



MEMORANDUM

TO: Board of County Commissioners

FROM: Caroline House, Senior Planner

DATE: October 25, 2023

RE: An appeal of the Hearings Officer’s Decision Approving an Outdoor Motocross Facility in the Rural Residential (RR10) Zone; File Nos. 247-22-000812-CU / 247-22-000812-SP and Appeal No. 247-23-000724-A

On November 1, 2023, the Board of County Commissioners (“Board”) will consider hearing an appeal of the Hearings Officer’s decision conditionally approving an outdoor motocross facility in the RR10 Zone.

I. PROPOSAL

The Applicant is requesting conditional use and site plan approval for a recreation-oriented facility requiring large acreage. Specifically, the Applicant proposes a commercial outdoor motocross facility with four (4) courses. The subject property is located at 7505 NW Eagle Dr, Redmond, OR 97756.

II. PROCEDURAL HISTORY

The applications were received on October 11, 2022. The initial public hearing before a Hearings Officer was held on May 2, 2023. Continuances of the initial hearing were held on July 11, 2023 and August 15, 2023. The Hearings Officer approved the Applicant's request on August 31, 2023.

Subsequently, the Applicant submitted a Reconsideration application requesting changes to the conditions of approval. The Hearings Officer's Reconsideration Decision modified two (2) conditions of approval and denied modification of four (4) other conditions. On October 17, 2023, the Applicant filed a timely appeal of the Hearings Officer’s Reconsideration Decision.

III. APPLICANT'S APPEAL

The Applicant requests the Board review the Hearings Officer's decision, as part of a *de novo* review, but limit the scope of review to the following conditions of approval:

1. Reconciliation of conflict and confusion between application of Conditions of Approval U, V, W, Y, and AA concerning motorcycle noise.
2. Appeal of Condition of Approval "S" addressing the Hours of Operation to be consistent with the evidence in the record that the primary operating season is October-March.
3. Appeal of Condition of Approval "T" which limits the number of "visitors" on the property does not relate to any approval criterion.
4. Appeal of Condition of Approval "BB" requiring construction of a new restroom facility.

IV. STAFF RECOMMENDATION

There are several factors staff believes the Board should consider when deciding whether to hear this appeal. Below staff has summarized key issues that staff recommends the Board consider as part of their decision.

Reasons to hear the appeal:

- The appeal issues are primarily associated with local code requirements. For this reason, the Board decision will potentially be given deference on these matters if appealed to the Land Use Board of Appeals ("LUBA").
- Staff believes conditions of approval relying on the Department of Environmental Quality ("DEQ") Noise regulations may be difficult for the County to enforce, and the Board could consider imposing clearer conditions as part of any approval.
- There was significant public interest in the proposal.
- The Board may wish to concur, reverse, or modify the Hearing Officer's decision.

Reasons to not hear the appeal:

- The County's Noise Ordinance (DCC 8.08) will likely impact the Applicant's proposal regardless of any potential changes to the conditions of approval. Staff believes that the Applicant likely needs to initiate a Text Amendment to resolve this issue.
- Staff believes the Hearings Officer's decision to limit visitors is reasonable to ensure compatibility with the surrounding uses.
- The Board will not be afforded deference on the restroom facility requirements as this authority is given to DEQ and the County's Onsite Wastewater Division.

If the Board decides to hear the appeal, staff recommends the Board hear the appeal *de novo* and not limit the scope of review.

V. BOARD OPTIONS

First, the Board must decide if it wishes to hear the appeals. In determining whether to hear the appeals, the Board may only consider:

1. The record developed before the Hearings Officer;
2. The Notice of Appeal; and
3. Recommendation of staff¹

Option 1: Hear the Appeal

If the Board decides to hear the appeal, the Board must make a decision on the scope of the review. As noted above, the Applicant has requested a *de novo* review and to limit the issues to be reviewed by the Board. Per the Deschutes County Code (“DCC”), the Board has two choices for the scope of the review:

1. On the Record
 - This means parties can only present their arguments and the Board must rely on the record developed before the Hearings Officer. No new evidence can be submitted.
2. De Novo
 - This means parties can submit new evidence and present their arguments.

Next, the Board may wish, but is not required, to limit the issues it will consider as part of the Board’s review.

Lastly, the Board should give staff direction on when to schedule the appeal hearing and the Board may want to establish time limits for testimony at the hearing.

Option 2: Not Hear the Appeal

Should the Board decline to hear the appeal, the Hearings Officer’s decision will become the final decision of the County. Upon the mailing of the Board’s decision to decline review, the party appealing may continue their appeal as provided under the law.

¹ Deschutes County Code 22.32.035(D)

VI. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on this application is April 27, 2023.

VII. RECORD

The record for File Nos. 247-22-000812-CU & 247-22-000812-SP and the Notice of Appeal are presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

Attachments:

1. DRAFT Board Order 2023-051 Accepting Review of the Hearings Officer's Decision – Full Review
2. DRAFT Board Order 2023-051 Accepting Review of the Hearings Officer's Decision – Limited Scope of Review
3. DRAFT Board Order 2023-051 Declining Review of the Hearings Officer's Decision
4. Notice of Appeal - 247-23-000724-A

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File Nos. 247-22- * ORDER NO. 2023-051
000812-CU, 247-22-000813-SP, & 247-23-
000666-RC.

WHEREAS, on October 5, 2023, the Hearings Officer approved File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, on October 17, 2023, Justin Homan, the Applicant, appealed (Appeal No. 247-23-000724-A) the Deschutes County Hearings Officer’s Decision on File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. That it will hear on appeal Appeal No. 247-23-000724-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearings body for File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings *
Officer’s Decision in File Nos. 247-22- * ORDER NO. 2023-051
000812-CU, 247-22-000813-SP, & 247-23-
000666-RC.

WHEREAS, on October 5, 2023, the Hearings Officer approved File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, on October 17, 2023, Justin Homan, the Applicant, appealed (Appeal No. 247-23-000724-A) the Deschutes County Hearings Officer’s Decision on File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. That it will hear on appeal Appeal No. 247-23-000724-A pursuant to Title 22 of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo* and the scope of the review will be limited to the issues raised in the Applicant’s appeal.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearings body for File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board’s official repository for the record in this matter.

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of Hearings *
Officer’s Decision in File Nos. 247-22- * ORDER NO. 2023-051
000812-CU, 247-22-000813-SP, & 247-23-
000666-RC.

WHEREAS, on October 5, 2023, the Hearings Officer approved File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, on October 17, 2023, Justin Homan, the Applicant, appealed (Appeal No. 247-23-000724-A) the Deschutes County Hearings Officer’s Decision on File Nos 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear appeals of Hearings Officers’ decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. That it will not hear on appeal Appeal No. 247-23-000724-A pursuant to Title 22 of the DCC and/or other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fee not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 3. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for File Nos. 247-22-000812-CU, 247-22-000813-SP, & 247-23-000666-RC as presented at the following website:

<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

DATED this ____ day of _____, 2023.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, Chair

ATTEST:

PATTI ADAIR, Vice Chair

Recording Secretary

PHIL CHANG, Commissioner



APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Justin Homan Phone: (541) 815-5512
Mailing Address: 7505 NW Eagle Drive City/State/Zip: Redmond, OR 97756
Email Address: Lisa@FitchandNeary.com
Land Use Application Being Appealed: 247-22-812-CU, 247-22-813 SP. Recms. 247-23-666 RC
Property Description: Township 15 Range 12 Section 11 Tax Lot 600
Appellant's Signature: See land use authorization attached Date: 10.17.23

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of



Lisa Andrach
lisa@fitchandneary.com

LAND USE AUTHORIZATION FORM

For: Deschutes County Community Development

Re: T15S-R12E-11 Tax Lot 600 (Tax Account 124991)
7505 NW Eagle Drive, Redmond, Oregon 97756

Let it be known that the firm of Fitch & Neary PC has been retained to act as my authorized agent to perform all acts for development on my property noted above. These acts include: Pre-application conference, filing applications, and/or other required documents relative to all Permit applications.

Property Owner: Justin Homan

Justin Homan
Justin Homan (Sep 8, 2023 12:46 PDT)
Justin Homan

Sep 8, 2023
date

NOTICE OF APPEAL
TO DESCHUTES COUNTY BOARD OF COMMISSIONERS

FILE NUMBER: Reconsideration file 247-23-000666-RC;
Planning Files 247-22-000812-CU/247-22-000813-SP
(hearings officer)

APPLICANT/OWNER: Justin Homan

APPLICANT’S ATTORNEY: Lisa Andrach
Fitch & Neary, P.C.
210 SW 5th St., Ste. #2
Redmond OR 97756
P: 541-316-1588
Email: lisa@fitchandneary.com

Appeal of specific conditions of approval set forth in a hearings officer decision approving a recreation-oriented facility (“ROF”) requiring large acreage. Specifically, the applicant proposes an outdoor motocross facility for training classes.

I. APPLICABLE CRITERIA

22.32.010 Who May Appeal

- A. The following may file an appeal:**
- 1. A party**

FINDING: The appellant is the applicant in Deschutes County File Nos. 247--22-000812-CU/247-22-000813-SP that are the subject of this appeal. This criterion is satisfied.

22.32.015 Filing Appeals

- 1. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.**
- 2. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 4:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 4:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.**

3. **If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body’s decision.**
4. **The appeal fee shall be paid by method that is acceptable to Deschutes County.**

FINDING: The appellant has filed herewith the required notice of appeal on the prescribed form, and the appeal fee, within the 12 days from the date of mailing of the decision on reconsideration. This criterion is met.

22.32.020 Notice Of Appeal

Every notice of appeal shall include:

A. 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 in dispute.

FINDING: Appeal concerns specific conditions of appeal imposed by the hearings officer. Because the hearings officer found that the concerns with the conditions of approval below did not “meet the standards for reconsideration of the decision,” and that “resolution of [a] conflict [between conditions of approval] is best left to the Board of Commissioners and not a hearings officer,” the hearings officer declined to modify the decision to address the applicant’s concerns.

Specifically, the appellant requests review of the following conditions of approval:

1. **Reconciliation of conflict and confusion between application of Conditions of Approval U, V, W, Y, and AA concerning motorcycle noise.**

The decision approves a recreation-oriented facility (“ROF”) for an outdoor motocross facility in the RR-10 zone. Specifically, the language in the code for the RR-10 zone identifies an off-road vehicle track or racetrack – such as the motocross facility proposed - as an example of the type of recreation-oriented facility that the Board considered may be allowed in the zone. The express language of DCC 18.60.030(G) provides

The following uses may be allowed subject to DCC 18.128:

G. Recreation-oriented facility requiring large acreage such as off-road vehicle track or race track, but not including a rodeo grounds.

(underline emphasis added)

The hearings officer imposed five (5) conditions of approval to address potential noise impacts from the approved use. However, as written, the conditions of approval are conflicting and irreconcilable, and the applicant/appellant (hereinafter “applicant”) asks the Board to clarify the conditions and resolve the conflicts. The applicant is concerned that the conflict and confusion between the Conditions of Approval regulating noise impacts has the potential to nullify the approval for motorcycle use and asks the Board of Commissioners to clarify and resolve the conflicts between the Conditions of Approval imposed.

Specifically, the Condition of Approval “AA” requires that “[w]here any condition imposed by this decision is less restrictive than any comparable conditions imposed by which is more restrictive, the more restrictive shall govern.” As written, it is not clear and objective which of the Conditions of Approval that address motorcycle noise (U, V, W, Y) is “more restrictive,” and as a result it is not clear which of the four (4) Conditions of Approval ultimately “governs” as set forth in “AA.”

This issue is extremely important because the applicant is required to make substantial improvements and financial investment to commence operation of the use, but as written is concerned that he could end up in complicated code enforcement litigation and/or be shut down if the Condition of Approval “U,” which imposes the county noise ordinance, could be construed as the most restrictive and controlling under COA “AA.”

While the applicant agrees that the county noise ordinance generally applies to “unreasonably loud or raucous noise,” the hearings officer added language to “U” which creates confusion as to how the noise ordinance applies to the approved motorcycle use. Specifically, Condition of Approval “U” provides:

The Property Owner will comply with the County Noise Control Ordinance DCC Chapter 8.08 and shall not allow or engage in any uses on the property that result in “unreasonably loud or raucous noise, defined in DCC 8.08.040(N) as “the use of any off-road motorcycle where it is heard by the occupant from the premises of an inhabited residence not owned by the user.”

(underline emphasis added)

The confusion and conflict is caused by the underlined language that the hearings officer added to the Condition of Approval “U.” If “U,” as written is construed to prohibit any motorcycle noise “where it is heard by the occupants from the premises of an inhabited residence not owned by the user,” even if generated from the use of the motocross facility, it could be applied as the most restrictive under “AA,” and such a construction would effectively nullify the ability to use the ROF as otherwise permitted.

As written, it is ambiguous if “U” is the “most restrictive” condition of approval that “governs” the use. The other three (3) Conditions of Approval addressing noise (V, W, Y) all impose requirements to comply with the DEQ Noise Control Regulations for In-Use Motor Vehicles as regulated by state adopted DEQ administrative rules, with maximum decibel levels and ambient noise restrictions. (Exhibit A) How are these three (3) conditions of approval reconciled with “U” as required by “AA” which provides that the most restrictive shall govern? The applicant wants to avoid future confusion and possible code enforcement proceedings to determine whether “U” is the most restrictive, or how it applies.

Some of the confusion is created by an error in the language of DCC 8.08.040(N)¹ which carves out an exception to the noise ordinance for permitted motorcycle noise. DCC 8.08.040(N) refers to an exception for motorcycle noise if the user has a permit and is operating the motorcycle within the terms of the permit. However, the confusion is caused by the reference in DCC 8.08.040(N) to a noise permit issued under DCC 8.08.080(B). This cross-referenced section no longer applies to permits for noise in general because the county amended DCC 8.08.080(B) in 2005 and it now only applies to permits for road construction noise. When DCC 8.08.080(B) was amended in 2005, the cross-reference in DCC 8.08.040(N) was not also amended.

However, while awkwardly worded, the code clearly intends to allow for an exception to motorcycle noise when the user has a permit and is operating within the terms of the permit. Unfortunately, the hearings officer did not include the balance of that language from the code in the Condition of Approval “U,” which would have clarified how the conditions of approval U, V, W, Y are reconciled as required by “AA.” On reconsideration, he stated that he “believe[s] the resolution of that conflict is best left to the Board of Commissioners and not to a hearings officer.” (Reconsideration, Pg.2)

¹ Specifically, the County Noise Control Ordinance **8.08.040** regulates off-road motorcycle noise generally. Then it **defines “unreasonably loud or raucous noise” to mean:**

B. Noise, which violates the standards of the Environmental Quality Commission, adopted pursuant to ORS 467.030 which are not exempt under ORS 467.035 or permitted by a variance issued under ORS 467.060;

N. The use of any off-road motorcycle or snowmobile where it is heard by the occupant from the premises of an inhabited residence not owned by the user. If the user has a permit issued under DCC 8.08.080(B), such person may operate the motorcycle or snowmobile within the terms of the permit;

(underline emphasis added)

A modification to the COA “U” to make clear that the use of the motorcycles in compliance with the other Conditions of Approval shall not be a violation of the DCC 8.08.040 Noise Control Ordinance would reconcile the conflict and allow clarity in applying the Conditions of Approval U, V, W, Y, and AA.

The applicant is prepared to make substantial changes to the property and investment into the operation of the ROF consistent with the approval, including but not limited to: purchasing a water truck, landscaping, irrigation, restroom facilities, parking, moving berms, and paying System Development Charges (SDC). The foregoing could all be nullified if the track cannot be used because of the conflict, confusion and ambiguity in the Conditions of Approval.

2. Appeal of Condition of Approval “S” addressing the Hours of Operation to be consistent with the evidence in the record that the primary operating season is October-March.

Condition of Approval “S” provides:

The hours of operation are limited as follows:

OCTOBER-MARCH: two weekdays per week and one day per weekend.

The Property Owner has the ability to select these days based upon weather, other events and customers.

Hours of operation on the 2 weekdays is limited to 10 am to 3 pm.

Hours of operation on the one weekend day is limited to 10 am to 3 pm and 6 pm to 7:30 pm. Total hours per week are limited to 10 hours.

April to September: two weekdays per week and one day per weekend. Applicant has the ability to select these days based on weather, other events and customers.

Hours of operation on the 2 weekdays and the one weekend day is limited to 10 am to 3 pm and 5 pm to 8 pm. Total hours per week are limited to 10 hours. If applicant opts not to operate during October-March, applicant shall be limited to 20 hours per week.

(underline emphasis added)

The applicant appreciates the need to limit the hours of operation for the proposed use in general, but makes the following request to the October-March operation schedule to be

consistent with the evidence in the record that the primary operating season is October-March (“winter”) due to weather conditions and event schedules. As written, the Condition of Approval allows more operating time in the summer.

The applicant testified that he works full time, and that the primary season for the use of his training course is in the winter when the track is naturally moist and there are not other courses open, or other competitions and/or events which the riders all participate in. He testified that the track is not used as much in the April to September (“summer”) season because in the summer, conflicting schedules with other events, other open courses, wind, and dry soil limit the use of the track.

Therefore, the applicant requests that the winter evening hours not be limited to only the “weekend day” because, as set forth in the evidence, the evening hours during the week work better for the applicant and training on a weekend evening is not ideal for people’s schedules generally. During the wet, cold winter weekday evenings, the neighbors are likely indoors with the windows and doors closed which serves to minimize noise impacts, and moist conditions minimize dust. It is more likely the neighbors would be outside on a weekend evening, not a weeknight evening, during the winter, so the proposal is a win-win for both the neighbors and the applicant, and is consistent with the substantial evidence in the record.

The applicant also requests that the same option that is applied to the “summer” schedule which allows a maximum of 20 hours per week if the Property Owner did not operate the prior season, also be applied to the winter operation because the winter operation is the primary operating season as set forth in the evidence and above.

The proposed modification makes the two operating seasons consistent and more conducive to the operating needs of the applicant without increasing the overall operating hours. Without the change, the primary operating season – which is winter - is extremely limited.

3. Appeal of Condition of Approval “T” which limits the number of “visitors” on the property does not relate to any approval criterion.

Condition of Approval “T” provides that “[t]he total number of riders and visitors is limited to 20 per weekday or weekend session.” The applicant asks the Board of Commissioners to remove the “visitors” from the cap because visitor impacts are already regulated by the DCC 8.08.040 the County Noise Ordinance, and the limitation on parking. Visitors generally include parents and siblings of students and including them in the cap on riders has the effect of reducing the number of riders allowed in a class.

The decision discusses a limit of 20 on the number of riders as a means to minimize and address potential impacts to surrounding neighbors (Decision, page 60), but then the Condition

of Approval includes “visitors” in that cap. The limitation on the number of “visitors” in the Condition of Approval does not relate to any approval standard because visitors are already regulated by the Deschutes County Noise Control Ordinance provision of DCC 8.08.040 (no unreasonably loud or raucous noise), and by the limitation on the parking available, and the hours of operation.

Any spectators on-site to watch the riders are generally the parents/guardians and siblings of the rider participating in a class. The spectators are generally quiet and observant. The spectators also do not create dust and there is no evidence in the record that the “visitors” cause other concerns related to an applicable standard that requires a limitation on the number of “visitors.”

The decision already limits the hours of operation and the number of riders in response to the applicable criteria to minimize any potential adverse impacts from the motorcycle use. There are no known or identified potential impacts from any “visitors” so a limitation on the number of “visitors” is not related to an applicable standard.

The application of this condition makes it extremely hard to assure riders that they will be able to participate in classes. If a student – which are generally minors - has parents and siblings that must be on-site during the class, the total number of riders that can participate in the class session is reduced accordingly. With a maximum of 20 people (“riders and visitors”) on site, the applicant would have to turn parents, siblings, or riders away from a session if there are too many people on site.

It is imperative to have the legal guardian of a minor rider on-site during the session, and often those legal guardians/parents have other minor children in tow (ie siblings). The applicant acquiesces to the limit on the number of riders, but asks that the limit not also include “visitors” which is an extreme hardship in the operation of the proposed use.

In addition, under state land use law, it is impermissible as a matter of law for the county to impose a condition of approval relating to “visitors” without finding that such limitation on “visitors” is warranted due to the proposed use and due to such adverse impacts “visitors” may have under the applicable standards. Without identifying what adverse impacts to the surrounding area will result from the potential impacts of “visitors,” no condition of approval is warranted. It is not clear and objective in terms of what the condition of approval seeks to accomplish. Therefore, the applicant requests that the reference to “visitors” be struck from Condition of Approval “T.”

4. Appeal of Condition of Approval “BB” requiring construction of a new Restroom Facility.

Condition of Approval “BB” requires the Property Owner to apply to Deschutes County Onsite Wastewater Division, to the Planning Division and to the Building Division for approval of siting and construction of a restroom with running water and full facilities including lavatories.

The applicant appeals condition of approval “BB” to allow the applicant to work with the Deschutes County wastewater division to determine the restroom facility requirements.

While the applicant understands the need to provide a place for patrons to use restroom facilities, the applicant has bathrooms available in his house, and has successfully used portable toilets without any negative issues or smells. The Condition of Approval specifically requires construction of a new restroom facility building. The applicant appeals to ask that the decision not limit the restroom options that may be available for use at the facility subject to Deschutes County wastewater division approval.

B. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons why the Board should review the lower Hearings Body's decision.

FINDING: The appeal seeks clarification and reconciliation of conflicting conditions of approval and clarification as to how the county noise ordinance applies to the approved use. The hearings officer also imposed conditions of approval that are not supported by or are in conflict with the substantial evidence in the record, or which do not apply to any specific approval criterion.

C. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons why the Board should provide de novo review as provided in DCC 22.32.030.

FINDING: The applicant requests *de novo* review of the issues raised on appeal herein. The issue concerning the DCC 8.08.040(N) County Noise Ordinance as it applies to an approved use for an ROF motocross track, and the intended exception in the code for motorcycle noise when operated within the terms of a permit, is an issue of first impression for the Board of Commissioners.

The applicant faces extreme hardship if he makes all of the improvements required and invests all of the sums necessary to comply with the conditions of approval, if he could still be subject to possible code enforcement proceedings to address how the county noise ordinance applies to the approved use. Any such enforcement proceeding could result in nullifying the use if the conflicts and clarity of the conditions of approval regulating motorcycle noise are not resolved by the Board of Commissioners herein.

The Board of Commissioners, as the legislative body of the county, is the only body that can issue a binding interpretation of the county code. Here it is necessary for *de novo* review so that the Board has an opportunity to fully and properly evaluate the issues on review which are of first impression. The Board's application and interpretation of DCC 8.08.040 is important enough and the stakes are extremely high for the applicant all which further warrant the Board of Commissioners addressing the issues raised *de novo*.

2.32.024 Transcript Requirement

- 1. Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.**
- 2. Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a *de novo* appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.**
- 3. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.**
- 4. Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.**

FINDING: The appellant agrees to the transcript requirements imposed by this criterion.

22.32.027 Scope Of Review

- 1. Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or Planning Commission shall be *de novo*.**
- 2. Before the Board.**
 - 1. Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027.**
 - 2. The Board may grant an appellant's request for a *de novo* review at its discretion after consideration of the following factors:**
 - 1. Whether hearing the application *de novo* could cause the 150-day time limit to be exceeded; and**
 - 2. If the magnetic tape of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether**

review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or

3. Whether the substantial rights of the parties would be significantly prejudiced without *de novo* review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or
4. Whether in its sole judgment a *de novo* hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

For the purposes of DCC 22.32.027, if an applicant is an appellant, factor DCC 22.32.027(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the County to restart the 150-day time clock as of the date of the acceptance of applicant's appeal.

FINDING:

1. The applicant is the appellant, and the 150-day clock is near expiration. Therefore, the applicant / appellant hereby agrees to restart the clock to allow time for the appeal as set forth above.

2. The substantial rights of the applicant are prejudiced by the decision on review. The applicant requests *de novo* review of the issues appealed herein to allow the Board of Commissioners an opportunity to fully understand the proposed use and reconcile or amend the conditions of approval as addressed above.

3. **Notwithstanding DCC 22.32.027(B)(2), the Board may decide on its own to hear a timely filed appeal *de novo*.**
4. **The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal or to one or more specific issues from among those listed on an applicant's notice of appeal.**

FINDING: The appellant requests that the Board limit the issues on appeal to those listed in appellant's notice of appeal.

DATED this 17th day of October 2023.

FITCH & NEARY PC

LISA ANDRACH, OSB #040012
Of Attorneys for Appellant / Applicant below
Email: lisa@fitchandneary.com
P: 541.316.1588 F: 541.316.1943



Mailing Date:
Thursday, August 31, 2023

02/24/2020

COMMUNITY DEVELOPMENT

NOTICE OF HEARINGS OFFICER'S DECISION

The Deschutes County Hearings Officer has **APPROVED** the land use application(s) described below:

FILE NUMBERS: 247-22-000812-CU / 247-22-000813-SP

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: HOMAN, JUSTIN M
Map and Taxlot: 1512110000600
Account: 124991
Situs Address: 7505 NW EAGLE DR, REDMOND, OR 97756

APPLICANT: Justin Homan

REQUEST: The applicant requests conditional use and site plan approval for a recreation-oriented facility requiring large acreage. Specifically, the applicant proposes an outdoor motocross facility.

HEARINGS OFFICER: Alan Rappleyea

STAFF PLANNER: Caroline House, Senior Planner
Phone: 541-388-6667
Email: Caroline.House@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

STANDARDS AND APPLICABLE CRITERIA:

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

- Chapter 18.60, Rural Residential Zone (RR10)
- Chapter 18.80, Airport Safety Combining Zone (AS)
- Chapter 18.116, Supplementary Provisions



A.

Chapter 18.124, Site Plan Review
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

DECISION: The Hearings Officer finds that 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 Property Owner shall obtain any necessary permits from the Deschutes County Building Division, Environmental Soils Division and Onsite Wastewater Disposal Division.
- C.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- D.** No lighting associated with the proposed use shall project directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel.
- E.** Lighting shall incorporate shielding in their designs to reflect light away from airport approach surfaces.
- F.** No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- G.** No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures.
- H.** The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.
- I.** Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
- J.** Required parking facilities for 15 spaces shall be provided prior to or concurrently with construction and/or initiation of the proposed use. The parking area shall be graveled and not cindered.



- K. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
- L. There shall be no on-street parking for customers or visitors to the motocross course.
- M. Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.
- N. The service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A).
- O. All trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.
- P. All exterior lighting shall be shielded so that direct light does not project off site.
- Q. Provision shall be made for watering planting areas where such care is required.
- R. Required landscaping shall be continuously maintained and kept alive and attractive.
- S. Hours of Operation:

The hours of operation are limited as follows:

October-March: two weekdays per week and one day per weekend. The Property Owner has the ability to select these days based on weather, other events and customers.

Hours of operation on the 2 weekdays is limited to 10 am to 3 pm. Hours of operation on the one weekend day is limited to 10 am to 3 pm and 6pm to 7:30pm. Total hours per week are limited to 10 hours.

April to September: two weekdays per week and one day per weekend. Applicant has the ability to select these days based on weather, other events and customers.

Hours of operation on the 2 weekdays and the one weekend day is limited to 10 am to 3 pm and 5 pm to 8 pm. Total hours per week are limited to 10 hours. If Applicant opts not to operate during October-March, applicant shall be limited to 20 hours per week.

- T. The total number of riders and visitors at any given time is limited to 20 per weekday or weekend session.

- U.** The Property Owner will comply with the County Noise Control Ordinance DCC Chapter 8.08 and shall not allow or engage in any uses on the Property that result in “unreasonably loud or raucous noise, defined in DCC 8.08.040(N) as “the use of any off-road motorcycle where it is heard by the occupant from the premises of an inhabited residence not owned by the user.”
- V.** The Property Owner will comply with DEQ Noise Control Regulations for In-Use Motor Vehicles OAR 340-035-0030 or as amended.
- W.** The Property Owner shall not allow any person to operate an off-road motorcycle on the Property which exceeds a stationary noise level limit measured at 20 inches from the vehicle of 99 decibels, or in a manner as to exceed a moving vehicle noise level limit measured at 50 feet from the vehicle of 82 decibels. For the purposes of this condition, terms defined under OAR 340-035-0015 shall have the meaning(s) defined thereunder.
- X.** The Property Owner shall not allow any person to operate an off-road recreational vehicle with any of the following defects: no muffler, leaks in the exhaust system, and/or pinched outlet pipe.
- Y.** Ambient Noise Limits: The Property Owner shall not cause, allow, permit or fail to control the operation of motorcycles on the Property if the operation thereof increases the ambient noise level above 60 decibels during the hours of 7 a.m. to 7 p.m. and/or above 55 decibels during the hours of 10 p.m. to 7 a.m. as measured from any residence located within 1,000 feet of the motor vehicle. For the purposes of this condition, terms defined under OAR 340-035-0015 shall have the meaning(s) defined thereunder.
- Z.** The Property Owner will test motorcycles once every week at the facility to ensure compliance with DEQ noise requirements.
- AA.** Where any condition imposed by this decision is less restrictive than any comparable conditions imposed by which is more restrictive, the more restrictive shall govern.
- BB.** The Property Owner will make application to the Deschutes County Onsite Wastewater Division, to the Planning Division and to the Building Division for approval of siting and construction of a restroom with running water and full facilities including lavatories. These facilities shall be reviewed, approved and provided prior to or concurrently with construction and/or initiation of the proposed use.
- CC.** The Property Owner will have a functioning water truck on the site to suppress dust and fires.
- DD.** The number of employees, besides the Property Owner, is limited to two.



- EE.** The Property Owner will abide by yard and setbacks per DCC 18.60.040(A), (B), & (C) for the improved structures. The berms are improved structures and must be moved from the setback areas.
- FF.** No structures shall be greater than 30 feet in height.
- GG.** Refuse storage must be buffered and screened from view from neighboring properties.
- HH.** No competitive racing is allowed other than for training and education.

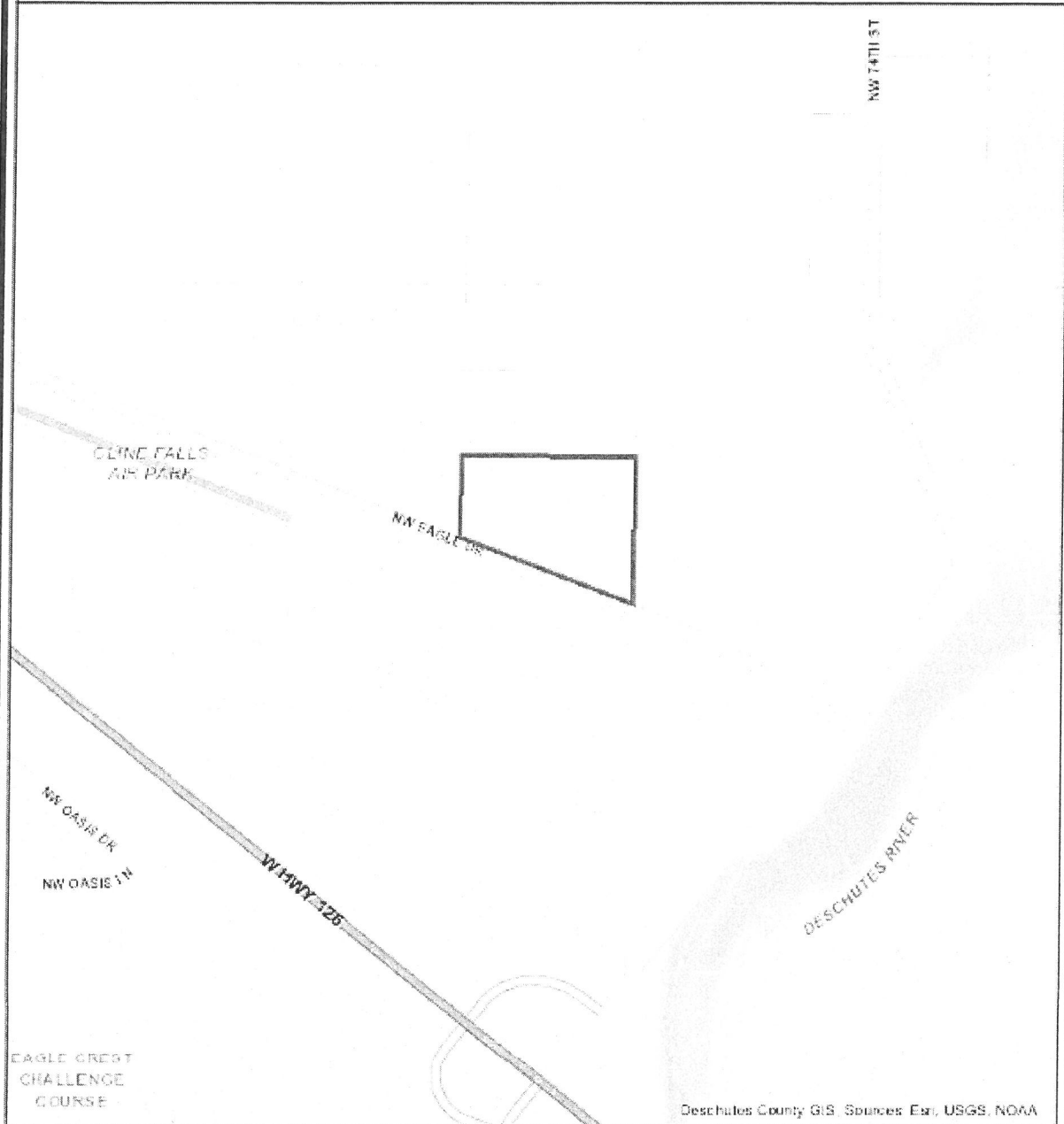
This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the base appeal deposit plus 20% of the original application fee(s), and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Board of County Commissioners an adequate opportunity to respond to and resolve each issue.

Copies of the decision, 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.

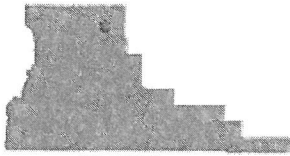
NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

7505 NW EAGLE DR, REDMOND, OR 97756

247-22-000812-CU / 247-22-000813-SP



Deschutes County GIS Sources: Esri, USGS, NOAA



DATE: 05/2024

