation.***
- D. ***Means to improve the safety and function of the facility, including surrounding zoning, access control and terrain modifications.***

- E. *In the case of roadways where modification results in a change of traffic types or density, impacts on route safety, route land use patterns, and route nonmotorized/pedestrian traffic.***
- F. *Consideration of the potential developmental impact created by the facility.***
- G. *Cost effectiveness.***

FINDING: The applicant's burden of proof provides the following proposed findings:

As noted above, no road or street construction is proposed in connection with the subject application. Rather, the applicant seeks to dedicate an additional right-of-way segment to extend the existing Fryrear Butte public right-of-way (designated as a "Local Access Road") south to the boundary of Tax Lot 2802. The proposed dedication area is intended to facilitate the construction of a new local access roadway at such time as Tax Lot 2802 is further partitioned. The proposed dedication area is located entirely within areas of Class 7 soil (as mapped by NRCS) and will have no impact on agricultural practices on surrounding lands. Construction of a local access roadway within this area will facilitate access for the land uses permitted within the EFU zone. Any future roadway construction will comply with applicable County roadway standards. The minimal additional traffic created by this proposal (if any) will not result in any change in traffic types or density, route safety and/or route land use patterns.

Staff agrees with the applicant's response. Further, staff notes the proposed road dedication application does not include the construction of a physical road within the proposed dedication area; therefore, no construction or traffic impacts are expected in association with the dedication. The dedicated area includes a 60-foot right-of-way which is consistent with County standards. The road dedication will extend approximately 500 feet from Fryrear Butte Road to the east before turning south for approximately 1,100 feet and then making one additional extension to the west to front on Tax Lot 2802. Staff notes there is no Landscape Management (LM) or Wildlife Area (WA) or any other overlays affecting the subject property. These overlays help to protect Goal 5 resources. However, as noted, the subject property does not contain any inventoried Goal 5 resources.

In regards to potential development impact created by the facility, the road dedication will give frontage to Tax Lot 2802 and Tax Lot 3303, where none currently exists. This may allow for these tax lots to be partitioned in the future. It is unclear at this point whether these tax lots would be eligible for a partition. However, future partitions are subject to Title 17 and Title 18 standards and submittal and review of a formal land use application. The County has not received any applications for land divisions involving Tax Lot 2802 and Tax Lot 3303. This road dedication itself does not approve or establish any development.

The applicant has submitted a Minor Partition to divide a 157.3-acre property (Map and Tax Lot 15-11, Tax Lot 4001) within the Exclusive Farm Use (EFU) Zone into two parcels (County File No. 247-22-000372-MP, 373-CU). Parcel 1 is proposed to be 153.1 acres, and Parcel 2 is proposed to be 4.2 acres. The applicant also requests approval of a conditional use permit for a non-farm (single-family) dwelling on Parcel 2. However, the newly created parcel and the remainder parcel will be accessed via Cloverdale Road and will not require improvement of the proposed road dedication.

Lastly, staff note no public funds will be expended for construction or maintenance of this road. Staff has included a condition of approval which requires any road created in this proposed dedication under DCC 17.52 shall be designated as a local access road, which shall not be maintained by the County unless and until that right-of-way is established as a County-maintained road.

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:

- 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 applicant's burden of proof provides the following proposed findings:

The applicant seeks to dedicate an extension of public right-of-way from the existing terminus of Fryrear Butte Road, through the subject property, to Tax Lot 2802. The proposed dedication area will be 60-feet in width and generally within the alignment depicted on Exhibit A attached hereto. The proposed dedication is intended to comply with the requirements of DCC 17.36.080 (Future Extension of Streets) as applicable to the larger Desert Springs Ranch property. The proposed dedication area is located entirely within mapped Class 7 soils and in a location that will have no impact on agricultural activities being conducted within Desert Springs Ranch or any surrounding property. Tax Lot 2802 has existing access from Forked Horn Drive (to the west) and no roadway construction is planned or anticipated within the proposed dedication area until such future time as said parcel may be further divided. The length and width of the proposed dedication area is sufficient to

facilitate a local access roadway supporting any future partition of Tax Lot 2802. The proposed dedication is compatible with the existing and projected uses of surrounding properties based on the factors listed in DCC 18.128.015(A), as referenced above.

As noted, the proposed road dedication does not include construction of a roadway at this time. The road dedication includes the extension of the existing Fryrear Butte Road to the south in order to provide future road access to landlocked parcels. The dedicated area includes a 60-foot right-of-way which is consistent with County standards. The road dedication will extend approximately 500 feet from Fryrear Butte Road to the east before turning south for approximately 1,100 feet and then making one additional extension to the west to front on Tax Lot 2802.

As discussed, the subject property is located on undeveloped land zoned EFU. The subject properties contain a vegetative cover of juniper and sagebrush. No portion of the subject property is currently irrigated and the dedication area does not cross any irrigated pasture or fields. The applicant proposed the dedication within an existing powerline easement to limit disturbance to the property should a road be constructed in the future. The applicant included a statement¹ from Central Electric Cooperative, the easement authority, which states the following:

Thank you for reaching out. CEC is in favor of the dedication. Please keep our facilities on one side of the ROW.

Based on the information above, staff believes the proposed site location is suitable for the road dedication considering its size, design, and operating characteristics of the use.

2. Adequacy of transportation access to the site; and

FINDING: The proposed road dedication will extend the existing Fryrear Butte road right-of-way which connects to Jordan Road, a public road maintained by the County and functionally classified as a local road. The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application and identified no required improvements to other area roadways. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of transportation access to the site.

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

FINDING: The site is generally flat and presents no topographical constraints on the proposed road dedication. 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. The subject property is located within a wildfire hazard area, however, the road dedication application does not include the construction of any structures or habitable space. Further, the road dedication does not propose road construction at this time. Although, if a future road is built within the dedicated right-of-way it

¹ Reference email from Parneli Perkins, CEC, dated May 19, 2023.

may allow greater access for emergency vehicles in the event of an emergency. The subject property is currently served by Cloverdale Fire District.

Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. The subject property is not located within a special flood hazard area. Further, there is no road construction proposed at this time, so there would be no impacts to any potential mapped wetlands.

Comments from agencies did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. There were no public comments received which identified unsuitability based on the above listed factors.

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: Staff finds this this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. Staff finds “surrounding properties” are those that might be significantly adversely impacted by their proximity to the proposed use. Existing uses on surrounding properties include rural residential uses to the west and vacant, undeveloped EFU parcels with some in apparent farm use. Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the area. These projected uses on property surrounding the subject property include residential use, and agriculture and farm use. Staff finds existing uses are a reasonable representation of uses allowed in the underlying zones of surrounding properties. For this reason, staff finds projected uses are likely to be similar to existing uses.

Staff finds that the proposed road dedication will be compatible with the existing and projected uses due to the scale of the operation and operating characteristics as analyzed in DCC 18.128.015(A) above.

(A)(1). Site, design and operating characteristics of the use;

Staff finds the proposed road dedication 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 finds the road dedication, which does not include construction of a roadway at this time, will not have a visual, noise, dust or odor impact. If a road is improved within the proposed dedication area, staff finds the road will not have a visual impact, as the dedication area will not include structures. No odors would be generated by a future roadway. Any noise impacts are expected to be temporary in nature and associated with construction, including any grading or clearing that is necessary. No significant noise, visual, dust, or odor impacts are identified in the record for the application.

(A)(2). Adequacy of transportation access to the site; and

Staff finds the road dedication would be unsuitable if access to the area of dedication would significantly adversely impact existing and projected uses on surrounding properties. The proposed road dedication will extend the existing Fryrear Butte road right-of-way which connects to Jordan Road, a public road maintained by the County and functionally classified as a local road. The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application and identified no required improvements to other area roadways. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of existing transportation access to the site.

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

Staff finds the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. As discussed above, the proposed road dedication application does not include the actual construction of a roadway. However, staff finds a future roadway in this location would not significantly impact off-site topography, natural hazards or natural resource values. The subject property is located within a wildfire hazard area, although due to its location within the boundary of the Cloverdale Fire District, staff finds this natural hazard is greatly reduced. No significant natural hazards have been identified in the record. There is no evidence in the record that the proposed use will significantly adversely impact natural resource values of the area. The area of dedication is partially within a disturbed easement area associated with an existing powerline easement and contains juniper and sagebrush vegetation. The placement of the roadway in this area will minimize disturbance to potentially viable EFU-zoned land. However, as noted, the subject properties currently do not have irrigation rights and are not in farm use.

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.

IV. CONCLUSION

Based on the foregoing findings, staff concludes that the proposed use can comply with the applicable standards and criteria of the Deschutes County zoning ordinance if conditions of approval are met.

Other permits may be required. The applicants are responsible for obtaining any necessary permits from the Deschutes County Building Division and Deschutes County Environmental Soils Division as well as any required state and federal permits.

V. DECISION

APPROVAL, subject to the following conditions of approval.

VI. 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.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- C.** All persons with an ownership interest in the properties subject to the road dedication shall

sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.

D. Per Deschutes County Code (DCC) Chapter 17.52.090:

- The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
- Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
- Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk's Office pursuant to DCC 17.52.090(D).
- Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

E. Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road.

VII. DURATION OF APPROVAL, NOTICE, AND APPEALS

The declaration of dedication for the proposed road shall be completed and recorded with the County Clerk's Office within 120 days of the application being deemed complete. Staff calculates this day to be October 27, 2023.

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

Haleigh King

Written by: Haleigh King, Associate Planner

Will Groves

Reviewed by: Will Groves, Planning Manager

Attachment: Proposed Road Dedication Map

owner	agent	inCareof	address	cityStZip	type	cdd id	email
Myles Conway			2503 NW Coe Court	Bend, OR 97703	FD	23-438-RD	myles@mconwaylaw.com
Desert Springs Ranch Limited Partnership			5051 SW Barnes Road	Portland, OR 97221	FD	23-438-RD	antonvett@comcast.net
Anton Vetterlein			430 SW Hamilton Street	Portland, OR 97239	FD	23-438-RD	
Chris Munson			845 NE 11th Street	Bend, OR 97701	FD	23-438-RD	



Mailing Date:
Friday, August 25, 2023

COMMUNITY DEVELOPMENT

NOTICE OF DECISION

The Deschutes County Planning Division has approved the land use application described below:

FILE NUMBER: 247-23-000438-RD

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511000003303
Account: 133950
Situs Address: **NO SITUS ADDRESS**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001200
Account: 133968
Situs Address: **NO SITUS ADDRESS**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001000
Account: 133952
Situs Address: **NO SITUS ADDRESS**

APPLICANT'S ATTORNEY: Myles Conway Law PC

REQUEST: The applicant requests approval to dedicate an additional segment of Fryrear Butte Road, extending through Tax Lots 1000 and 1200 (County Assessor's Map 15-11-17) and Tax Lot 3303 (County Assessor's Map 15-11-00) in the Exclusive Farm Use Zone (EFU).

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

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

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 17, Subdivision and Partition Ordinance

117 NW Lafayette Avenue, Bend, Oregon 97703 | P.O. Box 6005, Bend, OR 97708-6005

(541) 388-6575

cdd@deschutes.org

www.deschutes.org/cd

Chapter 17.52, Road Dedications
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

DECISION: Staff finds the application meets applicable criteria and approval is being granted subject to the following conditions:

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.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- A.** All persons with an ownership interest in the properties subject to the road dedication shall sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.
- D.** Per Deschutes County Code (DCC) Chapter 17.52.090:
 - The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
 - Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
 - Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
 - Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.
- E.** Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the

County unless and until that right-of-way is established as an official County road.

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. Pursuant to Ordinance 2021-014 and Deschutes County Code Section 22.32.015(B), appeals must be received by 4:00 pm.

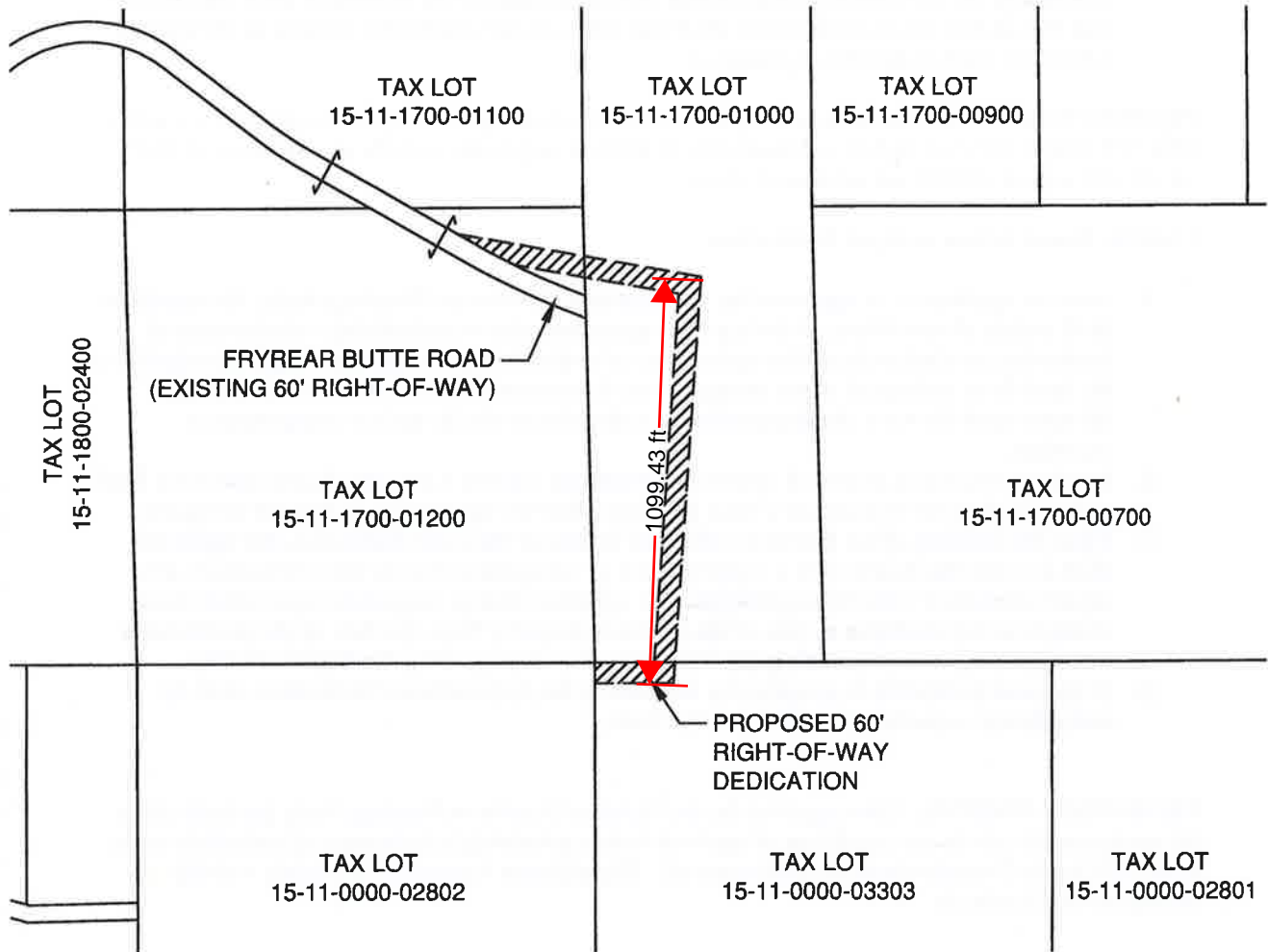
Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

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.

This Notice was mailed pursuant to Deschutes County Code Chapter 22.24.

PROPOSED
FRYREAR BUTTE ROAD DEDICATION

LOCATED IN PORTIONS OF THE S1/2 SW1/4 OF SECTION 17 AND THE
NE1/4 NW1/4 OF SECTION 20, TOWNSHIP 15 SOUTH, RANGE 11 EAST,
WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON



PREPARED BY:



Munson & Associates
civil engineers | land surveyors

845 NORTHEAST 11TH STREET
BEND, OREGON 97701



SCALE: 1" = 500'
DATE: 5/16/2023
W.O.#: 21-019

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

RENEWS: 12/31/2024

PRELIMINARY

owner	agent	inCareof	address	cityStZip	type	cdd id
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOD	23-438-RD
DESCHUTES CO. ROAD DEPT.	CODY SMITH		ELECTRONIC		NOD	23-438-RD
DESCHUTES CO. SR. TRANS. PLANNER	TARIK RAWLINGS		ELECTRONIC		NOD	23-438-RD
JOAN R HULL TRUST	HULL,WENDY C TRUSTEE	C/O MIKELYN HULL	25715 SW AIRPORT AVE	CORVALLIS, OR 97333	NOD	23-438-RD
LAWRENCE, DENISE J			28102 S SALO RD	MULINO, OR 97042	NOD	23-438-RD
DESERT SPRINGS RANCH LIMITED PARTNERSHIP		C/O VETTERLEIN, ERIC GENERAL PARTNER (A)	5051 SW BARNES RD	PORTLAND, OR 97221	NOD	23-438-RD
JOAN R HULL TRUST	HULL,WENDY C TRUSTEE	C/O MIKELYN HULL	25715 SW AIRPORT AVE	CORVALLIS, OR 97333	NOD	23-438-RD
DESCHUTES COUNTY		C/O PROPERTY MANAGEMENT	PO BOX 6005	BEND, OR 97708-6005	NOD	23-438-RD
JSTC LIMITED PARTNERSHIP			11339 S ELYSIUM AVE	PORTLAND, OR 97219	NOD	23-438-RD
SUMMER, COLBY & APRIL			17835 WARRIN RD	SISTERS, OR 97759	NOD	23-438-RD
NEWMAN, TREVOR L & TY N			3848 NW 91ST ST	REDMOND, OR 97756	NOD	23-438-RD
BALDOCK, JEROME M & DONNA M			17530 SE FORKED HORN DR	SISTERS, OR 97759	NOD	23-438-RD
JANSSENS, ERIN			43000 SE TROUT CREEK RD	CORBETT, OR 97019	NOD	23-438-RD
EDWARDS, CHERYL ANNE			17771 WARRIN RD	SISTERS, OR 97759	NOD	23-438-RD
VOGT, HOWARD F ET AL			UNKNOWN		NOD	23-438-RD