



Mailing Date:  
Wednesday, August 9, 2023

## COMMUNITY DEVELOPMENT

### NOTICE OF PUBLIC HEARING

#### HEARING FORMAT

The Deschutes County Hearings Officer will conduct a public hearing on August 30, 2023, at 6 p.m., in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend, to consider the request below. The public hearing will be conducted as described below by video, telephone, and in-person. Options for participating in the public hearing are detailed in the Public Hearing Participation section.

#### PROJECT DESCRIPTION

**REMAND FILE NUMBER:** 247-23-000599-A

**FILE NUMBER(S):** 247-21-000756-CU / 247-22-000109-A

#### **LUBA FINAL**

**OPINION & ORDER:** *Windlinx Ranch Trust v. Deschutes County*, \_\_ Or LUBA \_\_ (LUBA No 2022-022, July 7, 2022), aff'd, 323 Or App 290 and 323 Or App 319 (nonprecedential memorandum opinions)

#### **SUBJECT PROPERTY/**

**OWNER:** Mailing Name: KERR, HODGE & DEBORA NORENE  
Map and Taxlot: 1812310000600  
Account: 271610  
Situs Address: 59770 SCALE HOUSE RD, BEND, OR 97702

**APPLICANT:** Hodge & Debora Kerr

**REQUEST:** A remand application to consider the Land Use Board of Appeals ("LUBA") remand of a Deschutes County Hearings Officer's ("HO") approval of File No. 247-21-000756-CU, a proposal to establish a Template Dwelling in the Forest Use (F2) Zone. Pursuant to LUBA's Final Opinion and Order, the decision was remanded back to the County to address the following issues:

- The HO's conclusion that Lot 2 was lawfully created was not supported by substantial evidence in the whole record. On remand,

the County should determine whether Lot 2 was created in one of the ways specified in ORS 215.010(1)(a);

- The County's findings must explain why Lot 7 is a lawfully created parcel and address the legal effect, if any, of deeds from 1980 and 1982 that transfer property without complying with county partition regulations.
- The HO did not directly address petitioner's argument that the 1980 deed created Lot 7, so the findings are inadequate to address opponents' argument that Lot 7 is not a lawfully created parcel;
- HO's findings are inadequate to explain his conclusion that Lots 7A and 7C are lawfully created parcels. On remand, the County should determine whether Lots 7A and 7C are lawfully created parcels under ORS 215.010(1)(a).

Each of the above remand bases relates to a single approval standard. DCC 18.40.050(D)(1)(b)(i). That standard requires that template dwellings shall demonstrate that "All or part of least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract[.]"

**HEARING DATE:** Wednesday, August 30, 2023

**HEARING TIME:** 6:00 p.m.

**STAFF PLANNER:** Caroline House, Senior Planner  
[Caroline.House@deschutes.org](mailto:Caroline.House@deschutes.org) / 541-388-6667

**RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-23-000599-kerr-template-dwelling-remand>

**STANDARDS AND APPLICABLE CRITERIA:**

As identified in the Final Opinion and Order, LUBA No. 2022-022

Deschutes County Code  
Title 18, Deschutes County Zoning Ordinance  
Chapter 18.04, Title, Purpose, & Definitions  
Chapter 18.40, Forest Use Zone (F2)  
Chapter 18.113, Destination Resorts Zone (DR)  
Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.04, Introduction and Definitions  
Chapter 22.24, Land Use Action Hearings  
Chapter 22.34, Proceedings on Remand

Oregon Revised Statutes (ORS)

Chapter 92 — Subdivisions and Partitions

Chapter 215 — County Planning; Zoning; Housing Codes

### **PUBLIC HEARING PARTICIPATION**

Per DCC 22.34.030(A), only those persons who were parties to the proceedings before the County as part of the File Number(s) listed above are entitled to notice and participation in this remand hearing.

- The Hearings Officer has the discretion to reopen the record in instances in which they deem it to be appropriate.
- The scope of the remand hearing is limited to those issues that LUBA required to be addressed.
- Absent an order from the Hearings Officer reopening the record, no new evidence or testimony may be submitted.

If the Hearings Officer reopens the record, the instructions detailed below apply. Those parties that wish to participate at the public hearing, are requested to contact the staff planner by 4 pm on Tuesday, August 29, 2023.

- Parties to this proceeding can participate in-person at the Barnes and Sawyer Rooms of the Deschutes Services Center located at 1300 NW Wall Street, Bend.
- Parties to this proceeding can participate remotely by using Zoom. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/86566691445>. Using this option may require you to download the Zoom app to your device.
- Parties to this proceeding can participate remotely by telephone by dialing 1-669-444-9171. When prompted, enter the following Webinar ID: 865-6669-1445.
- Parties to this proceeding can submit written arguments to the record. Please see the Document Submission section below for details regarding written submittals.
- The Deschutes County Planning Division has set the following time limits for participants at the hearing:
  - Applicant: 30 minutes

- Appellant(s): 20 minutes
- General Public: 3 minutes
- Applicant Rebuttal: 10 minutes

Please note, the above time limits can be modified or eliminated by the Hearings Officer at their discretion.

- Any interested persons may *listen/watch* the hearing by going to the following website: <https://www.deschutes.org/meetings> or join the in-person participants in the Barnes and Sawyer Rooms of the Deschutes Services Center located at 1300 NW Wall Street, Bend.

All documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost at the Deschutes County Community Development Department (CDD) at 117 NW Lafayette Avenue. Copies of all documents, evidence and the staff report can be purchased at CDD for (25) cents a page.

Failure to raise an issue in person at a hearing or in writing precludes appeal by that person to LUBA, and that failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.

Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, please contact the staff planner identified above.

### **DOCUMENT SUBMISSION**

Parties to this proceeding may submit written comments on the subject application. Documents may be submitted to our office in person, U.S. mail, or email.

#### **In Person**

We accept all printed documents.

#### **U.S. Mail**

Deschutes County Community Development  
Planning Division, Caroline House  
P.O. Box 6005  
Bend, OR 97708-6005

#### **Email**

Email submittals should be directed to [Caroline.House@deschutes.org](mailto:Caroline.House@deschutes.org).

## Limitations

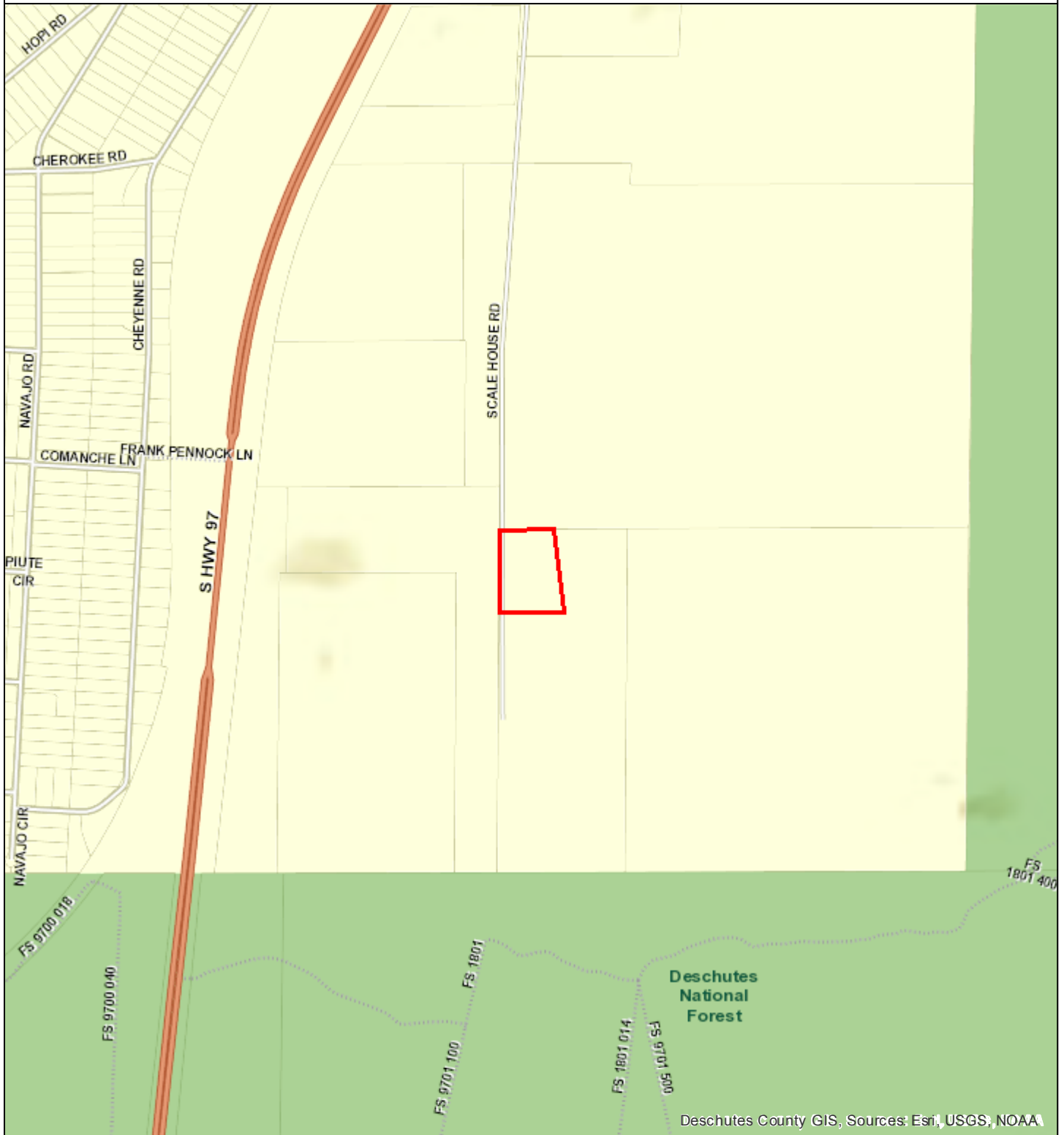
- Deschutes County does not take responsibility for retrieving information from a website link or a personal cloud storage service. It is the submitter's responsibility to provide the specific information they wish to enter into the record. We will print the email which includes the link(s), however, we will not retrieve any information on behalf of the submitter.
- Deschutes County makes an effort to scan all submittals as soon as possible. Recognizing staff availability and workload, there is often a delay between the submittal of a document to the record.
- To ensure your submission is entered into the correct land use record, please specify the land use file number(s).
- For the open record period after a public hearing, electronic submittals are valid **if received by the County's server** by the deadline established for the land use action.

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

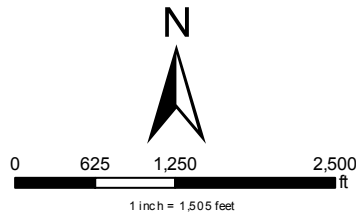
This Notice was mailed pursuant to Deschutes County Code Chapters 22.20, 22.24, and 22.34.

# 59770 Scale House Rd / Map and Taxlot: 1812310000600

File No. 247-23-000599-A



Date: 8/3/2023



owner	agent	inCareOf	address	cityStZip	Type	CDD ID	email
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOPH	21-756-CU/23-559-A	
DESCHUTES CO. ROAD DEPT.	Cody Smith		ELECTRONIC		NOPH	21-756-CU/23-559-A	Cody.Smith@deschutes.org
DESCHUTES CO. SR. TRANS. PLANNER	Tarik Rawlings		ELECTRONIC		NOPH	21-756-CU/23-559-A	Tarik.Rawlings@deschutes.org
DESCHUTES CO. SURVEYOR	Kevin Samuel/ John McCoy		ELECTRONIC		NOPH	21-756-CU/23-559-A	Kevin.Samuel@deschutes.org; John.McCoy@deschutes.org
BEND FIRE DEPT.	LARRY MEDINA		1212 SW SIMPSON, SUITE B	Bend, OR 97702	NOPH	21-756-CU/23-559-A	
DESCHUTES NAT. FOREST	DENNIS BENSON		63095 DESCHUTES MARKET RD.	Bend, OR 97701	NOPH	21-756-CU/23-559-A	
DEPUTY STATE FIRE MARSHAL	CALEB BARNES		1345 NW WALL ST., SUITE 202	Bend, OR 97701	NOPH	21-756-CU/23-559-A	
Schwabe Williamson & Wyatt PC	Tia Lewis		360 SW Bond St. Ste 500	Bend, OR 97702	NOPH	21-756-CU/23-559-A	TLewis@SCHWABE.com
Kellington Law Group PC	Wendie L Kellington		PO Box 2209	Lake Oswego, OR 97035	NOPH	21-756-CU/23-559-A	wk@klgpc.com
Christopher P. Koback			1331 NW Lovejoy St. Ste 950	Portland, OR 97209	NOPH	21-756-CU/23-559-A	chris@hathawaylarson.com
Fredrick Windlinx			59895 Scale House Road	Bend, OR 97702	NOPH	21-756-CU/23-559-A	
OREGON HIGH DESERT MUSEUM			59800 S HWY 97	BEND, OR 97702	NOPH	21-756-CU/23-559-A	
CAMERON M KERR REV LIV TRUST	KERR, CAMERON M TRUSTEE		59700 SCALE HOUSE RD	BEND, OR 97702	NOPH	21-756-CU/23-559-A	
KERR, HODGE & DEBORA NORENE			61056 SNOWBERRY PL	BEND, OR 97702	NOPH	21-756-CU/23-559-A	kerrdebora@msn.com; hkd_1@msn.com
WINDLINX RANCH TRUST	WINDLINX, ROBERT H JR TTEE		59850 SCALE HOUSE RD	BEND, OR 97702	NOPH	21-756-CU/23-559-A	
Randy Windlinx			59895 Scale House Road	Bend, OR 97702	NOPH	21-756-CU/23-559-A	rwindlinx@empnet.com
High Desert Museum	Dana Whitelaw				NOPH	21-756-CU/23-559-A	dwhitelaw@highdesertmuseum.org