

HEARINGS OFFICER DECISION

FILE NUMBER: 247-23-000162-CU

**SUBJECT PROPERTY/
OWNER/APPLICANT:** Mailing Name: TUMALO LAVENDER PROPERTY LLC
Map and Tax Lot: 1612190000501
Account: 132493
Situs Address: 19825 CONNARN RD, BEND, OR 97703
(hereafter referred to as the "Subject Property")

**AGENT FOR
APPLICANT:** Douglas White
Oregon Planning Solutions LLC

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

HEARING DATE: Tuesday, May 16, 2023

HEARING START: 6:00 pm

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

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

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

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

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

Chapter 18.80, Airport Safety Combining Zone (AS)

Chapter 18.116, Supplementary Provisions

II. **BACKGROUND FINDINGS**

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

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

C. REVIEW PERIOD: The application in this case was submitted on March 7, 2023 and deemed complete by the Planning Division on April 6, 2023. The Hearings Officer notes that a request to keep the record open was made at the public hearing and the Hearings Officer kept the record open pursuant to the following schedule:

Initial Open-Record Period: Submission of New Evidence by 4:00 pm May 23, 2023; and

Responsive Open-Record Period (evidence in response to that submitted during the Initial Open-Record Period): Submission of Responsive Evidence by 4:00 pm May 30, 2023; and

Rebuttal Open-Record Period (Applicant’s final argument): Submission of Applicant’s Final Argument by 4:00 pm on June 6, 2023.

Staff provided the following comments, during its Initial Open-Record Period submission (Memorandum, May 23, 2023, page 2), related to the date when the final County decision in this

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

² The attached and detached greenhouses were established around 2006. Staff (Staff Report, page 2) indicated that the greenhouse structures did not appear to meet the required 25-foot rear setback for the MUA10 Zone. The Hearings Officer notes that this decision does not review or approve these potentially nonconforming setbacks.

case is due:

“As discussed at the conclusion of the May 16, 2023 hearing, the Hearings Officer left the written record open for a total of 21 days to include three periods of seven days. DCC 22.24.140.E states the following,

E. A continuance or record extension granted under DCC 22.24.140 shall be subject to the 150- day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 150-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

While staff notes the open record period was not initially requested by the applicant, the applicant, Holly Olsen, did not object to the specific schedule as set forth above. This occurred at approximately 1 hours and 27 minutes during the hearing on May 16, 2023. Staff notes the applicant was asked if they wanted to be the initiator of the open record period, to which Ms. Olsen responded, “No”, around 1 hours 28 minutes. Despite the applicant not requesting the open record period, they did agree to it as discussed above.

Therefore, Staff believes the 150-day clock is suspended for the first 14 days of the open record period pursuant to the language above “...or otherwise agreed to by the applicant.” Staff wanted to clarify this for the Hearing Officer’s consideration.”

The Hearings Officer concurs with the above-quoted Staff analysis and conclusion. The Hearings Officer adopts the above-quoted Staff comments as the Hearings Officer’s findings related to the open-record period and impact on the date the final County decision is due.

The Hearings Officer notes that an open-record submission was received from Applicant on June 1, 2023 which stated:

“We will close out the record so that Gregory Frank can start his review and expedite the process. Does that shorten his 21-day review period? In other words, if we close the record today, does the 21-day review period begin today or does it still begin on June 6 (ending June 27)?”

The Hearings Officer finds that Applicant, on June 1, 2023 waived the balance of its final argument period and requested the record be closed. The Hearings Officer finds that the record shall be deemed closed on June 1, 2023.

The 150th day on which the County must take final action on this application is September 17, 2023.

D. PROPOSAL: The Applicant requests a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling pursuant to DCC 18.32.030.G and DCC 18.128.³

The Applicant provided the following statement in their Proposal section (Burden of Proof, page 5):

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

Based upon the application materials the Hearings Officer interprets Applicant’s proposal for a secondary accessory farm dwelling to be inextricably linked to the existing manufactured home. The Hearings Officer is constrained by Applicant’s request to locate the existing manufactured home as the secondary accessory farm dwelling. The Hearings Officer is not allowed to consider unspecified alternatives such as locating an alternative Class manufactured home on the Subject Property.

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

F. LAND USE HISTORY: The Applicant submitted the current land use permit application in response to code enforcement case, file no. 247-22-000400-CE. In summary, the Applicant did not decommission or remove the temporary manufactured home when the medical hardship previously approved in 2010 and again in 2015 ceased to exist and the Subject Property was sold. The Applicant did not apply for a new medical hardship dwelling. The Applicant is requesting an after-the-fact approval for the existing manufactured home to be used as a secondary accessory

³ See Deschutes County Application question #1: “Request Conditional Use for Manufactured Home as Secondary Farm Dwelling.”

farm dwelling. Although the secondary accessory farm dwelling use may have been operational on the Subject Property for some time, Staff and the Hearings Officer reviewed it as a new application.

Below is a summary listing of recent land use actions affecting the Subject Property:

- 247-18-000526-CU, 527-SP: Conditional Use and Site Plan Review to establish a commercial activity in conjunction with the existing lavender farm use; and
- 247-15-000238-TU: Temporary Use Medical Hardship Dwelling⁴; and
- TU-10-8: Temporary Use Medical Hardship Dwelling; and
- SMA-04-4: Surface Mining Impact Area (SMIA) review for single-family dwelling; and
- LR-02-25: Legal lot of record verification.

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

Deschutes County Onsite Wastewater, Todd Cleveland

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

STAFF REPORT COMMENT (Staff Report, pages 4 and 5): *“Staff recommends the following condition of approval be included in any decision which approves the application:*

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

Deschutes County Senior Transportation Planner, Peter Russell

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

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family home (Land Use #210) produces approximately nine weekday trips. Thus the site’s two dwellings would produce approximately 20 weekday trips (9.43 + 9.43). Under DCC 18.116.310(C), no further traffic analysis is required for a

⁴ The dwelling approved through file 247-15-000238-TU utilizes the same dwelling approved through file TU-10-8. The requirement for a new land use - 247-15-000238-TU – was based on the change of circumstances (change in family member using the dwelling).

use of less than 50 new weekday trips. Staff notes the burden of proof states the farm would have workers ranging in four to 10 in number. Even with 10 employees, which would equal 20 new daily weekday trips, the combination of the roughly 30 weekday trips from the two dwellings (20 from the farm worker dwelling, 9.43 from the main home) would not exceed the 50-trip threshold.

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

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

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

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

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

Deschutes County Building Safety Division, Randy Scheid

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

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

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

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

Staff, prior to the publication of the Staff Report, received two public comments from nearby property owners.

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

“I see that a conditional use application has been submitted by Tumalo Lavender to add a secondary farm dwelling (the medical hardship manufactured trailer) to their property. Please include me with all correspondence at this email address and at my physical address, David Arnold, 19830 Connarn Rd, Bend, OR 97703. I will be asking that this application be denied.”

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

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

- Driveways (existing and proposed).*
- Location of all existing and proposed structures on the property.*
- Distance from all existing and proposed structures to property lines (setbacks).*
- Location of water source.*
- Location of septic tank, drainfield and replacement area.*
- Location of major features such as rivers, streams, canals, irrigation ditches, and/or rock ledges/outcrops.*

Specifically I am most concerned about location of the water source. This property is registered with the Oregon Department of Agriculture with a Food Processing License and Nsy Stk Growers Collectors of Native Plants license (nursery). Both of these licenses require specific permits from the Oregon Water Resources Department (OWRD). For this reason I

request the application be returned to the applicants as incomplete and not be accepted until all the requirements are met.”

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

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

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

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

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

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

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

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

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

At the public hearing, in addition to Staff and Applicant (including Applicant representatives), a number of persons testified (Gail Burton, David Arnold, Nunzie Gould). The Hearings Officer reviewed and considered all hearing testimony and all documents submitted into the record when

making this decision. Testimony and documents directed to relevant approval criteria may be referenced in the findings set forth below.

III. FINDINGS & CONCLUSIONS

A. PRELIMINARY FINDING - SCOPE

A number of opponents offering testimony and record documents raised issues related to the *operation* of the lavender farm apart from the proposed secondary accessory farm dwelling. For example, testimony/documentary evidence was offered related to code violations not related to the manufactured home that is subject of the application in this case. Additionally, testimony and evidence were offered related to the commercial activities located on the Subject Property.

The Hearings Officer finds that the application in this case seeks approval of the use of an existing manufactured home proposed to be used as a secondary accessory farm dwelling. The Hearings Officer is limited to considering evidence and argument related to whether or not the application for a secondary accessory farm dwelling meets the relevant approval criteria. This case is not the proper time or forum to reconsider and/or review issues not related to the approval criteria relevant to the specific application for a secondary accessory farm dwelling on the Subject Property.

B. PRELIMINARY FINDING - INCOMPLETE APPLICATION

Two participants (Arnold and Gould) argued that the application was incomplete, should not have been accepted by Staff and therefore should be denied. Initially, the Hearings Officer finds that no participant in this case provided the Hearings Officer with a citation or legal reference to a specific section of State law, DCC or regulation that imposed “application requirements” as relevant approval criteria. The Hearings Officer finds that generally “application requirements” do not operate as relevant approval criteria and therefore, an application cannot be denied on the basis that “application requirements” have not been met.

In this case many of the “application requirement” deficiencies raised by participants related to evidentiary topics that were contained in relevant approval criteria.⁵ In those instances the Hearings Officer considered all evidence in the record when determining if a specific approval criterion was met. In numerous instances evidentiary deficiencies were noted by the Hearings Officer and addressed through the imposition of conditions of approval. The Hearings Officer only utilized conditions of approval to satisfy evidentiary deficiencies where a future administrative decision would be made using objective standards (as opposed to discretionary standards).

C. PRELIMINARY FINDINGS: STAFF ISSUES

⁵ Example of application requirement that is also related to relevant approval criterion: David Arnold May 16, 2023 email to Haleigh King - “distance from all existing and proposed structures to property lines (setbacks).”

Staff (Staff Report [page 15] & Staff PowerPoint Presentation [Issue Areas and Considerations] & hearing testimony) requested that the Hearings Officer address specific issues. The Hearings Officer provides findings below for each issue raised by Staff.

1. Staff Issue: Class A Manufactured Home

“Can a Class A manufactured home be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.070?”

Applicant requested (Application form & Burden of Proof) that the County approve a conditional use permit for a “manufactured home as a secondary accessory farm dwelling subject to the requirements set forth in DCC 18.116.070.” The reason that DCC 18.116.070 is relevant to this case is found in DCC 18.32.030 G, which states that a conditional use request may be approved for a:

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

Applicant’s proposal is for a conditional use permit to allow an existing manufactured home to be allowed as a secondary accessory farm dwelling on the Subject Property. Applicant acknowledged that the existing manufactured home located on the Subject Property is a Class A manufactured home per DCC 18.116.050 A.

DCC 18.116.070, as relevant to this case, states the following:

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

Applicant, in its May 23, 2023 open-record submission, responded to Staff’s above-stated question as follows:

“The Staff Report clearly acknowledges that the existing manufactured home (the one that is the subject of this application) is a Class A manufactured home (page 24 of the Staff Report). The above subsection (1) clearly provides that Class A and B manufactured homes are permitted in any MUA-10 and the ‘FP as the primary dwelling, and R1 and SM as a caretaker residence’.

The provisions of DCC 18.116.070 (A)(1) clearly provide that Class A and B manufactured homes are permitted in certain zones, including MUA-10 Zones, without restriction unless such zoning imposes additional requirements. The MUA-10 zoning regulations do not impose additional requirements as to use of Class A or B manufactured homes. The limit to Class A and B

manufactured homes in the (FP) Flood Plain Zone to only the 'primary dwelling' doesn't apply to the MUA-10 zone, in the same way that a 'caretaker's residence' is permitted in the Rural Industrial (RI) and Surface Mining (SM) zones."

Staff, in its May 23, 2023 Memorandum, provided the following comments related to the interpretation of DCC 18.116.070 (A)(1):

"As stated in A.1, the sentence construction of the code requirement may be unclear on whether a Class A manufactured home can be utilized only as a primary dwelling in any zone besides RI and SM, as a primary dwelling only in the FP zone, or if allowed as any type of dwelling in the MUA Zone. Although unclear, Staff believes this requirement to specify that Class A manufactured homes are allowed in the FP zone only as a primary dwelling.

It is clear that DCC 18.116.070(B) allows for a Class C manufactured home to be permitted as a secondary accessory farm dwelling. However, as discussed in the staff report, the subject dwelling is classified as a Class A manufactured home. Although unclear, Staff believes this provision for Class C manufactured homes to be used as secondary accessory farm dwellings was intended to allow Class C manufactured homes to be utilized for this specific use on properties where otherwise a Class C manufactured home would not be permitted. In other words, DCC 18.116.070(A)(1) allows Class A and B in a large variety of situations and (B)(2) is an exception to the implicit preclusion of Class C manufactured homes in the .070(A)(1) scenarios.

However, the sentence construction of 18.116.070(A)(1) makes this unclear. Staff requests interpretation and specific findings from the Hearings Officer on this issue."

The Hearings Officer agrees with Staff that it is necessary to interpret DCC 18.116.070 (A)(1) in order to make the decision in this case.

As a backdrop for the interpretive process the Hearings Officer takes notice of ORS 174.010. While this section of the Oregon Revised Statutes is not determinative in this case the Hearings Officer finds it provides a relevant conceptual perspective. ORS 174.010 states:

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

The Hearings Officer also takes note of prior Court and Oregon Land Use Board of Appeals ("LUBA") interpretative guidelines. A long line of Oregon cases instructs decision makers (such as a hearings officer) to focus on the "text" and the "context" of the relevant code. Portland Gen. Elec. Co v. Bureau of Labor and Indus., 317 Or 606 (1993), State v. Gaines, 346 Or 160 (2009) and Sarathy v Washington County, LUBA No. 2011-065. These cases are consistent with the Hearings Officer's interpretation of ORS 174.010.

The Hearings Officer finds that the words, and only the words, used by the drafters (Deschutes County Commission) should be considered. The Hearings Officer does not have the authority to insert words into DCC 18.116.070 (A)(1) that were not included or to omit words that were included in DCC 18.116.070 (A)(1). The Hearings Officer also finds it to be proper to consider the actual text of DCC 18.116.070 (A)(1) in the context of other sections of DCC 18.116.070.

The Hearings Officer finds that DCC 18.116.070 is focused on where specific types/categories of manufactured homes may be located in Deschutes County. DCC 18.116.070 (A) addresses where Class A and B manufactured homes are allowed to be placed. The Hearings Officer finds that DCC 18.116.070 (A)(2), (A)(3) and (A)(4) are not relevant to these findings. The preface of DCC 18.116.070 (A) states, in part that DCC 18.116.070 (A) is “subject to the requirements of the underlying zone.” The Hearings Officer finds the “subject to” language is an important part of DCC 18.116.070 (A) and in this case the application for a secondary accessory farm dwelling is allowed as a conditional use in the MUA-10 zone.⁶

The Hearings Officer agrees with Staff that the language of DCC 18.116.070 (A)(1) is challenging to read. This is primarily because of the “except where...” language and the use of a colon (following “(CH)”). However, the Hearings Officer finds that DCC 18.116.070 (A)(1) is capable of a clear interpretation.

The Hearings Officer finds that DCC 18.116.070(A)(1) permits the placement of a Class A or Class B manufactured home in certain designated land use planning zones. DCC 18.116.070 (A)(1) sets forth two lists of zones where Class A and Class B manufactured homes can be placed as “primary dwelling” and where they (Class A and Class B manufactured homes) can be placed as a “caretaker’s residence.” The first list includes the following zones: EFU, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community, RSR-M, RSR-5 and FP. The second list contains the R-1 and SM zones.

The Hearings Officer disagrees with Applicant that the only zone where a “primary dwelling” can be located is the FP zone. The Hearings Officer disagrees with Applicant for two reasons. First, immediately preceding the FP designation in DCC 18.116.070 (A)(1) is the word “and.” The Hearings Officer finds that the word “and,” as used in DCC 18.116.070 (A)(1) between “RSR-5” and “FP,” is a conjunction linking the listed zones.⁷ The word “and” ties together all zones in the list. The Hearings Officer finds that the “FP” zone is included in the list of zones where a Class A or Class B manufactured home must be used as a “primary residence.”

The second reason the Hearings Officer disagrees with Applicant’s “FP is the only zone requiring a ‘primary residence’” is Applicant’s statement that “The MUA-10 zoning regulations do not

⁶ The Hearings Officer finds no participant in this case identified a relevant “underlying zone” (MUA) requirement (other than compliance with DCC 18.116.070) that would limit the location of a Class A or B manufactured home, as a conditional use, on the Subject Property.

⁷ Dictionary definition of “and”: “used to connect words of the same part of speech, clauses, or sentences, that are to be taken jointly.”

impose additional requirements as to use of Class A or B manufactured homes.” DCC 18.32.030 G does in fact “impose additional requirements” for the placement of a manufactured home in the MUA-10 zone; DCC 18.116.070 restrictions and limitations on the various classes of manufactured homes within identified zoning districts. Further, the Hearings Officer finds that had the Commission intended there be no requirements to use Class A or B manufactured homes it could have clearly said that. To the contrary the Commission included a finite list of zones where a Class A or Class B manufactured home must be used as the “primary dwelling.”

The Hearings Officer also considered the context of DCC 18.116.070 (A). The Hearings Officer finds it is reasonable to consider language of other sections of DCC 18.116.070 when interpreting DCC 18.116.070 (A)(1). The Hearings Officer takes note that DCC 18.116.070 (B) is directed to where Class C manufactured homes may be placed. Specifically, DCC 18.116.070 (B)(2) allows a Class C manufactured home to be permitted “as a secondary accessory farm dwelling.” The Hearings Officer finds that the Commission, when drafting DCC 18.116.070 was aware of the difference between “primary dwellings” and “secondary accessory farm dwellings.” The Hearings Officer finds that the Commission’s inclusion of the phrase “secondary accessory farm dwellings” in DCC 18.116.070 (B) but not in DCC 18.116.070 (A) clearly expressed the Commission’s intent. The Hearings Officer finds that the Commission’s omission of the phrase “secondary accessory farm dwellings” from DCC 18.116.070 (A) was intentional. Consistent with ORS 174.010 the Hearings Officer finds that he may not “insert” terms or phrases that are not included in the actual text of a questioned code section. The Hearings Officer cannot insert the “secondary accessory farm dwellings” text into DCC 18.116.070 (A)(1).

The Hearings Officer does not find Applicant’s interpretation of DCC 18.116.070 (A)(1) is without merit. However, the Hearings Officer finds interpreting DCC 18.116.070 (A)(1) to require that Class A and Class B manufactured homes, within the MU-10 zone, must be used for “primary dwelling” purposes best reflects the actual words used (text) in DCC 18.116.070 (A)(1) and is consistent with the overall context of DCC 18.116.070.

2. Staff Issue: Need

“Does an applicant need to demonstrate a need for the ‘secondary accessory farm dwelling?’ and if so, has the applicant demonstrated a need for the ‘secondary accessory farm dwelling?’”

It appears to the Hearings Officer this query arose from Staff’s review of prior County land use decisions. Staff cited two prior County decisions (CU-90-163 and CU-95-122) dealing with applications for a secondary accessory farm dwelling proposed to be located within the MUA-10 zone. County staff, in the CU-90-163 decision (Conclusionary Findings, page 3), stated

*“the applicant has an established farm operation with livestock and has shown a **need** for an accessory dwelling in conjunction with the farm use...”* [bolding added for emphasis by the Hearings Officer]

The Hearings Officer issuing the CU-95-122 decision stated:

*“In order to satisfy this criterion, the applicant must show that farm use of the property is the main use of the property and there is connection between the farm use and the proposed accessory use or structure. Or, in the words of the applicants’ counsel, the issue is ‘whether or not the dwelling will be **necessary** for the farm use.’” [bolding added for emphasis by the Hearings Officer]*

Staff, in this case and in the CU-90-163 Staff decision, and the prior Hearings Officer’s decision (CU 95-122), sourced its “need,” “necessary,” or “connection” concerns from the definition of “accessory use or accessory structure.” (See DCC 18.04.030) The DCC defines “accessory use or accessory structure” as:

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

The Hearings Officer finds the above-quoted “Accessory use or accessory structure” definition does not contain the either the word “need” or the word “necessary.” The definition does contain the words “incidental” and “subordinate.” Staff, in its CU 95-122 decision, did reference dictionary definitions for “incidental” and “subordinate.” Staff, in CU 95-122 stated:

“Incidental means ‘being likely to ensure as a chance or minor consequence. Webster’s New Collegiate Dictionary. Subordinate means ‘inferior, submissive to or controlled by authority.’ Id. The use of these terms in the definition of accessory use or structure suggests that there be a connection of the proposed use or structure to the main use of the property.”

The Hearings Officer, in addition to considering the DCC definition of the phrase “accessory use or accessory structure” considered the dictionary definition of “accessory” as an interpretative aide. Webster’s Online Dictionary ([Accessory Definition & Meaning - Merriam-Webster](#)) defines “accessory” as:

*aiding or contributing in a secondary way: supplementary
accessory materials*

*present in a minor amount and not essential as a constituent
an accessory mineral in a rock*

The Hearings Officer finds that the literal meaning of “accessory,” as used in the context of DCC 18.32.030 G., requires that an applicant successfully demonstrate the a proposed “secondary accessory farm dwelling” has a connection to a demonstrated primary farm use. The Hearings Officer finds that the extent or degree of connection could plausibly include a demonstration of “need” or “necessity.” However, the Hearings Officer finds that the use of the phrase “incidental” suggests a lesser standard of proof than “need.” The Hearings Officer finds that use of the term

“incidental” is better paired with the terms “contributing” or “supportive.” The Hearings Officer finds that an applicant is not required to demonstrate “need” in an application for a secondary accessory farm dwelling.

3. Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling

“How does a ‘secondary accessory farm dwelling’ relate to a property’s primary use or primary residence?”

The Hearings Officer incorporates the interpretation of “accessory” set forth in the Need findings above (Section III.C.2). The Hearings Officer finds that DCC does not define the term “secondary” or the phrase “farm dwelling.” The Hearings Officer finds that “primary use” is defined by DCC 18.04.030.

Secondary is defined by Webster’s Online Dictionary ([Secondary Definition & Meaning | Dictionary.com](#)) as:

“next after the first in order, place, time, etc.

belonging or pertaining to a second order, division, stage, period, rank, grade, etc.

dependent on or generated by something more basic; derivative.”

The Hearings Officer finds that the phrase “farm dwelling,” while not defined by the DCC, is a structure that is intended to be occupied for living purposes and is connected/associated with a farm use. The Hearings Officer, considering the above-referenced definitions, finds that a **secondary accessory farm dwelling** is a dwelling (place of occupancy) located on a farm that is supportive of or is subordinate in rank/importance to a “primary dwelling.”

In the context of an application for the location of a secondary accessory farm dwelling the Hearings Officer finds (1) that the structure must be used in connection with farm use(s) occurring on a property and (2) there is a primary dwelling to which the proposed secondary accessory farm dwelling is additional to and subordinate.

The Hearings Officer finds that the “primary use” of a property, when considering “secondary accessory farm use” is important. As noted in the Need findings an applicant for a secondary accessory farm use must demonstrate that the proposed structure contributes to or is supportive of a farm use on a subject property. The same can be said of a “secondary accessory farm structure or dwelling.

The Hearings Officer finds that to have a secondary accessory farm dwelling there must be a primary farm dwelling. The Hearings Officer finds that a primary farm dwelling, in the MUA-10 zone, is allowed as a matter of right and a secondary farm dwelling is only allowed as a conditional use. Therefore, the right to have a secondary farm dwelling is derivative of the right to having a

primary farm dwelling. In the event the primary farm dwelling would be removed or eliminated, in some manner, the secondary accessory farm dwelling rights would no longer exist; a secondary farm dwelling needs, for it to be legally recognizable, a primary farm dwelling.

4. Staff Issue: Occupant(s) of Secondary Accessory Farm Dwelling

“Can a primary farm operator reside in a secondary accessory farm dwelling?”

Staff expressed uncertainty as to whether or not “who” lived in a “primary farm dwelling” and “who” lived in a “secondary farm dwelling” was relevant and/or important. The Hearings Officer reviewed the record in this case and sections of the DCC the Hearings Officer considered relevant. The Hearings Officer could find no provision of the DCC that unequivocally identified “who” should live in a “primary farm dwelling” or “who” should live in a “secondary farm dwelling.”

As noted in the preceding findings the Hearings Officer concluded that a secondary farm dwelling has the right to exist because of the existence of a “primary farm dwelling.” The right of a secondary farm dwelling to exist is derivative of a primary farm dwelling. This right of existence is not dependent upon “who” resides in either the “primary farm dwelling” or the “secondary farm dwelling.”

As alternative findings to the above paragraph the Hearings Officer finds there is no requirement in the DCC that a “primary farm dwelling” be occupied by an “owner” of a property. It is reasonable to assume, in some instances, that the primary farm dwelling could be occupied by a lessee (person renting the farm property) or a farm employee (i.e., foreperson, farm operator, farm worker). Likewise, the Hearings Officer found no requirement in the DCC that a “secondary farm dwelling” be occupied by any class/category of person(s). The Hearings Officer finds an owner, lessee, primary farm operator, secondary farm operator (if there is such a title) or farm employee can all reside in a secondary accessory farm dwelling.

5. Staff Issue: Occupant(s) Stick-built/Primary Dwelling

“Can a stick-built dwelling or primary dwelling, as defined in DCC 18.04.030, be occupied by farm help or employees?”

The Hearings Officer finds DCC 18.04.030 does not include a definition of “stick-built dwelling” or “primary dwelling.”⁸ There is reference to “primary dwelling” in the “primary or principal use” DCC 18.04.030 definition. That reference is strictly temporal in nature; the dwelling that was first located on a lot is the “primary dwelling.” “

⁸ The phrase “Primary or principal use” is defined, in DCC 18.04.030, as “the first use to which property is or may be devoted, and to which all other uses on the premises are accessory or secondary uses. As used relative to dwelling units, the primary dwelling would be the first dwelling unit to be located on a specific parcel or lot.”

The Hearings Officer could find nothing in the DCC either authorizing or prohibiting the occupancy of a “primary farm dwelling” or a “secondary accessory farm dwelling” by farm help or employees. Because there is no DCC reference to who may occupy a “stick-built dwelling” or a “primary dwelling” the Hearings Officer finds there are no limitations on who may occupy such structure. The Hearings Officer finds that a “stick-built dwelling” and also a “primary dwelling” may be occupied by farm help and/or employees.

D. Approval Criteria Findings

Title 22, Deschutes County Development Procedures Ordinance

Chapter 22.20 Review of Land Use Action Applications

Section 22.20.015, Code Enforcement and Land Use.

- A. *Except as described in (D) below, if any property is in violation of applicable land use regulations and/or conditions of approval of any previous land use decisions or building permits previously issued by the County, the County shall not:***
 - 1. *Approve any application for land use development;***
 - 2. *Make any other land use decision, including land divisions and/or property line adjustments;***
 - 3. *Issue a building permit.***
- B. *As part of the application process, the applicant shall certify:***
 - 1. *That to the best of the applicant’s knowledge, the property in question, including any prior development phases of the property, is currently in compliance with both the Deschutes County Code and any prior land use approvals for the development of the property; or***
 - 2. *That the application is for the purposes of bringing the property into compliance with the Deschutes County land use regulations and/or prior land use approvals.***
- C. *A violation means the property has been determined to not be in compliance either through a prior decision by the County or other tribunal, or through the review process of the current application, or through an acknowledgement by the alleged violator in a signed voluntary compliance agreement (“VCA”).***
- D. *A permit or other approval, including building permit applications, may be authorized if:***
 - 1. *It results in the property coming into full compliance with all applicable provisions of the federal, state, or local laws, and Deschutes County Code, including sequencing of permits or other approvals as part of a voluntary compliance agreement;***
 - 2. *It is necessary to protect the public health or safety;***
 - 3. *It is for work related to and within a valid easement over, on, or under the affected property; or***

4. ***It is for emergency repairs to make a structure habitable or a road or bridge to bear traffic.***
- E. ***Public Health and Safety.***
 1. ***For the purposes of this section, public health and safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.***
 2. ***Examples of that situation include, but are not limited to issuance of permits to replace faulty electrical wiring, repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel or power; and actions necessary to stop earth slope failure.***

FINDING: The Hearings Officer acknowledges that one or more code violations currently exist at the Subject Property. The Hearings Officer finds that a current code violation exists related to the manufactured home that is subject to this application and decision.

The Hearings Officer takes note of the Deschutes County Board of Commissioners' decision in *Tumalo Irrigation District* (247-17-000775-ZC, 247-17-000776-PA). In that decision the Board provided interpretive guidance to all Deschutes County Hearings Bodies related to DCC 22.20.015. Staff, in the Staff Report (pages 8, 9 & 10), pointed out to the Hearings Officer that the following Board comments may be relevant to this case and decision:

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

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

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

First, the Board starts by noting that the primary purpose (and benefit) of DCC 22.20.015 is to address "adjudicated violations," i.e. violations that were already conclusively determined through the normal applicable code enforcement process prior to an applicant submitting a land use application. This interpretation is supported by the use of the past tense in the codified definition of "violation" in DCC 22.20.015(C): "[a] violation means the property has been determined to not be in compliance either through a prior decision by

the County or other tribunal, ... or through an acknowledgment by the alleged violator in a signed voluntary compliance agreement ('VCA')" (emphasis added).

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

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

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

executing and complying with a voluntary compliance agreement even for an unrelated violation on the same property.”

As referenced above, the Subject Property has active code compliance cases, 247-22-000400-CE, 247-22-000399-CE, and 247-22-000398-CE for multiple dwellings, non-approved disposal and RV occupancy. Staff indicated that it believed that the RV occupancy has ceased on the Subject Property. With consideration to the above-mentioned interpretive guidance from the BOCC, Staff expressed its belief that it would be appropriate to use this land use application to resolve the outstanding violation(s).

Staff noted that there are many options for the property owners to achieve compliance with the zoning regulations of the MUA10 Zone; the request to establish the manufactured home as a secondary accessory farm dwelling is one potential pathway. Other options include but are not limited to; removal of the manufactured home from the Subject Property, decommission the manufactured home to a non-residential use, decommission the existing stick-built dwelling to a non-residential use, or remove the existing stick-built dwelling from the Subject Property.

The applicant elected, through the submittal of the subject application, to establish the manufactured home as a secondary accessory farm dwelling. If approved this land use application will address the manufactured home related code violation. Staff stated that the comments from the Onsite Wastewater Division should be included as conditions of approval to ensure the property owner receives any necessary permits as it pertains to the onsite wastewater system.

The Hearings Officer finds that the Board’s DCC 22.20.015 interpretative guidance, as quoted above, is supportive of a holding that this application, if approved, is an appropriate method of addressing the manufactured home related code violation.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Section 18.32.030, Conditional Uses Permitted

The following uses may be allowed subject to DCC 18.128:

...

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

FINDING: The Hearings Officer incorporates the Preliminary Findings for Staff Issue: Class A Manufactured Home [Section III.C.1.], Staff Issue: Need [Section III.C.2.], Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling [Section III.C.3], Staff Issue: Occupant(s) of Secondary Accessory farm Dwelling (Section III.C.4), and Staff Issue: Occupant(s) of Stick-built/Primary Dwelling [Section III.C.5] as additional findings for this approval criterion.

The Hearings Officer includes the following statements taken from Applicant's Burden of Proof Statement in support of its application:

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

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

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

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

The applicant is proposing to keep the existing manufactured home as an accessory farm dwelling. The subject manufactured dwelling will be "incidental and subordinate to the main farm use of the property." Incidental means to "being likely to ensure as a chance

or minor consequences.” Webster’s New Collegiate Dictionary. Subordinate means “inferior, submissive to or controlled by authority.” *Id.* The use of these terms suggests in the definition of accessory use or structure that there be a connection of the proposed use or structure with the main use of the property.[footnote omitted]

The definition also requires the “main use of the property” be identified. The main use of the subject property is currently an established lavender farm (Tumalo Lavender) that has gross annual sales exceeding \$80,000 (see Attachment E showing profit and loss for Tumalo Lavender farm operations in 2021). The farm at the subject site consists of approximately 5 acres of established lavender fields, greenhouses for plant propagation/nursery growing of potted plants, commercial activity in conjunction with the lavender farm with an operated store (open to the public with set hours during the spring, summer, and fall months and by appointment during the winter months), a production area for distillation of lavender plants and for making lavender products. The activities described above require year-round farm help, seven days a week, with part-time and full-time staff varying between 4 and up to 10 employees throughout the year.

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

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

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

The Applicant's request, in this case, is for a Conditional Use Permit to establish an existing manufactured home as a secondary accessory farm dwelling.

Staff noted (Staff Report, page 13), the Title 18 definitions Section (DCC 18.04.030) do not define "secondary accessory farm dwelling." Staff included a number of Title 18 definitions (Accessory use or accessory structure, Agricultural Use, Dwelling Unit, Family, Manufactured Home, Primary or Principal Use) to assist the Hearings Officer in interpreting "secondary accessory farm dwelling." Consistent with the findings set forth in Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling (Section III, C.3.) the Hearings Officer defines secondary accessory farm dwelling as a dwelling (place of occupancy) located on a farm that is supportive of or is subordinate in rank/importance to a 'primary dwelling'."

The Hearings Officer finds, based upon substantial evidence in the record, that the primary use of the Subject Property is for the cultivation and processing of lavender. The Hearings Officer considered the historical use of the Subject Property as a lavender farm, the number of acres in lavender cultivation, the onsite greenhouses and processing structure and retail location when determining the primary use.

The Hearings Officer finds conflicting evidence in the record with respect to the "necessity" or "need" of employees to live onsite. The Hearings Officer was persuaded by Applicant's record submissions indicating that it is very important to have two farm operators onsite to assure the efficient and successful operation of the lavender farm (propagation, processing and selling of products). The Hearings Officer agrees with opponents that it may not be absolutely "necessary" that two farm operators reside on the Subject Property; however, the Hearings Officer finds that the likelihood of economic sustainability and growth of the lavender operation at the Subject Property is substantially enhanced by having two onsite farm operators. The Hearings Officer finds there is the requisite/required "connection" between the farm operation (lavender farm) and a secondary accessory farm dwelling being located on the Subject Property.

The Hearings Officer found (Staff Issue: Class A Manufactured Home findings [Section III.C.1]) that DCC 18.116.070(A)(1) does not allow a Class A Manufactured Home to be used as a secondary accessory farm dwelling. The Hearings Officer finds that DCC 18.32.030 G allows a manufactured home to be used as a secondary accessory farm dwelling only if the requirements of DCC 18.116.070 are met. The Hearings Officer finds Applicant's proposal to use a Class A manufactured home as a secondary accessory farm dwelling does not meet the requirements of DCC 18.116.070. The Hearings Officer finds this criterion is not met.

Section 18.32.040. Dimensional Standards

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

...

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

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

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

The Hearings Officer finds that, per Staff’s comments, the application in this case is being treated as a new application for a secondary accessory farm dwelling. The Hearings Officer finds that despite the fact that the specific structure subject to the Applicant’s proposal is an “existing” manufactured home this criterion is relevant. The Hearings Officer agrees with Staff that this criterion can be met if a condition of approval is included that requires confirmation that the manufactured home does not exceed 30 feet in height except as allowed by DCC 18.120.040.

Building Height

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

Section 18.32.050. Yards

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

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

“The proposed accessory farm dwelling will occupy the existing manufactured home previously approved on the property as a family medical hardship dwelling. In its approval of the hardship dwelling, the county found that the submitted plot plan for the

hardship manufactured home met the required setbacks of DCC 18.32.040. The location of the proposed use will remain on the exact same structure and footprint as the existing manufactured home. Therefore, this section does not apply.”

Staff (Staff Report, page 16) reiterated that this application was reviewed by Staff as an application for a new use despite the manufactured home pre-existing condition. Staff concluded that this criterion is applicable to the application. The Hearings Officer concurs.

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

The Hearings Officer finds that the evidentiary record included a copy of the Manufactured Home Placement permit. The Manufactured Home Placement permit information can be considered as evidence in the record of this case. Staff (Staff Report) recommended conditions of approval to assure that the information contained in the Manufactured Home Placement permit remained accurate. The Hearings Officer agrees with Staff’s recommended conditions (see below).

Under DCC 18.116.180, the purpose of the solar setback is, “...to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings...” The northern lot line of the Subject Property abuts Connarn Road, where future structural development is impracticable. Staff determined that the area immediately adjacent to the north lot line is not a location of a “Potential Structure,” as defined in DCC 18.04.030. Staff concluded that the solar protections of DCC 18.116.180 do not apply to this area and, therefore, the solar setback does not apply to the manufactured dwelling. The Hearings Officer concurs with Staff’s analysis and conclusions related to solar setbacks.

General Setbacks

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

Building and Structural Code Setbacks

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

Section 18.32.060. Stream Setbacks

To permit better light, air, vision, stream pollution control, fish and wildlife areas and

to preserve the natural scenic amenities and vistas along the streams and lakes, the following setbacks shall apply:

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

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

Section 18.32.070. Rimrock Setback

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: There is no rimrock in the project vicinity.

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

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

Chapter 18.80, Airport Safety Combining Zone (AS)

Section 18.80.020. Application of Provisions.

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

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

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

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

Section 18.80.028. Height Limitations.

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

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

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

Section 18.80.044. Land Use Compatibility.

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When

compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080]

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

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

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

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

Staff (Staff Report, pages 20 & 21) recommended a condition of approval be included in any decision which approves the application. The Hearings Officer concurs with Staff that this criterion can be met if the following condition is included.

Outdoor Lighting.

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

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

FINDING: Staff (Staff Report, page 21) recommended a condition of approval be included in any decision which approves the application. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

Glare.

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

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

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

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

FINDING: Staff (Staff Report, page 21) indicated that the proposed use in this case will not cause or create electrical interference. The Hearings Officer concurs with this Staff analysis and conclusion. This criterion can be met.

- F. *Limitations and Restrictions on Allowed Uses in the RPZ, Transitional Surface, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.***

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

Section 18.80.054. Conditional Uses.

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

FINDING: The proposed use is permitted conditionally in the underlying zone. The Hearings Officer finds the Applicant’s proposal is also permitted conditionally in the AS Zone. The Hearings Officer finds that DCC 18.80.044 does not prohibit the proposed use.

Chapter 18.116, Supplementary Provisions

Section 18.116.050, Manufactured Homes

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

- A. *A Class A manufactured home shall:***
- 1. *Have more than 1,000 square feet of occupied space in a double section or larger multi-section unit;***
 - 2. *Be placed on a foundation or support system, as specified by the manufacturer. Skirting shall be required;***
 - 3. *Have wheels, axles and hitch mechanisms removed;***
 - 4. *Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications;***

5. ***Bear an insignia of compliance with the Manufactured Housing and Construction and Safety Standards Code as of June 15, 1976;***
6. ***Have roofing materials of a type customarily used on site constructed residences, including wood shakes or shingles, asphalt or fiberglass shingles, corrugated matte finish colored metal and tile materials, but not including high gloss corrugated aluminum or fiberglass panels. The roof pitch shall be a minimum of two over 12; and***
7. ***Have siding materials of a type customarily used on site-constructed residences such as clapboard, horizontal vinyl or aluminum lap-siding, cedar or other wood siding, brick or stone, and not including high gloss finished material, corrugated metal or fiberglass, or metal or plastic panels.***

B. A Class B manufactured home shall:

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

C. A Class C manufactured home shall:

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

4. Have utilities connected subject to the requirements of the Building Codes Agency and manufacturer's specifications.

FINDING: The Burden of Proof states,

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

Applicant and Staff agree that the manufactured home that is subject to this application is a Class A manufactured home. The Hearings Officer finds no substantial evidence or persuasive evidence in the record to suggest otherwise. The Hearings Officer finds the manufactured home subject to this application is a Class A manufactured home.

Section 18.116.070, Placement Standards for Manufactured Homes.

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

FINDING: The Hearings Officer incorporates the Preliminary Findings for Staff Issue: Class A Manufactured Home (Section III.C.1.), Staff Issue: Need (Section III.C.2.), Staff Issue: Relationship – Primary use/residence to Secondary Accessory Farm Dwelling (Section III.C.3.), Staff Issue: Occupant(s) of Secondary Accessory farm Dwelling (Section III.C.4.), and Staff Issue: Occupant(s) of Stick-built/Primary Dwelling (Section III.C.5.) as additional findings for this approval criterion.

DCC 18.32.030 sets forth the uses that may (if standards are met) be approved as conditional uses in the MUA-10 zone. The Hearings Officer concluded that the Applicant’s proposal to locate a Class A manufactured home within the MUA-10 zoned Subject Property cannot be approved if the requirements of DCC 18.116.070 (A)(1) were not satisfied/met. The Hearings Officer found, based upon the representation of Applicant, that the manufactured home sought to be approved as a secondary accessory farm dwelling is a Class A manufactured home. The Hearings Officer found that a Class A manufactured home can be approved, under DCC 18.116.070 (A)(1) “only” as a primary residence. The Hearings Officer finds that Applicant represented the primary residence on the Subject Property was located within the barn structure.

Staff suggested that this criterion could be met with a condition of approval. The Hearings Officer disagrees. The Hearings Officer finds that Applicant’s proposal is for the Class A manufactured home to be the secondary accessory farm dwelling; not some other class of manufactured home. The Hearings Officer finds that adopting Staff’s recommended condition is a modification of

Applicant's proposal and the Hearings Officer does not have such authority. The Hearings Officer finds Applicant's proposal does not satisfy the requirements of DCC 18.116.070 and therefore does not satisfy the requirements of DCC 18.32.030 G.

2. *In manufactured home parks and subdivisions.*

FINDING: The Subject Property is not within a mobile home park or subdivision. The Subject Property does not contain a mobile home park or subdivision. Burden of Proof states,

3. *As permitted in DCC 18.116.080 and 18.116.090.*

FINDING: DCC 18.116.080 is titled "Manufactured Home Or RV As A Temporary Residence On Individual Lot During Construction." DCC 18.116.090 is titled "A Manufactured Home OR Recreational Vehicle as a Temporary Residence for Medical Condition." The application in this case is for approval of a secondary accessory farm dwelling. The application is not for either a temporary residence for use during construction or a temporary vehicle to be used for a medical condition. The Hearings Officer finds this criterion is not relevant.

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

FINDING: The Hearings Officer finds the Subject Property is not located in an inventoried historic district. The Hearings Officer finds this criterion is not relevant.

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

- 1. *Except as otherwise allowed in DCC 18.116.070, on parcels 10 acres in size or larger.***
- 2. *As a secondary accessory farm dwelling.***
- 3. *In manufactured home parks and manufactured home subdivisions.***
- 4. *As permitted in DCC 18.116.080 and 18.116.090.***
- 5. *As a replacement to an existing non-conforming manufactured home destroyed by fire or other natural act, or as an upgrade to an existing manufactured home.***
- 6. *In the following subdivisions: Rockview II, Tetherow Crossing, Chaparral Estates, Crystal Acres, Hidden Valley Mobile Estates, Johnson Acres, Seven Peaks, Sun Mountain Ranches, Deschutes River Homesites Rimrock Addition, Happy Acres, Rancho El Sereno, Whispering Pines, Bend Cascade View Estates, Raintree, Holmes Acres, La Pine Meadows North, Pine Crest Ranchettes, Dora's Acres, Pierce Tracts, Roan Park, South Forty, Tomes, Crooked River Ranch, Dale Acres, Replat/Hillman, Lake Park Estates, Mary K. Falls Estates.***

7. Class C manufactured homes are not permitted in any historic district or on any historic site.

FINDING: The Applicant proposes to establish an existing Class A manufactured home as a secondary accessory farm dwelling. The Hearings Officer finds these criteria relate only to Class C manufactured homes. The Hearings Officer finds these criteria are not relevant.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

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

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

Section 18.128.015, General Standards Governing Conditional Uses.

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

FINDING: This criterion applies “except for those conditional uses permitting individual single family dwellings...” The first issue the Hearings Officer must address is whether or not an application for a secondary accessory farm dwelling is an application for permitting a “single family dwelling?”

DCC 18.04.030 defines “dwelling, single family” as:

“a detached building containing one dwelling unit and designed for occupancy by one family only, not including temporary structures such as tents, teepees, travel trailers and other similar structures.”

The Hearings Officer finds that the Class A manufactured home that is being proposed as a secondary accessory farm dwelling is a single detached dwelling unit designed to be occupied by one family only. The Hearings Officer finds that the Class A manufactured home is not a

temporary structure similar to a tent, teepee, travel trailer or other similar structure. Therefore, the Hearings Officer finds that the Class A manufactured home meets the definitional requirements to be considered a “dwelling, single family.” The Hearings Officer finds that a “dwelling, single family” is the same as a “single family dwelling.”

The Hearings Officer, based upon the above stated definitional findings, concludes that the application for a manufactured home to be approved as a conditional use as a secondary accessory farm dwelling falls within the single family dwelling exception for this criterion.

The Hearings Officer, as alternative findings to those set forth above, finds that this criterion is relevant and undertakes evaluation of the factors set forth in DCC 18.128.015, General Standards Governing Conditional Uses.

A. *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:*

1. *Site, design and operating characteristics of the use;*

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

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

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

Comments from governmental agencies and the general public did not identify any site, design, or operating characteristic deficiencies related to the proposed secondary accessory farm dwelling. Comments were received from participants related to impacts created by the commercial lavender operation. As noted in the Preliminary Findings this application is for a manufactured home to be used as a secondary accessory farm dwelling. Impacts from the commercial lavender operation are not relevant to a decision in this case. Further, participants indicated that if this application were to be approved then other proximate property owners would be making “similar requests” and if those are approved then negative impacts, such as increased traffic, could result. The Hearings Officer finds the “similar requests” argument is not relevant to this case.

The Hearings Officer finds that there is no substantial or persuasive evidence in the record that

demonstrates that approval of the manufactured home as a secondary accessory farm dwelling at the Subject Property would have negative impacts based on the location, design or operating characteristics of the manufactured home.

2. Adequacy of transportation access to the site; and

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

The Hearings Officer reiterates that the request in this case involves a request for approval of a manufactured home to be used as a secondary accessory farm dwelling. The only traffic impacts relevant to this case are those attributable to the *addition* of the secondary accessory farm dwelling. Traffic impacts from other farm uses, including the commercial farm use, are not subject to reconsideration in this case.

The Hearings Officer finds the written comments from the Deschutes County Road Department and the Deschutes County Transportation Planner are credible and constitute substantial evidence in support of the conclusion that the transportation access to the Subject Property and to the proposed secondary accessory farm dwelling is adequate.

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

FINDING: The Subject Property is generally level and presents no topographical constraints on the proposed manufactured home to be used as a secondary accessory farm dwelling. The *Deschutes County Natural Hazards Mitigation Plan (2015)* identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. There are no Goal 5 inventoried natural resources on the site that merit protection. Further, the property does not contain any mapped wetlands or special flood hazard areas. The Hearings Officer finds, based upon the evidence in the record, that this criterion can be met.

Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. The Hearings Officer finds, based upon the evidence in the record, that this criterion can be met.

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

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

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

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

Pursuant to the factors listed in DCC 18.128.015(A), staff opined (Staff Report, pages 28 & 29) that the proposed use (manufactured home as a secondary accessory farm dwelling) 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 include visual, noise, dust, and odor impacts. Staff (Staff Report, page 29) also noted that the proposed use would be unsuitable if access to the Subject Property would significantly adversely impact existing and projected uses on surrounding properties. Lastly, Staff (Staff Report, page 29) noted that the proposed use would be unsuitable if it significantly adversely impacts off-site topography, natural hazards, or natural resource values.

The Hearings Officer reiterates that the proposal in this case is a request for approval of a secondary accessory farm dwelling on the Subject Property. The proposal, and therefore this decision, does not include reconsideration or review of any of the existing approved farm uses on the Subject Property. Included in the existing approved farm uses is the growing, processing and commercial sales of lavender products. The impacts from these approved uses is not relevant to this approval criterion.

The Hearings Officer finds the proposed location of the manufactured home will not impact surrounding properties related to the design of the manufactured home or the operating characteristics associated with the manufactured home. The Hearings Officer finds there is no evidence in the record demonstrating that approval of a manufactured home as a secondary accessory farm dwelling on the Subject Property could be expected to cause any significant visual, noise, dust or odor impacts. The Hearings Officer finds no evidence in the record to demonstrate that the proposed location of the manufactured home will have any impact on off-site topography, natural hazards or natural resource values.

The Hearings Officer finds that approval of the application to locate a manufactured home on the Subject Property as a secondary accessory farm dwelling is compatible with surrounding properties.

- 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, the Hearings Officer 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 Subject Property beyond the minimum standards of DCC Title 18, the Hearings Officer finds such conditions are authorized by this section.

Section 18.128.040, Specific Use Standards.

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

FINDING: As described herein, the proposed conditional use is reviewed in accordance with the standards of the zone in which it is located and with the standards and conditions set forth in

DCC 18.128.045 through DCC 18.128.370, as applicable.

IV. CONCLUSION

The application in this case is to locate a Class A manufactured home on the Subject Property to be used as a secondary accessory farm dwelling. Secondary accessory farm dwellings are allowed in the MUA-10 zone so long as all relevant conditional use approval criteria are met. DCC 18.32.030 G states a manufactured home may be approved as a secondary accessory farm dwelling conditional use in the MUA-10 zone “subject to the requirements set forth in DCC 18.116.070.”

Applicant represented that a “stick-built” structure (part of a barn) is the “primary dwelling” on the Subject Property and the proposed manufactured home would be the “secondary accessory farm dwelling.” Applicant represented that the manufactured home proposed to be used as the secondary accessory farm dwelling is a Class A manufactured home.

The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker’s residences) to be used as a “primary dwellings.” The Hearings Officer concluded that Applicant’s proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.

The Hearings Officer found that all relevant approval criteria were met by the application in this case excepting for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application must be denied.

V. DECISION

Denial of Applicant’s request for Secondary Accessory Farm Dwelling Conditional Use permit at the Subject Property.

Deschutes County Hearings Officer

A handwritten signature in cursive script that reads "Gregory J. Frank".

Gregory J. Frank, Hearings Officer

Date: June 14, 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 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.

owner	agent	inCareof	address	cityStZip	type	cdd id
Tumalo Lavender Property LLC	Holly Olson and Summer Hagedorn		3318 NW Rademacher Place	Bend, OR 97703	HOFF Decision	23-162-CU
Douglas White			60762 River Bend Drive	BEND, OR 97702	HOFF Decision	23-162-CU
Marilyn Thompson			29475 NE Miller View Lane	Newberg, OR 97132	HOFF Decision	23-162-CU