



# Land Use Application

DESCHUTES COUNTY  
117 NW Lafayette Avenue  
PO Box 6005  
Bend, OR 97703  
541-388-6575

Appeal - BOCC

247-24-000629-A

www.deschutes.org/cd

cdd@deschutes.org

## APPLICATION DESCRIPTION

**Type of Application:** Appeal - BOCC

**Description of Work:** Conditional Use Permit - Nonfarm Dwelling

## LOCATION INFORMATION

**Property Address:**

71510 Forest Service Rd No 6360, Sisters, OR  
97759

**Parcel:**

141102B000300 - Primary

**Owner:**

SCHUTTE, JEFFREY A &  
CINDI R

**Address:**

71415 FOREST SERVICE  
RD #6360  
SISTERS OR 97759

## APPLICANT INFORMATION

**Applicant:**

SCHUTTE, JEFFREY A & CINDI R

**Business Name:**

SCHUTTE, JEFFREY A & CINDI R

**Address:**

71415 FOREST SERVICE RD #6360

**City:**

SISTERS

**State:**

OR

**Zip**

97759

## APPLICATION FEES

**Fee Description**

**Quantity**

**Amount**

Appeals to Board of County Commissioners Deposit

1.00 Qty

\$4,069.00

Appeals to Board of County Commissioners Additional Fee  
(20% of original fee)

810.36 Amount

\$810.36

**Total Fees:**

\$4,879.36



**APPEAL APPLICATION**

**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): Cindi and Jeff Schutte Phone: (541) 815-8244

Mailing Address: 71415 Forest Service Rd., No 6360 City/State/Zip: Sisters, OR 97759

Land Use Application Being Appealed: 247-24-000209-CU

Property Description: Township 14S Range 11E Section 2 Tax Lot 141102B000300

Appellant's Signature:   
Cindi Schutte (Oct 9, 2024 12:16 MDT)

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

(over)

# appeal

Final Audit Report

2024-10-09

Created:	2024-10-09
By:	Wendy Smith (wendy@fitchandneary.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAu2HDcn6e09rzhttMb4EL1Ejs59kKTIB1

## "appeal" History

-  Document created by Wendy Smith (wendy@fitchandneary.com)  
2024-10-09 - 6:13:08 PM GMT
-  Document emailed to Cindi Schutte (classy44505@gmail.com) for signature  
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-  Email viewed by Cindi Schutte (classy44505@gmail.com)  
2024-10-09 - 6:14:54 PM GMT
-  Document e-signed by Cindi Schutte (classy44505@gmail.com)  
Signature Date: 2024-10-09 - 6:16:28 PM GMT - Time Source: server
-  Agreement completed.  
2024-10-09 - 6:16:28 PM GMT



Lisa Andrach  
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Wendy L. Smith  
Paralegal  
[wendy@fitchandneary.com](mailto:wendy@fitchandneary.com)

## LAND USE AUTHORIZATION FORM

For: Deschutes County Community Development

Re: Jeff Schutte and Cindi Schutte  
Land Use Decision: Planning File # 247-24-000209-CU  
Tax Map: 141102B000300. Account 124740  
Situs: 71510 Forest Service Rd. 6360, Sisters, OR 97759

Let it be known that the firm of Fitch & Neary PC has been retained to act as my authorized agent to perform all acts to submit for land use approval / permits for the above referenced property.

**Appellant Jeff and Cindi Schutte**

  
Cindi Schutte (Oct 9, 2024 12:13 MDT)

09/10/24

JEFF and CINDI SCHUTTE date






# LU Authorization 2024.10.09

Final Audit Report

2024-10-09

Created:	2024-10-09
By:	Wendy Smith (wendy@fitchandneary.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAASnSuQZh6HOILS2L0EGJtt86-D9IDNgpn

## "LU Authorization 2024.10.09" History

-  Document created by Wendy Smith (wendy@fitchandneary.com)  
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-  Document emailed to Cindi Schutte (classy44505@gmail.com) for signature  
2024-10-09 - 6:11:13 PM GMT
-  Email viewed by Cindi Schutte (classy44505@gmail.com)  
2024-10-09 - 6:12:17 PM GMT
-  Document e-signed by Cindi Schutte (classy44505@gmail.com)  
Signature Date: 2024-10-09 - 6:13:22 PM GMT - Time Source: server
-  Agreement completed.  
2024-10-09 - 6:13:22 PM GMT

## Appeal Statement

**APPLICANT/APPELLANT:** Jeff and Cindi Schutte

**APPELLANTS' ATTORNEY:** Fitch & Neary, PC  
c/o Lisa Andrach, OSB #040012  
210 SW 5<sup>th</sup> Street, #2  
Redmond, OR 97756

**Appeal of Decision and Findings of The Deschutes County Hearings Officer:**  
**File No.: 247-24-000209-CU**  
**Mailing Date: October 2, 2024**

**Proposal: Establishing a non-farm dwelling previously approved as part of a non-farm partition in 2009.**

**A. Summary of application and appeal:**

The Schuttes appeal the denial of the nonfarm dwelling application because it misconstrued the applicable criteria and failed to consider the evidence in the record.

The nonfarm dwelling at issue has been previously approved twice (2) by the county. First it was approved when the county approved the application to create the subject nonfarm parcel in 2009. The parcel was created by the non-farm partition, but the prior owner let the dwelling CUP expire.

In 2014, the county again approved the non-farm dwelling on the non-farm parcel. When COLW appealed the decision, the applicant was not in a position to engage in the appeal process so the approval was surrendered.

The Schuttes have now again applied for the non-farm dwelling on the existing non-farm parcel. Since the prior approvals, other than the establishment of a few dwellings in the area, the facts have not changed. Therefore, the facts and Findings from the prior decisions are still relevant. Accordingly, the applicant submitted the facts and Findings and Decision from the prior approvals (2009 and 2014) in support of this application.

## **B. Assignments of Error on Appeal:**

- 1. The Decision erroneously applied the “used in conjunction” test of CCC 18.16.050(G) to the “generally unsuitable” analysis. The test does not apply here because the basis for the “unsuitability” is the poor Class VII soils of the building envelope.**

The hearings officer misconstrued the applicable law when he applied the “used in conjunction” test to analyze the “generally unsuitable” standard for the proposed building envelope. That test only applies when an applicant relies on the “size or location” of the parcel to argue that the parcel is generally unsuitable for farm use. In such a case, the applicant must show that the parcel cannot be used in conjunction with a commercial farm operation as part of the analysis.

Here, the applicant was relying on the poor soils, not the “size or location” of the parcel to allege “unsuitability.” Notably, the entire parcel was found to be “generally unsuitable” in 2009 when the non-farm partition was approved with the proposed dwelling. However, here, the applicant narrowed the focus to only the poor Class VII soils within the building envelope to satisfy the unsuitability test. When relying upon the soils to establish unsuitability of that portion of the parcel, the “used in conjunction” test does not apply. *See Central Oregon LandWatch v. Crook County*, 294 Or.App. 762 (2018). Accordingly, an appeal of the decision would likely be remanded to the county. This appeal avoids the time and expense of an appeal and likely remand to the county.

- 2. The Hearings Officer ignored the applicable criteria and did not engage in the required analysis of the state and local law, in favor of a new “50% rule” shortcut he created.**

The applicable criteria at issue requires an analysis of whether the approval of the non-farm dwelling would “materially alter the stability of the overall land use pattern of the area...by making it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.”

The hearings officer avoided that analysis in favor of creating his own simple math equation “50% rule” to determine whether stability is materially altered. His shortcut rule says that because this would constitute dwelling number 10 of the 19 privately-owned lots that could be developed with a non-farm dwelling, this automatically “tips the scale” and changes the stability of the land use pattern for the area from resource to non-resource use.

Not only is this new 50% rule not in state or county law, the Decision does not engage in the substantive analysis required to determine whether the dwelling “will materially alter the stability of the overall land use pattern” such that it will “destabilize” farm use in the area.

The Decision completely ignores the required analysis in favor of making a new 50% rule. What’s even more erroneous is that this would only be the 10<sup>th</sup> dwelling within the 2000 acre study area, which equates to a density of 1 dwelling per 200 acres. This density is well below what the county has recently approved for other non-farm dwellings when “there appear to be more undeveloped EFU private parcels than those developed with residences” as is the case here. (*See Grossmann*, 247-23-0000293-CU, 294-CU, 295-CU approving 3 non-farm dwellings). In *Grossmann*, there were 43 dwellings in the study area, and the county did not find that the dwellings materially altered stability or destabilized the intense farm use in the area. (*See Grossmann* at page 22) Here, there is no irrigation district for the area, and the surrounding area is primarily large tracts of USA public lands and/or large tracts held by conservation Trusts or ranches used for dry open range grazing. Not only is there no loss to farm use by this dwelling, but the surrounding lands are also not likely to ever be developed because of their ownership, and 1 dwelling per 200 acres certainly does not tip the scale to cause them to be developed.

As was established when the parcel was created in 2009, the parcel is not engaged in farm use and is not considered valuable farmland. Allowing the dwelling on it does not remove valuable farmland from productivity and does not “tip the scale” of the entire 1-mile area to a “non-resource use.” The decision shortcuts the analysis by creating a math equation and ignores the balance of the criteria. There is no evidence to support that approval of this dwelling will materially change the surrounding land use pattern or destabilize the farm uses in the area.

### **3. Substantial evidence addressing farm impacts was in the record but overlooked by the Hearings Officer.**

The Decision ignores the evidence in the record regarding the surrounding farm uses and impacts on the surrounding area. Perhaps the hearings officer overlooked the evidence? As a result, the decision is not based upon the substantial evidence in the record.

### **C. Conclusion**

An appeal of the erroneous decision to LUBA and/or the Court of Appeals will require time and expense to the county to defend. The likely result is that the decision is ultimately remanded to the county to fix the decision. Appellant is seeking *de novo* review to afford the Board an opportunity to review the issues and correct the errors with minimal time and expense to the county.



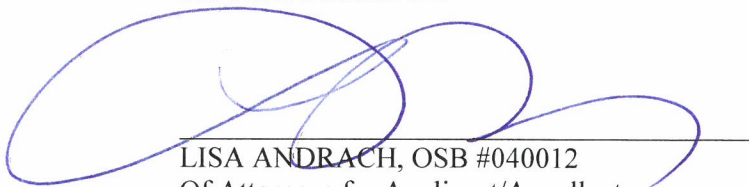
It is also important for the Board to hear this appeal because this Decision is in conflict with other decisions issued by county Hearings Officers. It is imperative that the Board establish uniformity in the county decisions on these issues.

The application was very straight forward with only COLW appearing in opposition. Therefore, there should be minimal time required of the Board and county staff to review the matter *de novo*.

Finally, the appellant requests waiver of the transcript preparation as such transcript would not be helpful in a *de novo* review.

DATED this 10<sup>th</sup> day of October 2024.

FITCH & NEARY PC



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