



**STAFF REPORT**

**FILE NUMBER(S):** 247-23-000249-MC

**SUBJECT PROPERTY/  
OWNER:**

Mailing Name: SIMMONS BROTHERS LLC  
Map and Taxlot: 1413250001200  
Account: 128367  
Situs Address: 4180 NE ONEIL WAY, REDMOND, OR 97756

**APPLICANT:** Simmons Brothers, LLC

**ATTORNEY:** Lisa Andrach, Fitch & Neary, P.C.

**REQUEST:** A modification of conditions to a previously-approved land use permit (247-21-000593-MP, 594-CU, 595-CU) to change the point of access from NE Coyner Avenue to NE Oneil Way (Highway 370).

**HEARING DATE:** July 12, 2023

**HEARING START:** 6:00 pm

**STAFF CONTACT:** Dan DiMarzo  
Phone: 541-330-4620  
Email: [dan.dimarzo@deschutes.org](mailto:dan.dimarzo@deschutes.org)

**RECORD:** Record items can be viewed and downloaded from:  
[www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov)

Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-23-000249-mc-modification-conditions-247-21-000593-mp-594-cu-595-cu>

**I. APPLICABLE CRITERIA**

Deschutes County Code (DCC)  
Title 17, Subdivisions

Chapter 17.22, Approval of Tentative Plans for Partitions

**II. BASIC FINDINGS**

**LOT OF RECORD:** The subject property is one (1) legal lot of record pursuant to County land use file no. 247-15-000247-LR.

**SITE DESCRIPTION:** The subject ± 242.49-acre property is developed with one (1) single-family dwelling and several detached accessory structures in the northern region of the property. The property is moderately covered by mature juniper trees and low-lying native vegetation. The property is irregular in shape and fronts on NE Oneil Way to the north, NE 33<sup>rd</sup> Street to the southwest, and NE Coyner Avenue to the south. The grade of the property is relatively even throughout, with the exception of raised pressure ridges in its southeastern region.

**REVIEW PERIOD:** The subject application was submitted on April 4, 2023 and deemed complete by the Planning Division on May 4, 2023. The 150th day on which the County must take final action on this application is October 1, 2023.

**BACKGROUND/PROPOSAL:** Staff understands the subject modification of condition application as a request to modify the conditions of land use file nos. 247-21-000593-MP, 594-CU, 595-CU to reflect the following:

1. Allow a new access to NE O'Neil Way that would serve the driveways to the two new parcels;
2. Remove any conditions of approval which require dedication of private property to public right of way;
3. Remove any conditions of approval which require road improvements to NE Coyner Avenue.

Staff provides a timeline of relevant events, as follows:

October 3, 2021	Land use approval became final (247-21-000593-MP, 594-CU, 595-CU). (Exhibit A)
December 12, 2022	Application submittal to ODOT for State Highway Approach. (Exhibit B)
January 30, 2023	ODOT Staff Report; Findings of Fact. (Exhibit C)
February 23, 2023	ODOT approval letter which approved new access from the property to O'Neil Highway. (Exhibit D)

February 27, 2023	Revised ODOT approval letter which conditionally approved new access from the property to O'Neil Highway; conditional on local land use approval. (Exhibit E)
April 4, 2023	Modification of Conditions application submittal

**SURROUNDING LAND USES:** Immediately surrounding properties north, east, and west are EFU-zoned parcels in a variety of sizes and shapes ranging from approximately 3.23 acres to 79.02 acres within the Deschutes County jurisdiction. Properties to the south are within the Lake Park Estates subdivision and are zoned MUA-10. There are MUA10-zoned properties located to the north of the subject property, the nearest of which is located ± 0.25 miles to the north of the subject property. Crook County is located to the east of the subject property and contains privately-owned EFU-2 and EFU-3-zoned parcels in a variety of sizes ranging from approximately 0.67 acres to 289.26 acres, with larger-acreage public lands located to the south. Further east, within Crook County, along Highway 370/NE Oneil Way, are several parcels zoned R10 and occupied by residential uses and development.

All of the abutting parcels are residentially developed and several are engaged in small-scale agricultural uses such as the keeping of livestock, horses, and pasture. The attributes of the adjoining EFU properties are summarized in the following table.

Owner	Tax Lots	Total Ac./Irrigated Ac.	Farm Tax	Dwelling Unit	Soil Mapping Units
Parker <i>North</i>	14-13-25-200	14.00 / 25.09	Yes	Yes	35B, 32A, 104A
Aprill <i>North</i>	14-13-25-300	5.63	No	Yes	32A, 35B, 142B
Bear Springs Trust <i>North</i>	14-13-25-400	3.68	No	Yes	35B, 142B
Bennett <i>North</i>	14-13-25-1000	13.00	No	Yes	142B
Howard <i>Northwest</i>	14-13-25-1001	5.00	No	Yes	142B
Elrod Farms LLC <i>Northwest</i>	14-13-25-700	61.39 / 17.63	Yes	Yes	32A, 35B, 142B, 104A
Lamb <i>West</i>	14-13-25-1100	13.26	No	Yes	142B
Fox <i>West</i>	14-13-26-400	18.30	No	Yes	142B, 32A
Redmond Tallow Co <i>Southwest</i>	14-13-35A-100	39.17	No	Yes	142B, 32A



would include a 20 ft.-wide aggregate-surfaced road centered within a 60 ft.-wide public right of way. The existing 30 ft.-wide public right of way exists south of the subject property and was dedicated with the Lake Park Estates subdivision plat. The properties within Lake Park Estates that abut the NE Coyner Avenue right of way along the properties' northern boundaries are all accessed by NE Butler Avenue, a public road that abuts the southern boundaries of said properties. The easterly terminus of the road right of way is the North Unit Main Canal right of way. The Road Department has considered the need to improve NE Coyner Avenue along the entire frontage of the subject property and has determined that approval of the proposed partition should not be subject to road surface improvement requirements because the proposed parcels will be served with access via Oneil Highway. However, dedication of an additional 30 ft. of public right of way north of the south line of Section 25 along the entire frontage of the subject property should still be required to provide the full 60 ft. right of way required under DCC 17.48.100 and 17.48A to provide for any future installation of utility facilities or road improvements.

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

Prior to final plat approval by Road Department:

- Applicant shall dedicate additional right of way along the subject property's frontage to NE Coyner Avenue to provide the minimum standard rural local right of way width of 60 ft. (30 ft. width north of the south section line of Section 35) pursuant to DCC 17.22.030, 17.36.040, 17.36.060, 17.48.100, and 17.48A. Applicant shall cause for the removal of all private property, including fences, walls, landscaping, and other features, from the area to be dedicated.
- The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
- All easements of record or existing rights of way shall be noted on the final partition plat pursuant to DCC 17.24.060(E),(F), and (H).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Please let me know if there are any questions regarding these comments.

Deschutes County Building 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.

Deschutes County Senior Transportation Planner, Peter Russell (Initial Comments)

I have reviewed the transmittal materials for 247-23-000249-MC to modify the previously approved partition and two (2) non-farm dwellings (247-21-000593-MP/594-CU/595-CU) regarding access to the subject property; the modification is to have the access occur at a location approved by the Oregon Department of Transportation (ODOT) of NE O'Neil Way, aka O'Neil Highway. The 242.49-acre parcel lies in the Exclusive Farm Use (EFU) zone and is located at 4180 NE O'Neil Way, aka County Assessor's Map 14-13-25, Tax Lot 1200.

The property abuts NE O'Neil Way, a state highway under the jurisdiction of the Oregon Department of Transportation (ODOT) functionally classified as a principal arterial. Thus, the access permit requirements of DCC 17.48.210(A) do not apply. The applicant will need to obtain access permits from ODOT and provide copies to the County. The public road right of way dedications for NE Coyner, as set forth in Condition of Approval #17 of File 247-21-000593-MP/594-CU/595-CU and as described in the Road Department's comments on that 2021 application shall remain in force.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,088 per p.m. peak hour trip. 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 SDC is for informational purposes only as the SDC is only triggered when new development occur

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2021[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 PULLED.

ON JULY 1, 2023, THE SDC RATE GOES UP TO \$5,406 PER P.M. PEAK HOUR TRIP AND THE SDC FOR A SINGLE-FAMILY HOME WILL BE \$3,853 (\$4,379 X 0.81) AND THAT SDC AMOUNT WILL BE GOOD THROUGH JUNE 30, 2024.

AGAIN THE ABOVE SDC AMOUNTS ARE INFORMATIONAL ONLY; THE SDC IS ONLY TRIGGERED WHEN NEW DEVELOPMENT OCCURS.

Deschutes County Senior Transportation Planner, Peter Russell (Revised Comments)

In coordination with the Road Department and based on new materials that have come to the County's attention plus relevant Deschutes County Code, staff would recommend denying the modification of the partition at 4180 NE O'Neil Way, aka County Assessor's Map 14-13-25, Tax Lot 1200. The partitioning was originally approved under 247-21-000593-MP/594-CU/595-CU with access via Coyner, a local road. The modification seeks to change the access from Coyner to O'Neil Highway, a State facility, and remove the previous requirement to improve the section of Coyner to the site's driveway and dedicate right of way for the remaining frontage.

The applicant did not appeal the original approval in file 247-21-000593-MP/594-CU/595-CU to challenge any of the conditions of approval therein. The decision and conditions are thus final, per DCC 22.28.010.C. County Legal advises that the proposed modification appears to be an inappropriate substitute for an appeal and, thus, a collateral attack on the original approval, contrary to DCC 22.36.040.B ("A modification shall not be filed as a substitute for an appeal..."). The County cannot now consider an application that requires a determination that the access and conditions related thereto in the original, unappealed approval should be changed. *See Landwatch Lane County v. Lane County*, 79 Or LUBA 65, 72-73 (2019).

On this basis alone, the application may be denied. However, additional analysis is included in this memorandum which provides additional, alternate bases for denial.

**New materials have come to the County's attention**

The applicant submitted a letter from the Oregon Department of Transportation (ODOT) dated Feb. 23, 2023, approving a new access from the property to the O'Neil Highway. The access would serve two new lots. The applicant submitted just this letter to the County as part of its April 7, 2023, application.

Yet, ODOT had issued a second letter on Feb. 27, 2023, clarifying that the access approval to the O'Neil Highway was conditional and would be based on local approval of the land use. The applicant did not supply this letter as a portion of its April 7, 2023, application. However, ODOT based its findings for allowing the highway access on the incorrect assumption that the property had been denied access to a County road and thus there was no alternate access to the site. Yet, the County in its Sept. 21, 2021, decision, set Condition of Approval #12 requiring the applicant to apply for a driveway permit from Deschutes County to access Coyner. At Condition of Approval #8, the County required the portion of Coyner that led to the driveway to be improved with gravel and right of way dedication. Clearly, the County intent was to allow the access to Coyner.

Given there was an essentially approved access to Coyner, a local road, ODOT would not have needed to review the potential access onto a State highway with its higher speeds and volumes.

### **New accesses to arterials prohibited by County code**

Deschutes County Code (DCC) 17.48.210(B) prohibits new access to arterials or collectors unless there is no possible means of access to the parcel. The County's Transportation System Plan (TSP) defines O'Neil as a Principal Arterial as does Title 17. All State highways are principal arterials. The County defines Coyner as a local road. Coyner abuts the southern edge of the property and the applicant's site plan in 247-21-000593-MP/594-CU/595-CU) showed the two new lots accessing Coyner. Additionally, the County's approval of that 2021 application required improving a portion of Coyner that would serve the two new lots and dedication right of way for the remaining frontage. Clearly, Coyner provides a means to access the new parcels.

By applying to remove the access to Coyner, the applicant is basically forming a self-created hardship to then seek access onto O'Neil. From a perspective of the safety of the traveling public, an access onto a low-volume, low speed local road is superior to an access onto a high-speed, higher-volume arterial that is a State highway.

### **County code requires right of way dedication**

Coyner is of substandard width, being 30 feet wide while DCC 17.48 Table A requires 60 feet of right of way for a local. The County believes requiring a 30-foot dedication the full length of the property is consistent with County code.

DCC 17.36.080 states "[W]hen necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition." DCC 17.48, Table A sets gravel as the improvement for partitions that average 10 acres or more in size. The County will only require improving and graveling the segment of Coyner from the west end of the property to the driveway for the new lots, which is proportionate. Only traffic from the two lots will drive on the graveled portion, so that is both a rational nexus and roughly proportionate.

### **Conclusion**

Based on the incorrect information ODOT used to approve the second access onto O'Neil Highway, the incomplete information the County received in the application regarding ODOT's access permit, and the requirements of County, and that the applicant never timely appealed the conditions of approval, the modification should be denied.

The following agencies did not respond to the notice: Deschutes County Assessor, Deschutes County Environmental Soils Division.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the modification of conditions application to all property owners within 750 feet of the subject property on April 13, 2023. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The



applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on April 21, 2023. No public comments were received.

### III. FINDINGS & CONCLUSIONS

#### Title 22, Deschutes County Development Procedures Ordinance

#### Chapter 22.36, Limitations on Approvals

##### Section 22.36.040, Modification of Approval.

- A. *An applicant may apply to modify an approval at any time after a period of six months has elapsed from the time a land use action approval has become final.***

**FINDING:** A period of six months has elapsed from the time the subject land use action approval became final, October 3, 2021.

- B. *Unless otherwise specified in a particular zoning ordinance provision, the grounds for filing a modification shall be that a change of circumstances since the issuance of the approval makes it desirable to make changes to the proposal, as approved. A modification shall not be filed as a substitute for an appeal or to apply for a substantially new proposal or one that would have significant additional impacts on surrounding properties.***

**FINDING:** The applicant's burden of proof states:

The applicant is revising the proposed access location for the newly created parcels following ODOT approval of the proposed access location. Exhibit 1 (ODOT approval). There is no significant impact to the surrounding properties, as the proposed partition of the property is the same, and ODOT has approved the proposed access location. Exhibit 1. There is no proposal that constitutes and [sic] "appeal" from the original decision. The attached Exhibit 2 shows the location of the access approved by ODOT.

Staff notes comments received by Deschutes County Senior Transportation Planner, Peter Russell state:

...The applicant did not appeal the original approval in file 247-21-000593-MP/594-CU/595-CU to challenge any of the conditions of approval therein. The decision and conditions are thus final, per DCC 22.28.010.C. County Legal advises that the proposed modification appears to be an inappropriate substitute for an appeal and, thus, a collateral attack on the original approval, contrary to DCC 22.36.040.B ("A modification shall not be filed as a substitute for an appeal...."). The County cannot now consider an application that requires a determination that the access and conditions related thereto in the original, unappealed

approval should be changed. See *Landwatch Lane County v. Lane County*, 79 Or LUBA 65, 72-73 (2019).

On this basis alone, the application may be denied. However, additional analysis is included in this memorandum which provides additional, alternate bases for denial...

Staff notes County legal has advised that the proposed modification appears to be an inappropriate substitute for an appeal, as copied above.

For this reason, staff recommends the Hearings Officer deny this application under this criterion.

- C. *An application to modify an approval shall be directed to one or more discrete aspects of the approval, the modification of which would not amount to approval of a substantially new proposal or one that would have significant additional impacts on surrounding properties. Any proposed modification, as defined in DCC 22.36.040, shall be reviewed only under the criteria applicable to that particular aspect of the proposal. Proposals that would modify an approval in a scope greater than allowable as a modification shall be treated as an application for a new proposal.***

**FINDING:** The applicant's burden of proof states:

The modification is only to change the access location for the two approved new parcels. The county already approved the partition to create two (2) new parcels. The proposed modification to the access does not substantially change the approved 3 lot partition. ODOT has approved the proposed access point for the new parcels which saves the owner the development costs for right of way improvements and right of way dedication required in the original conditions of approval.

Deschutes County Senior Transportation Planner, Peter Russell, stated

The property abuts NE O'Neil Way, a state highway under the jurisdiction of the Oregon Department of Transportation (ODOT) functionally classified as a principal arterial. This [sic], the access permit requirements of DCC 17.48.210(A) do not apply. The applicant will need to obtain access permits from ODOT.

(Decision page 5)

In compliance with this comment, the applicant has obtained the required access permit from ODOT to take access from NE O'Neil Way. (Exhibit 1) Accordingly, DCC 17.48.210(A) does not apply.

The applicant does not propose any access from NE Coyner Avenue, and therefore there is no related nexus to require any dedication of right of way to the public for the public use and benefit, and there are no improvements required of NE Coyner Avenue because the newly created parcels will not use NE Coyner Avenue for any purpose.

The subject property front[s] on NE O'Neil Way, and will take direct access from NE O'Neil Way. Therefore, the applicant requests that the County modify the approval to remove any conditions requiring dedication of the private property to the public for right of way and any requirement to improve NE Coyner Avenue (See Decision at page 6-7, 37-38, Cody Smith, Deschutes County Road Department County Engineer, analysis of right of way dedication and road improvement if NE Coyner used for development benefit.)

The applicant requests modification of the following conditions of approval to the extent the requirements thereof are negated by the proposed direct access from NE O'Neil Way, public right of way: ...

Staff notes comments received by Deschutes County Senior Transportation Planner, Peter Russell state:

**... New materials have come to the County's attention**

The applicant submitted a letter from the Oregon Department of Transportation (ODOT) dated Feb. 23, 2023, approving a new access from the property to the O'Neil Highway. The access would serve two new lots. The applicant submitted just this letter to the County as part of its April 7, 2023, application.

Yet, ODOT had issued a second letter on Feb. 27, 2023, clarifying that the access approval to the O'Neil Highway was conditional and would be based on local approval of the land use. The applicant did not supply this letter as a portion of its April 7, 2023, application. However, ODOT based its findings for allowing the highway access on the incorrect assumption that the property had been denied access to a County road and thus there was no alternate access to the site. Yet, the County in its Sept. 21, 2021, decision, set Condition of Approval #12 requiring the applicant to apply for a driveway permit from Deschutes County to access Coyner. At Condition of Approval #8, the County required the portion of Coyner that led to the driveway to be improved with gravel and right of way dedication. Clearly, the County intent was to allow the access to Coyner.

Given there was an essentially approved access to Coyner, a local road, ODOT would not have needed to review the potential access onto a State highway with its higher speeds and volumes.

**New accesses to arterials prohibited by County code**

Deschutes County Code (DCC) 17.48.210(B) prohibits new access to arterials or collectors unless there is no possible means of access to the parcel. The County's Transportation System Plan (TSP) defines O'Neil as a Principal Arterial as does Title 17. All State highways are principal arterials. The County defines Coyner as a local road. Coyner abuts the southern edge of the property and the applicant's site plan in 247-21-000593-MP/594-CU/595-CU) showed the two new lots accessing Coyner. Additionally, the County's approval of that 2021 application required improving a portion of Coyner that would serve the two new lots and

dedication right of way for the remaining frontage. Clearly, Coyner provides a means to access the new parcels.

By applying to remove the access to Coyner, the applicant is basically forming a self-created hardship to then seek access onto O'Neil. From a perspective of the safety of the traveling public, an access onto a low-volume, low speed local road is superior to an access onto a high-speed, higher-volume arterial that is a State highway.

### **County code requires right of way dedication**

Coyner is of substandard width, being 30 feet wide while DCC 17.48 Table A requires 60 feet of right of way for a local. The County believes requiring a 30-foot dedication the full length of the property is consistent with County code.

DCC 17.36.080 states “[W]hen necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition.” DCC 17.48, Table A sets gravel as the improvement for partitions that average 10 acres or more in size. The County will only require improving and graveling the segment of Coyner from the west end of the property to the driveway for the new lots, which is proportionate. Only traffic from the two lots will drive on the graveled portion, so that is both a rational nexus and roughly proportionate...

Staff understands approval from ODOT (Exhibit E) is conditionally approved pending local land use approval. The subject modification of conditions application has not been approved; for this reason, staff finds access approval from ODOT is not finalized, and is pending approval of the subject modification of conditions application.

Additionally, staff notes DCC 17.48.210(B) prohibits new access to arterials or collectors unless there is no other possible means of accessing the parcel. Staff finds approval of file no. 247-21-000593-MP, 594-CU, 595-CU approved access to the newly created parcels via NE Coyner Avenue, a local road. Given the approved local road access, staff believes that the standards of DCC 17.48.210(B) are not met.

Finally, staff finds file no. 247-21-000593-MP, 594-CU, 595-CU approved access to the newly created parcels via NE Coyner Avenue, with conditions, as described herein. ODOT Staff Report; Findings of Fact (Exhibit C) states:

... Access off the local road system has been denied by the county and cannot be approved without site improvements that exceed what is reasonable for the partition of the two lots...

(Exhibit C, page 9)

It is unclear to staff whether the ODOT comments above are accurate; specifically, that the County did not deny access off the local road system, and whether or not ODOT views the conditions of approval – those that require road improvements and right of way dedication – to provide an essential nexus and are roughly proportionate to the approved partition.

For these reasons, staff recommends the Hearings Officer denies the application under this criterion.

***D. An application for a modification shall be handled as a land use action.***

**FINDING:** This application has been processed as a land use action in accordance with the applicable provisions of DCC Title 22.

**IV. CONCLUSION**

As noted above, Staff raises a number of issue areas to the Hearings Officer. Staff requests the Hearings Officer to determine if the application should be denied on the following issues:

- Is the subject modification of conditions application an inappropriate substitute for an appeal?
- Has the applicant obtained ODOT access permit approval?
- Do the standards of DCC 17.48.210(B) apply?
- Do the conditions of approval and findings of the County within the final land use decision – those that require road improvements and right of way dedication – provide an essential nexus and rough proportionality to the approved partition?

While staff has recommended denial of this application, staff recommends the following conditions of any approval:

**V. RECCOMENDED CONDITIONS OF ANY APPROVAL**

For clarity, the conditions of approval that the applicant is requesting to modify and/or remove are separated by theme, and are copied below:

Driveway Access

12. Driveway Access: Applicant or their successors in interest for the subject property shall obtain driveway access permits for all driveway accesses pursuant to DCC 12.28.050 and 17.48.210(A).

Road Improvement

8. Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. NE Coyner Ave between NE 33rd St and Proposed Parcel 3 shall be designed to the minimum aggregate road surface standard pursuant to 17.48.170(A) and 17.48A,

which requires a 20 ft.-wide by 5 in.-depth aggregate road surface and a 45 ft.-radius by 5 inch-depth aggregate cul-de-sac bulb at the improved road terminus. Applicant may propose a turnaround facility other than a cul-de-sac bulb that will be subject to approval by the appropriate fire protection district. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

9. Road Department Signature: Applicant shall submit final improvement plans with all required approval signatures to Road Department.

15. Construction of Road Improvements: Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a register professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter to the Road Department from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.

16. Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.40.050.

#### Right of Way Dedication

17. Applicant shall dedicate additional right of way along the subject property's frontage to NE Coyner Avenue to provide the minimum standard rural local right of way width of 60 ft. (30 ft. width north of the south section line of Section 35) pursuant to DCC 17.22.030, 17.36.040, 17.36.060, and 17.48A. Dedication shall also include area as required to provide for a minimum 50 ft.-radius right of way bulb to accommodate the required cul-de-sac bulb. Dedication shall be by plat declaration. Applicant shall cause for the removal of all private property, including fences, walls, landscaping, and other features, from the area to be dedicated.

18. Plat Preparation: The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).

Final Plat

20. Road Department Plat Approval: Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Should the Hearings Officer approve the request to modify some or all of the conditions of approval of the previously issued land use decision, staff recommends the remaining conditions of approval remain as written.

**VII. DURATION OF APPROVAL, NOTICE, AND APPEALS**

Staff recommends the Hearing Officer include specific language describing the duration of approval if the proposed modifications are approved. Staff understands that either an approval or denial to modify file nos. 247-21-000593-MP, 594-CU, 595-CU would have no impact on the original duration of approval as outlined both in that decision and in DCC Title 22.

**DESCHUTES COUNTY PLANNING DIVISION**



Written by: Dan DiMarzo, Assistant Planner



Reviewed by: Will Groves, Planning Manager

Attachment(s):

1. Exhibit A (247-21-000593-MP, 594-CU, 595-CU FD)
2. Exhibit B (ODOT Application for State Highway Approach)
3. Exhibit C (ODOT Staff Report; Findings of Fact)
4. Exhibit D (ODOT Approval Letter)
5. Exhibit E (ODOT Conditional Approval Letter)



**FINDINGS AND DECISION**

**FILE NUMBER:** 247-21-000593-MP, 594-CU, 595-CU

**SUBJECT PROPERTY/  
OWNER:** Mailing Name: SIMMONS BROTHERS LLC  
Map and Taxlot: 1413250001200  
Account: 128367  
Situs Address: 4180 NE ONEIL WAY, REDMOND, OR 97756

**APPLICANT:** Kilpatrick Consulting LLC

**REQUEST:** The applicant requests approval of a Minor Partition to divide the subject property to create an 8.98-acre Parcel 1, a 13.24-acre Parcel 2, and a 220.27-acre Parcel 3. The applicant also requests Conditional Use Permit approval to establish a nonfarm dwelling on Parcel 1 and Parcel 2.

**STAFF CONTACT:** Tarik Rawlings, Associate Planner  
Phone: 541-317-3148  
Email: [Tarik.Rawlings@deschutes.org](mailto:Tarik.Rawlings@deschutes.org)

**DOCUMENTS:** Can be viewed and downloaded from:  
[www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov) and <http://dial.deschutes.org>

**I. APPLICABLE CRITERIA**

- Deschutes County Code (DCC)
  - Title 17, Subdivision and Partition Ordinance
    - Chapter 17.22, Approval of Tentative Plans for Partition
    - Chapter 17.36, Design Standards
    - Chapter 17.44, Park Development
    - Chapter 17.48, Design and Construction Specifications
  - Title 18 of the Deschutes County Code, the County Zoning Ordinance:
    - Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Title 22, Deschutes County Development Procedures Ordinance
- Oregon Revised Statutes



**II. BASIC FINDINGS**

**LOT OF RECORD:** The subject property is considered a legal lot of record as it was recognized as such in a county-issued lot of record verification decision (file no. 247-15-000247-LR).

**SITE DESCRIPTION:** The subject 242.49-acre property is developed with a single-family dwelling and detached accessory structures in the northern portion of the property. The property itself has a vegetative cover of mature juniper trees, sagebrush, and native groundcovers with intermittent portions of the property characterized by a lack of mature vegetation likely associated with site clearing or wildfire fuel thinning. The property is irregular in shape and fronts on NE Oneil Way to the north, NE 33<sup>rd</sup> Street to the southwest, and NE Coyner Ave to the south. The grade of the property is relatively even across the interior portions of the property, with some raised pressure ridges in the southeast portion and immediately south of the existing home site.

**SURROUNDING LAND USES:** Immediately surrounding properties north, east, and west are EFU-zoned parcels in a variety of sizes and shapes ranging from approximately 3.23 acres to 79.02 acres within the Deschutes County jurisdiction. Other properties include MUA10-zoned properties abutting to the south within the Lake Park Estates subdivision. There are MUA10-zoned properties located to the north of the subject property, the nearest of which is located approximately 0.25 miles to the north of the subject property. Crook County is located to the east of the subject property and contains privately-owned EFU-2 and EFU-3-zoned parcels in a variety of sizes ranging from approximately 0.67 acres to 289.26 acres, with larger-acreage public lands located to the south. Further east, along Highway 370/NE Oneil Way, are several parcels zoned R10 and occupied by residential uses and development.

All of the adjoining parcels are residentially developed and several are engaged in small-scale agricultural uses such as the keeping of livestock, horses, and pasture. The attributes of the adjoining EFU properties are summarized in the following table.

Owner	Tax Lots	Total Ac./Irrigated Ac.	Farm Tax	Dwelling Unit	Soil Mapping Units
Lee Property Management LLC <i>North</i>	14-13-25-200	14.00 / 25.09	Yes	Yes	35B, 32A, 104A
Aprill <i>North</i>	14-13-25-300	5.63	No	Yes	32A, 35B, 142B
Edmonds <i>North</i>	14-13-25-400	3.68	No	Yes	35B, 142B
Bennett <i>North</i>	14-13-25-1000	13.00	No	Yes	142B
Howard <i>Northwest</i>	14-13-25-1001	5.00	No	Yes	142B

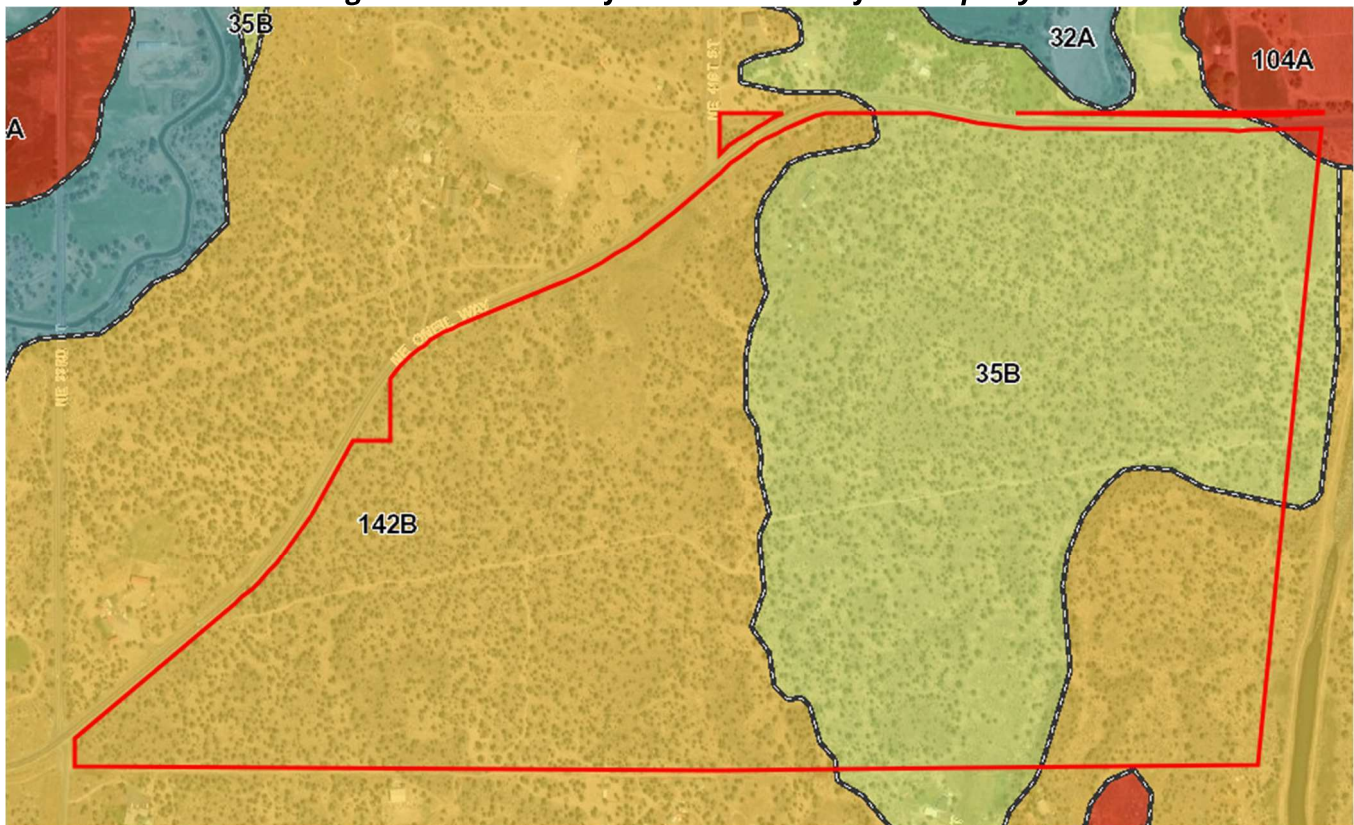
Elrod Farms LLC <i>Northwest</i>	14-13-25-700	61.39 / 17.63	Yes	Yes	32A, 35B, 142B, 104A
Lamb <i>West</i>	14-13-25- 1100	13.26	No	Yes	142B
Devore <i>West</i>	14-13-26-400	18.30	No	Yes	142B, 32A
Redmond Tallow Co <i>Southwest</i>	14-13-35A- 100	39.17	No	Yes	142B, 32A
Gulley <i>Southeast</i>	14-13-25- 1300	3.23	No	Yes	142B

**LAND USE HISTORY:**

- **247-20-000730-CU:** Nonfarm dwelling deposit packet used in preparing the subject application(s)
- **247-15-000247-LR:** Lot of Record verification for the subject property.

**SOILS:** According to the Natural Resources Conservation Service (NRCS) maps of the area, there are three (3) soil units mapped on the subject property. See **Figure 1** below:

**Figure 1 – Location of Soil Units on Subject Property**



35B, Deschutes-Stukel complex, dry, 0 to 8 percent slopes: This soil complex is composed of 50 percent Deschutes soil and similar inclusions, 35 percent Stukel soil and similar inclusions, and 15

percent contrasting inclusions. The Deschutes soil is well drained with a moderately rapid permeability and an available water capacity of about 4 inches. The Stukel soil is well drained and has a moderately rapid permeability, and an available water capacity of about 2 inches. The major use of this soil complex is irrigated cropland and livestock grazing. Stukel soils have an agricultural capability rating of 6E when not irrigated and 4e when irrigated. Deschutes soils have an agricultural capability rating of 6E when not irrigated and 3e when irrigated. Approximately 42.7 percent of the subject parcel is made up of this soil type.

104A, Redmond Sandy Loam, 0 to 3 percent slopes: This soil is typically composed of 85 percent Redmond soil and similar inclusions and 15 percent contrasting inclusions. The Redmond Sandy Loam is typically well-drained with moderate permeability and an available water capacity of about 3 inches. The surface layer is a grayish brown sandy loam to 12 inches and then turns to a grayish brown loam to about 21 inches. Thereafter, basalt bedrock is found. Major uses of this type of soil are irrigated cropland and livestock grazing. The agricultural capability rating for the Redmond Sandy Loam is 6S for nonirrigated and 3S for irrigated. This soil type is considered high value. Approximately 0.14 percent of the subject parcel is made up of this soil type.

142B, Stukel-Rock Outcrop-Deschutes complex. Dry, 0 to 8 percent slopes. This soil complex is composed of 35 percent Stukel soil and similar inclusions, 30 percent Rock outcrop, 20 percent Deschutes soil and similar inclusions, and 15 percent contrasting inclusions. Stukel soils are well-drained, with moderately rapid permeability and an available water capacity of about 2 inches. Deschutes soils are well-drained, with moderately rapid permeability and an available water capacity of about 4 inches. This soil is not considered a high value soil. Approximately 47.9 percent of the subject parcel is made up of this soil type.

#### Soil Study:

The applicant submitted a soil study prepared by Brian T. Rabe of Cascade Earth Sciences, a certified professional soil scientist and soil classifier. The study, dated July 15<sup>th</sup>, 2020, identifies a predominance of Land Capability Classification (LCC) 7 and 8 soils within the current configurations of the subject property. The soil study provides the County with a precise determination of the location of the soils units and types of soils found on the subject property within the study area.

**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on June 16, 2021, to several public agencies and received the following comments:

Deschutes County Building 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.*

Deschutes County Senior Transportation Planner, Peter Russell

*I have reviewed the transmittal materials for 247-21-000593-MP/594-CU/595-CU to partition an existing 242.49-acre parcel in the Exclusive Farm Use (EFU) zone into three lots and place a non-farm dwelling on each of Parcel One, 8.98 acres, and Parcel Two, 13.24 acres. The property is located at 4100 NE O'Neil Way, aka County Assessor's Map 14-13-25, Tax Lot 1200.*

*The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family residence (Land Use 210) generates an average of approximately 10 daily weekday trips. Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. The proposed land use will not meet the minimum threshold for additional traffic analysis.*

*The property abuts NE O'Neil Way, a state highway under the jurisdiction of the Oregon Department of Transportation (ODOT) functionally classified as a principal arterial. Thus, the access permit requirements of DCC 17.48.210(A) do not apply. The applicant will need to obtain access permits from ODOT.*

*Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,488 per p.m. peak hour trip. 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 \$3,635 ( $\$4,488 \times 0.81$ ). 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 SDC is for informational purposes only as the SDC is only triggered when new development occur*

**THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2021. 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 PULLED.**

**ON JULY 1, 2021, THE SDC RATE GOES UP TO \$4,757 PER P.M. PEAK HOUR TRIP AND THE SDC FOR A SINGLE-FAMILY HOME WILL BE \$3,853 ( $\$4,757 \times 0.81$ ) AND THAT SDC AMOUNT WILL BE GOOD THROUGH JUNE 30, 2022.**

**AGAIN THE ABOVE SDC AMOUNTS ARE INFORMATIONAL ONLY; THE SDC IS ONLY TRIGGERED WHEN NEW DEVELOPMENT OCCURS.**

Deschutes County Road Department County Engineer, Cody Smith

*I have reviewed the application materials for the above-referenced file numbers, proposing a three-parcel partition of Tax Lot 1200 on Assessor's Map 14-13-25. The subject property is accessed by and abuts OR 370 (a state highway, also known as "Oneil Highway") along the property's northern and western boundary, NE 33<sup>rd</sup> Street along the property's western boundary, and NE Coyner Avenue along the property's southern boundary. Road Department records indicate that NE 33<sup>rd</sup> St and NE Coyner Avenue have the following attributes along the frontage to the subject property:*

NE 33<sup>rd</sup> Street

- Road Status Local Access Road, Non-County Maintained

- *Surface Type* Aggregate
- *Surface Width* ~30 ft.
- *Functional Classification* Rural Local
- *Right of Way Width* 60 ft.
- *Right of Way Instrument* Document No. 1977-2530793, Deschutes County Official Records

Where it abuts or provides access to the subject property, NE 33<sup>rd</sup> Street meets the minimum local road standards given in Deschutes County Code (DCC) 17.48A.

NE Coyner Avenue

- *Road Status* Local Access Road, Non-County Maintained
- *Surface Type* Unimproved
- *Surface Width* NA
- *Functional Classification* Rural Local
- *Right of Way Width* 30 ft.
- *Right of Way Instrument* Lake Park Estates Subdivision Plat (1971)

Where it abuts or provides access to the subject property, NE Coyner Avenue does not meet the minimum local road standards given in Deschutes County Code (DCC) 17.48A, which would include a 20 ft.-wide aggregate-surfaced road centered within a 60 ft.-wide public right of way and a 45 ft.-radius aggregate-surfaced cul-de-sac bulb. The existing 30 ft.-wide public right of way exists south of the subject property and was dedicated with the Lake Park Estates subdivision plat. The properties within Lake Park Estates that abut the NE Coyner Avenue right of way along the properties' northern boundaries are all accessed by NE Butler Avenue, a public road that abuts the southern boundaries of said properties. The easterly terminus of the road right of way is the North Unit Main Canal right of way. The Road Department has considered the need to improve NE Coyner Avenue along the entire frontage of the subject property and has determined that approval of the proposed partition should not be subject to road surface improvement requirements for the entire length of the right of way along the subject property's frontage because the road only serves the subject property. As such, road improvements should be limited to the extent necessary to provide access to the proposed parcels. However, dedication of an additional 30 ft. of public right of way north of the south line of Section 25 along the entire frontage of the subject property should be required to provide the full 60 ft. right of way required under DCC 17.48.100 and 17.48A to provide for any future installation of utility facilities.

Please note that the available application materials did not include a burden of proof statement addressing the requirements of DCC 17.22, 17.36, or 17.48.

There are currently no driveway access permits on file for the subject property.

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

Prior to construction of public road improvements:

- Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. NE Coyner Ave between NE 33<sup>rd</sup> St and Proposed Parcel 3 shall be designed to the minimum aggregate road

surface standard pursuant to 17.48.170(A) and 17.48A, which requires a 20 ft.-wide by 5 in.-depth aggregate road surface and a 45 ft.-radius by 5 inch-depth aggregate cul-de-sac bulb at the improved road terminus. Applicant may propose a turnaround facility other than a cul-de-sac bulb that will be subject to approval by the appropriate fire protection district. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

- Applicant shall submit final improvement plans with all required approval signatures to Road Department.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter to the Road Department from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.40.050.
- Applicant shall dedicate additional right of way along the subject property's frontage to NE Coyner Avenue to provide the minimum standard rural local right of way width of 60 ft. (30 ft. width north of the south section line of Section 35) pursuant to DCC 17.22.030, 17.36.040, 17.36.060, and 17.48A. Dedication shall also include area as required to provide for a minimum 50 ft.-radius right of way bulb to accommodate the required cul-de-sac bulb. Dedication shall be by plat declaration. Applicant shall cause for the removal of all private property, including fences, walls, landscaping, and other features, from the area to be dedicated.
- The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
- All easements of record or existing rights of way shall be noted on the final partition plat pursuant to DCC 17.24.060(E),(F), and (H).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Prior to issuance of building permits on any parcel:

- Applicant or their successors in interest for the subject property shall obtain driveway access permits for all driveway accesses to NE Coyner Avenue for the subject property pursuant to DCC 12.28.050 and 17.48.210(A).

Deschutes County Environmental Health Supervisor, Todd Cleveland

*For each lot or parcel that is intended to have a dwelling, a complete approved site evaluation that is consistent with the conditional use approval must be completed prior to final plat approval.*

Deschutes County Address Coordinator, Tracy Griffin

*Provided the submitted parcel configurations do not change, addressing as follows:*

*Parcel 1 = 3350 NE O'Neil Way*

*Parcel 2 = 3370 NE O'Neil Way*

*Parcel 3 = 4180 NE O'Neil Way (existing address to remain)*

Redmond Fire & Rescue Deputy Fire Marshal, Wade Gibson

***The following is a recommendation only (because it is 1-2 family dwelling and not in application as a subdivision):***

**WATER:**

**• *Fire Safety during Construction – 2019 OFC 501.4***

- *Approved fire department access roads, required water supply, fire hydrants, and safety precautions shall be installed and serviceable prior to and during the time of construction. The requirements of NFPA 241 shall be followed until project is complete.*

***Area without Fire Hydrants:***

**• *NFPA 1142 Requirements 2017***

- *If the structure is being built in an area without a public water supply system, then the water flow requirements will come from NFPA 1142.*
- ***Note:*** *The following information will need to be provided in order to determine accurate water flow requirements.*
  - *Building height, length and width*
  - *Use of the building*
  - *Type of construction*
  - *Whether the structure 100 sq ft or larger and within 50 feet of any other structures*

**• *Structures with Automatic Sprinkler systems – 2017 NFPA 1142 Chapter 7***

- *The authority having jurisdiction shall be permitted to waive the water supply required by this standard when a structure is protected by an automatic sprinkler system that fully meets the requirements of NFPA 13 (2016)*

**• *Fire Safety during Construction – 2019 OFC 501.4 and NFPA 241 (2017)***

- *Approved fire department access roads, required water supply, fire hydrants, and safety precautions shall be installed and serviceable prior to and during the time of construction. The requirements of NFPA 241 shall be followed until project is complete.*

**ACCESS:**

- **Premises Identification – 2019 OFC 505.1**
  - Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street fronting the property. Said numbers shall contrast with their background and visible at night. Number/letter shall be a minimum of 4" high and a .5 "stroke width.
  - **Note:** Green address signs for addresses in the county are available for \$10.00 from Redmond Fire & Rescue. Please call 541-504-5000 to have one ordered and posted.
  
- **Required Access – 2019 OFC 504.1**
  - Exterior doors and openings shall be made readily accessible for emergency access by the fire department. An approved access walkway leading from fire apparatus access roads to exterior openings shall be provided.
  
- **Fire Apparatus Access Roads – 2019 OFC 503 & Appendix D**
  - Fire apparatus access **roads shall extend to within 150 ft of all portions of the building** as measured by an approved route around the exterior of the building.
  - Fire apparatus access roads shall have an unobstructed width of **not less than 20 feet** and an unobstructed vertical clearance of not less than 13 feet 6 inches.
  - Fire apparatus roads shall be designed and maintained to support the imposed loads of **70,000 lbs** and shall be surfaced so as to provide **all-weather driving** capabilities.
  - The required **turning radius** of a fire apparatus access road shall be 30 feet inside and 50 feet outside.
  - The **grade** of the fire apparatus access roads shall be within the limits established by the fire code official (10%).
  
- **Fire Lanes – 2014 OFC 503.3 & D103.6**
  - Approved signs or other approved notices shall be provided for fire apparatus access roads to identify such roads or prohibit the obstruction thereof. Such signs or notices shall be kept in legible conditions at all times. The stroke shall be 1 inch with letters 6 inches high and read **"No Parking Fire Lane"**. Spacing for signage shall be every 50 feet.
    - Recommended to also (in addition to Fire lane signs) paint fire lane curbs in bright red paint with white letters.
  - **D103.6.1 Roads 20-26 Ft. Wide:** Shall have Fire Lane signs posted on both sides of a fire lane.
  - **D103.6.2 Roads more than 26 Ft. Wide:** Roads 26-32 ft wide shall have a Fire Lane signs posted on one side of the road as a fire lane.
  
- **Aerial Access Roads – 2019 OFC D105**
  - Buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads and capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadways.
  - Access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of a building more than 30 feet in height.



- *At least one of the required access routes meeting above requirement shall be located within a minimum of 15 feet and a maximum of 30 feet from the building and shall be positioned parallel to one entire side of the building.*
- **Dead-Ends – 2019 OFC 503.2.5 and D103.4**
  - *Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus. Contact Redmond Fire & Rescue for requirements.*
    - *D 103.4 Table: Length of Dead end: greater than 500 ft shall meet the turnaround requirements and the width of the road shall be a minimum of 26 ft clear for fire apparatus.*
- **Additional Access – 2019 OFC 503.1.2**
  - *The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, conditions or terrain, climatic conditions or other factors that could limit access.*
- **Emergency Access Road Gates – 2019 OFC D103.5**
  - *Minimum 20 feet wide.*
  - *Gates shall be swinging or sliding type.*
  - *Shall be able to be manually operated by one person.*
  - *Electric gates shall be equipped with a means of opening by emergency personnel & approved by fire official.*
  - *Locking devices shall be fire department padlocks purchased from A-1 Lock, Safe Co., Curtis Safe and Lock, on line at [www.knoxbox.com](http://www.knoxbox.com), or contact Redmond Fire & Rescue for an order form.*
  - *Section 503.3: Install a sign on the gate “Emergency Access”*
- **Key Boxes – 2019 OFC 506.1**
  - *An approved key box shall be installed on all structures equipped with a fire alarm system and /or sprinkler system. Approved key boxes can only be purchased at A-1 Lock Safe Co., Curtis Safe and Lock, on line at [www.knoxbox.com](http://www.knoxbox.com), or contact Redmond Fire & Rescue for an order form.*

The following agencies did not respond to the notice: Deschutes County Assessor.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the subject application to all property owners within 750 feet of the subject property on June 16, 2021. The applicant also complied with the posted notice requirements of Section 22.23.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on June 17, 2021. No public comments were received.

**REVIEW PERIOD:** The subject application(s) were submitted on June 11, 2021 and deemed complete by the Planning Division on July 11, 2021. The 150th day on which the County must take final action on this application is December 8, 2021.

### III. FINDINGS & CONCLUSIONS

#### Title 18 of the Deschutes County Code, County Zoning

#### Chapter 18.16, Exclusive Farm Use Zones (EFU)

Section 18.16.030. Conditional uses permitted - High value and non-high value farmland.

***The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of Title 18.***

**A. *Nonfarm dwelling***

**FINDING:** The applicant proposes to establish two (2) nonfarm dwellings on Parcels 1 and 2 as shown on the applicant's proposed partition map. The proposed dwellings may be allowed as conditional uses if the applicant satisfies the applicable criteria in Title 18 of the County Code. The applicant is required to obtain these approvals in order to obtain approval of the non-irrigated land division being requested in the subject application.

Section 18.16.040. Limitations on Conditional Uses.

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

- 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***
- 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and***

**FINDING:** The County has applied an area of analysis that covers all properties within a one-mile radius of the subject property. This radius has been determined to be sufficient to identify farm or forest uses that might be impacted by a proposed nonfarm dwelling.

#### ***Forest Practices***

The closest properties zoned for forest use are approximately 16.2 miles to the west. The predominant tree species in the surrounding area is juniper, which is not a commercial species, with scattered pine trees in the area as well. Given the distance to forested lands and the lack of commercially viable tree species in the surrounding area, staff finds that the proposed nonfarm dwellings will not force a significant change in, or significantly increase the cost of, accepted forest practices on surrounding lands devoted to forest use.

## ***Farm Practices***

The USDA 2017 Census of Agriculture<sup>1</sup> shows agricultural production in Deschutes County roughly split between crop and livestock production in economic value. Predominant crop species include forage-land used for all hay and haylage, wheat for grain; and nursery production. Livestock production is predominated by cattle and calves, equestrian species, dairy and eggs/poultry. In the study area, 1,748.91 acres are receiving farm tax deferral and of, those, 936.01 acres are irrigated. Farm practices on the surrounding properties are described in the Surrounding Land Use Section, above.

## ***Potential Impacts***

Staff finds that the proposed nonfarm dwellings could change accepted farm or forest practices or increase the cost of accepted farm or forest practices on surrounding lands if they caused a reduction in available productive farmland, reduced the availability of irrigation water, or introduced conflicting uses. As described below, the applicant argues that the entirety of proposed Parcels 1 and 2 are generally unsuitable for farm use. In addition, Staff finds that no farmer has expressed interest in the proposed subject property for farm use and no water rights would be impacted by this proposal.

Residential uses can conflict with farm uses. The record includes information from the Oregon State University Extension Service describing the types of impacts the farming practices in the surrounding area could generate on nearby lands. Maintaining irrigated pasture can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing, and possible water runoff from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic, and property damage if livestock escape. However, staff finds that potential conflicts are mitigated, as follows.

Pursuant to DCC 18.16.050 the owner will be required to sign and record in the County Clerk's office a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.396 or 30.397. The recordation of this document with the County Clerk helps ensure that the proposed nonfarm dwellings will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm use, nor will they significantly increase the cost of accepted farm practices.

The closest farm use is on Assessor's Map 14-13-25 as Tax Lots 200 and 700. As proposed, the building envelopes will be approximately 408 feet from the nearest farm use on Tax Lot 700. This distance meets the minimum 100-foot setback required from nonfarm dwellings to adjacent properties currently employed in farm use and receiving farm tax deferral. Staff finds this distance will provide a sufficient buffer to mitigate potential use conflicts, although none are expected.

---

<sup>1</sup>[https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/County\\_Profiles/Oregon/cp41017.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Oregon/cp41017.pdf)

Within the study area (including portions of both Deschutes and Crook Counties), 56 of the 72 EFU tax lots (77 percent) are developed with dwellings. Given the establishment of a significant number of residential uses and the continuing farm uses in parts of the study area, staff finds the existing residential uses likely have not had a negative impact on those farm uses.

For the reasons detailed above, staff concludes the proposed nonfarm dwellings will not be subject to adverse impacts from adjacent farm uses, nor will they cause a significant change in or significantly increase the cost of accepted farming practices occurring on nearby lands.

These criteria will be met.

**3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.**

**FINDING:** The Board of County Commissioners determined in the *Clough* decision (File No. 247-15-000035-CU/247-15-000403-A), that when the general unsuitability criterion of 18.16.050 (G)(1)(a)(iii) is met, the least suitable criterion of Section 18.16.040 (A)(3) above is satisfied as well. The findings under DCC 18.16.050(G)(1)(a)(iii) below are incorporated herein by reference.

Section 18.16.050. Standards for Dwellings in the EFU Zones.

***Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.***

**FINDING:** The property owner will be required to sign and record the above document prior to issuance of a building permit for the dwellings. The Farm & Forest Management Easement has been prepared for the property owner and is attached to this decision.

Farm & Forest Management Easement: **Prior to the issuance of any building permit for a nonfarm dwelling**, the property owner shall sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The applicant shall submit a copy of the recorded Farm and Forest Management Easement to the Planning Division.

**G. Nonfarm Dwelling.**

- 1. One single-family dwelling, including a manufactured home in accordance with DCC 18.116.070, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:**
  - a. The Planning Director or Hearings Body shall make findings that:**

- i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.*

**FINDING:** This approval criterion is nearly identical to the approval criterion under DCC 18.16.040(A)(1) and (2). Those findings are incorporated herein by reference. This criterion will be met.

- ii. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.*

**FINDING:** On June 1, 1998, the Land Conservation and Development Commission adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter 660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The rules continue to apply the three-step “stability” analysis first articulated in the Land Use Board of Appeals (LUBA) case Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989). OAR 660-033-0130(4)(a) states:

- (D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:
  - (i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;**

**FINDINGS:** The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property's boundaries and including approximately 2,000 acres

(hereafter called “study area”). Staff finds this study radius is suitable to provide a comprehensive analysis of the character of the area surrounding the subject property because of its significant size and the number of parcels located within it. Staff notes the study area also includes portions of Crook County, to the east of the subject property.

There are 65 EFU-zoned tax lots in the Deschutes County portion of the study area, including the subject property. 62 of these tax lots are in private ownership and range in size from approximately 1.00 to 242.49 acres, partially or wholly within the study area. Of the privately owned tax lots in the Deschutes County portion of the study area, 35 (56 percent) of the tax lots in the study area are 20 acres or less in size, 14 (23 percent) of the tax lots are more than 20 and less than or equal to 40 acres in size, and 13 (21 percent) of the tax lots are larger than 40 acres in size.

There are 13 EFU-zoned tax lots in the Crook County portion of the study area. 11 of these tax lots are in private ownership and range in size from approximately 0.52 to 289.26 acres, partially or wholly within the study area. Of the tax lots in the study area, 11 (85 percent) of the tax lots in the Crook County portion of the study area are 80 acres or less in size (the minimum lot size for Crook County’s EFU-2 Prineville Valley-Lone Pine Areas Zone), and the remaining 2 (15 percent) tax lots are more than 160 acres in size.

- (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;***

## **FINDINGS:**

### **Farm Uses**

The EFU-zoned lands in the Deschutes County portion of the study area that are engaged in farm use mainly consist of farming in the form of irrigated pasture, hay and alfalfa production, and keeping horses and/or cattle. 37 of the privately-owned tax lots in the Deschutes County portion of the study area are receiving farm tax deferral. Of those privately-owned tax lots receiving farm tax deferral, 32 also have water rights. The total amount of water rights on these farm tax-deferred properties appears to be 936.01 acres. Based on the amount of irrigation and the size of the parcels in the Deschutes County portion of the study area, an estimated 936.01 acres (acreage that is possibly being irrigated) are engaged in irrigated farm use. According to Deschutes County GIS, most

of the Deschutes County portion of the study area is in the Central Oregon Irrigation District, with the exception of the properties to the south of the subject property.

The EFU-zoned lands in the Crook County portion of the study area that are engaged in farm use mainly consist of farming in the form of irrigated pasture, hay and alfalfa production, and keeping horses and/or cattle. Of the 13 privately-owned tax lots, 10 also have water rights. Based on the amount of irrigation and the size of the parcels in the Crook County portion of the study area, an estimated 426.8 acres (acreage that is possibly being irrigated) are engaged in irrigated farm use. According to Crook County GIS, the Crook County portion of the study area is not located within the boundaries of an irrigation district.

## **Existing Dwellings**

### ***Deschutes County***

The record indicates that 46 of the 62 private EFU-zoned tax lots in the Deschutes County portion of the study area have dwellings. These dwellings were built in the following years: 16 dwellings prior to 1979; 13 dwellings from 1979 through 1992; and 17 dwellings from 1993 to present.

The 16 dwellings developed prior to 1979 predated Deschutes County's EFU Zone and therefore were not subject to EFU zoning requirements. The 13 dwellings developed from 1979 through 1992 included 2 farm dwellings, 3 replacement dwellings, and 8 dwellings of unknown type. Staff notes that dwellings constructed up until the late 1980s in this time period were not necessarily reviewed as either farm or nonfarm dwellings.

Of the 17 dwellings constructed in 1993 or after, 1 was an accessory farm dwelling, 3 were nonfarm dwellings, and 11 were replacement dwellings. It is not clear to staff what type of dwellings the 2 remaining dwellings should be classified as.

### ***Crook County***

The record indicates that 10 of the 10 private EFU-2-zoned tax lots in the Crook County portion of the study area have dwellings. These dwellings were built in the following years: 3 dwellings prior to 1979; one (1) dwelling between 1979 and 1992; 5 dwellings in 1993 or after; and one dwelling with an unknown creation date.

The 3 dwellings developed prior to 1979 predated the Crook County EFU-2 Zone and therefore were not subject to EFU-2 zoning requirements. Only one dwelling was developed from 1979 through 1992. Staff notes that dwellings constructed up until the late 1980s in this time period were not necessarily reviewed as either farm or nonfarm dwellings.

Of the 5 dwellings constructed in 1993 or after, 1 was a farm dwelling, and 4 were nonfarm dwellings.

## **Dwelling Development Trends Since 1993 (Deschutes and Crook Counties)**

As discussed above, those 22 dwellings constructed in or after 1993 were a mixture of farm-associated (9 percent), nonfarm (32 percent), and replacement (50 percent) dwellings. For this reason, staff finds the most current dwelling development trend in the study area is the construction of replacement dwellings.

### **Potential Nonfarm Dwellings (Deschutes and Crook Counties)**

To address this criterion, staff reviewed the study area to determine how many properties are “similarly situated to the subject property”. Staff finds that properties in the EFU Zone that are not presently developed with a dwelling are similarly situated, in that they may be eligible for a nonfarm dwelling. Based on staff’s review, 19 properties meet these characteristics. Therefore, 19 possible new nonfarm dwellings could be developed on similarly situated properties.

It is not clear whether a nonfarm dwelling could be approved on these properties since each property would be reviewed on its own merits. Any proposed nonfarm dwellings on the above-referenced properties must be reviewed for their effect on the stability of the land use pattern, whether they are on land generally unsuitable for the production of crops, livestock or merchantable trees, and whether they will cause a significant change in or significantly increase the cost of accepted farming practices on adjacent land. For the purposes of this review, staff assumes all identified properties could be approved for a nonfarm dwelling.

### **Potential Nonfarm Parcels**

In the Deschutes County EFU Zone, two types of land divisions creating new nonfarm parcels are possible: those where the parent parcel is irrigated (DCC 18.16.055(B)) and those where the parent parcel is not irrigated (DCC 18.16.055(C)). In the Crook County EFU-2 Zone, land divisions are possible to: accommodate permitted conditional uses (CCC 18.16.070(2)); create up to two new parcels each to contain dwellings not provided in conjunction with farm use with the remainder parcel meeting minimum lot size standards (CCC 18.16.070(3)); and create up to two new parcels each to contain nonfarm dwellings with the remainder parcel being less than minimum lot size standards (CCC 18.16.070(4)). OAR 660-033-130(4)(c)(C) sets the rules for the stability analysis of properties outside of the Willamette Valley:

*The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and [...] (emphasis added)*

In the case *Elliott v. Jackson County*, 43 Or LUBA 426 (2003), LUBA found that OAR 660-033-0130(4)(a)(D) requires that the stability analysis for nonfarm dwellings needs to consider the potential for newly created nonfarm parcels. In part, LUBA summarizes that decision as follows:



OAR 660-033-0130(4)(a)(D) requires that the county's stability analysis consider the potential for new nonfarm parcels in the area, whether or not the applicant proposes a new nonfarm parcel.

OAR 660-033-0130(4)(c)(C) requires compliance with the standards of OAR 660-033-0130(4)(a)(D), and therefore also requires consideration of potential new nonfarm parcels, whether or not a new nonfarm parcel is proposed.

OAR 660-033-0130(4)(a)(D) and (c)(C) require consideration of the cumulative impact of a proposed nonfarm dwelling on lots or parcels that are "similarly situated." Because OAR 660-033-0130(4)(a)(D)(ii) expressly requires consideration of whether parcels larger than the minimum parcel size may be divided to allow nonfarm dwellings, the scope of "similarly situated" parcels is not limited to substandard parcels or parcels that are the same size as the subject property.

In consideration of the above and of the privately owned properties in the Deschutes County portion of the study area, staff finds:

- There are no nonirrigated parcels between 85 and 90 acres in the study area capable of being partitioned under a nonirrigated land division to create a single nonfarm parcel. There are no nonirrigated parcels over 90 acres in the study area capable of being partitioned under a nonirrigated land division to create two nonfarm parcels.
- There are no parcels equal to or greater than 40 acres and less than or equal to 80 acres in the study area that may be capable of being partitioned under a nonirrigated land division to create a single nonfarm parcel.
- There are 6 parcels that are less than 80 acres in the study area and meet the minimum irrigated acres for the subzone that may be capable of being partitioned under an irrigated land division based on size to create a single nonfarm parcel.
- There are 2 parcels that are equal to or greater than 80 acres in the study area and meet the minimum irrigated acres for the subzone that may be capable of being partitioned under an irrigated land division to create two nonfarm parcels (for a total of 4 potential nonfarm parcels).

The potentially divisible parcels are composed of class 3 to 8 soils that are rated both high-value and non-high value farmland, so it is unknown if they would meet the "generally unsuitable" criteria of 18.16.055(B)(2)(a)(v) and 18.16.050(G)(2)(b). To be eligible for division the parent parcel must have been lawfully created prior to July 1, 2001. In addition, new parcels must meet certain access and frontage requirements. Staff notes that the eligibility of other properties for land use approvals or land divisions cannot be formally determined as part of this process. This assumed eligibility or ineligibility of these properties for land use approvals or land divisions is based on publically available information and is not binding or final on these other properties.

Therefore, this analysis shows that up to 10 new nonfarm dwelling parcels could potentially be created from land divisions within the Deschutes County Portion of the study area.

In consideration of the above case law and of the privately owned properties in the Crook County portion of the study area, the applicant's burden of proof includes the following statement related to all potential nonfarm parcels within the study area:

***Total "Potential" 3326 Parcels / Dwellings on farm or non-farm parcels within the Study Area = 2 new Non-farm Parcels with 2 new Non-farm Dwellings (the proposed subject property).***

*The remaining privately-owned tax lots in the Study Area are not eligible for land partition because (1) they are too small, or (2) have significant irrigation rights, or (3) have valued productive soils, or (4) have road access issues or other conflicts, or (5) have already been partitioned since 2001 and are no longer eligible.*

*Eliminating the aforementioned ineligible tax lots leaves a total potential for two (2) non-farm parcels under provisions of HB3326, the proposed parcels, that have strong potential for development with non-farm dwellings, two (2) new, under the requirements of the Crook County Code.*

*8. Expired Non-farm Dwellings CUP's on Existing Approved Non-farm Parcels: The Study Area includes no (0) privately owned non-farm parcels that are potentially eligible for the approval of non-farm dwelling(s).*

Staff agrees with the above analysis and finds that a total of 11 new nonfarm dwelling parcels could potentially be created from land divisions within the study area including both the Deschutes County and Crook County portions of the study area.

### **Potential Lot of Record Dwellings**

Under Section DCC 18.16.050(E), CCC 18.16.035(1-8), and OAR 660-033-130(3), a lot of record dwelling may be sited on non-high value farmland in the EFU Zone if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F), CCC 18.16.035(1-8) and OAR 660-033-130(3)(c), a lot of record dwelling may be sited on high value farmland if it meets the criteria for a lot of record dwelling on non-high value farmland and the Planning Division finds the parcel cannot practically be managed for farm use "due to extraordinary circumstances inherent in the land or its physical setting," such as "very steep slopes, deep ravines or other similar natural or physical barriers."

The Planning Division has previously determined that lot of record dwellings can be difficult to obtain, given the requirement for ownership prior to 1985 and the land cannot be suitable for farming based on the above factors. Some parcels may qualify for a lot of record dwelling, but without a specific analysis of each and every parcel, this determination cannot be concluded.

### **Result From Approval of the Possible Nonfarm Dwellings (Deschutes and Crook Counties)**

The land use pattern and character of the study area is predominately a mixture of rural residential uses, some with hobby agricultural uses consisting of pasture for livestock and some with hay and alfalfa. There are also farm uses in the area, primarily alfalfa production and livestock pasture.

Including the subject application, a total of 27 new nonfarm dwellings could be established in the study area on existing and potential future nonfarm parcels. Given the large number of existing dwellings in the study area and the relatively limited number of potential nonfarm dwellings, staff finds the proposed development of a nonfarm dwelling on an unproductive portion of the property will not cause a substantial change in the land use pattern of the area.

Although there have been 22 dwellings constructed in the study area since 1993, staff finds that the land use pattern is generally stable. The majority of those dwellings were replacement dwellings.

For this reason, staff finds the most current dwelling development trends in the study area is the construction of replacement dwellings. Additionally, it does not appear the existing and newly approved dwellings have precluded farm uses in the study area.

There are both irrigated and nonirrigated lands in the area, and most of the nonirrigated parcels are already developed with dwellings. Staff notes that only two farm dwellings have been approved in the area since 1993, and no farm dwellings have been approved since 1995 when the farm dwelling standards included significant changes. The proposed dwelling will be consistent with the land use pattern of the area by allowing nonfarm dwellings on unproductive portions of the property.

***(iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;***

**FINDING:** The cumulative effect of existing and potential nonfarm dwellings will increase the number of dwellings in the study area from 56 to 83. Staff finds such approvals will not “materially alter the stability of the land use pattern in the area” by making it more difficult for the existing farms to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or by diminishing the number of tracts or acreage in farm use. This is because any such nonfarm dwelling approval would be limited to lands generally unsuitable for farm use and, as such, would not reduce available farmland or the number of tracts or acreage in farm use, individually or cumulatively. No impact on the ability of farmers to acquire water rights is anticipated. Additionally, staff finds that the approval of the nonfarm dwellings would not impact the existing farm uses that occur in the study area.

Under *Dowrie v. Benton County* (38 Or LUBA 93, 2000), the County must determine whether the proposed nonfarm dwelling or land division will encourage similar uses or divisions on similarly situated parcels in the area

*Dowrie v. Benton County, 38 Or LUBA 93 (2000)*. A local government cannot reach supportable conclusions as to the stability of the land use pattern required by OAR 660-033-0130(4)(a)(D) unless it adequately defines the study area and determines not only what the land use pattern is, but also whether the proposed use or land division will encourage similar uses or divisions on similarly situated parcels in the area.

It is unlikely that adding this dwelling would tip the balance from resource to non-resource use. Given the 3 nonfarm dwellings approved since 1999, it does not appear to staff that the approval of the proposed nonfarm dwellings will set a precedent for the wholesale approval of nonfarm dwellings to the detriment of surrounding farming. The parcels currently in farm use will likely remain relatively stable, with little or no expansion of farm use in the area, given the topography, soil types, availability of water rights, and prevalence of relatively small parcels (less than 20 acres) within the study area. The properties capable of being farmed appear to already be farmed. Additionally, no response to the notice of application or land use action sign was received by nearby farmers requesting the subject property be made available for farm use. The approval of the proposed dwelling will not affect the amount of farming or the type of farming in the study area. Lastly, nonfarm dwellings are reviewed on a case-by-case basis where each proposed nonfarm dwelling would need to demonstrate compliance with all of the applicable criteria for approval. For the foregoing reasons, staff finds that approval of the proposed nonfarm dwelling will not destabilize the mixture of agricultural and residential character of the surrounding area.

***iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.***

**FINDING:** Staff notes that the “generally unsuitable” standard is subject to specific criteria discussed in detail under DCC 18.16.050(B)(2) below. Regarding general suitability for the production of farm crops, livestock, and merchantable tree species, staff relies on the following LUBA case law:

*Griffin v. Jackson County, 48 Or LUBA 1 (2004)*. The question is not whether land is generally unsuitable for all farm use; the question is whether the land is generally unsuitable to produce crops, livestock or merchantable trees.

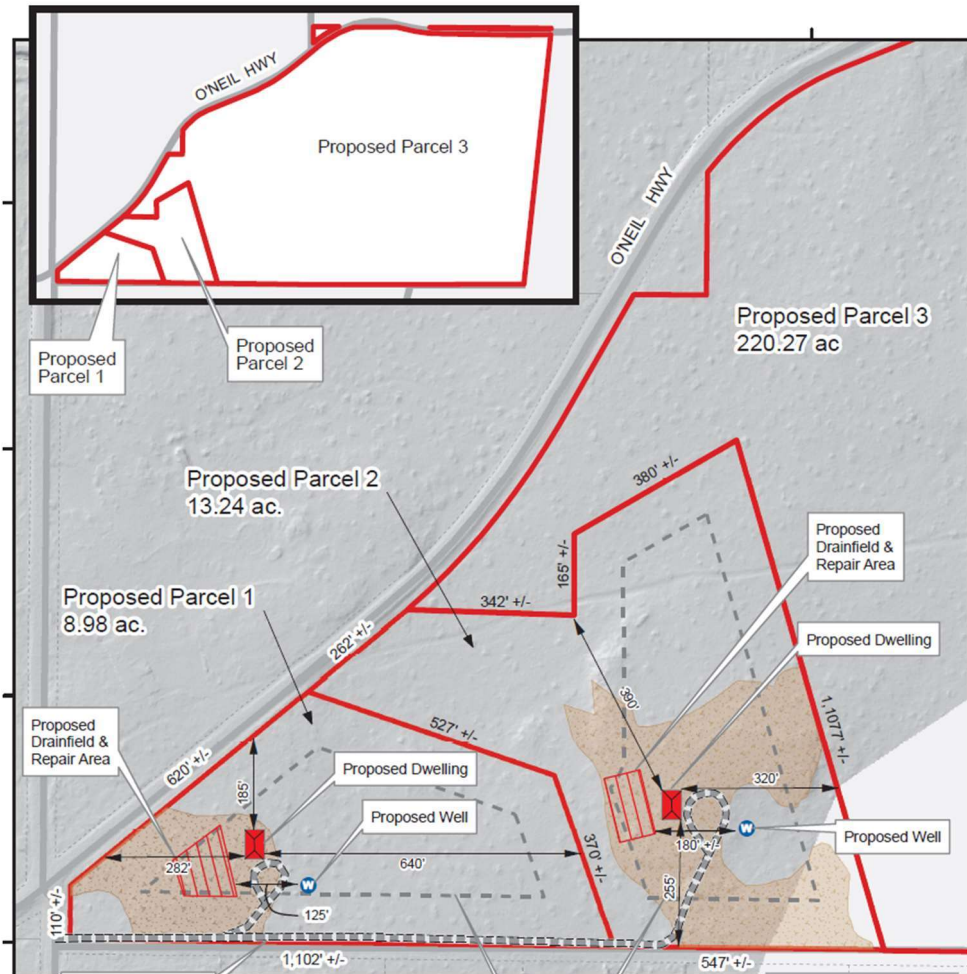
*Dorvinen v. Crook County, 33 Or LUBA 711 (1997); (discussing legislative history)*. ORS 215.284(2)(b) allows nonfarm dwellings to be sited on unproductive parts of the productive farm land on lands outside the Willamette Valley.

Williams v. Jackson County, 55 Or LUBA 223 (2007). A parcel can satisfy the generally unsuitable standard even if portions of the parcel contain areas that, if considered alone, do not satisfy the standard.

Frazer v. Jackson County, 45 Or LUBA 263 (2003). Where a nonfarm dwelling is proposed to be sited on unproductive parts of the productive farm land on lands outside the Willamette Valley, the county is to focus on the productivity of the part of the property selected for nonfarm development and should not consider the suitability of the rest of the parcel or tract.

Based on the above case law, it is optional to focus on the suitability of the *building envelope* or the *entire property* with respect to crops, livestock or merchantable trees only. For this review, staff focuses on the building envelopes of proposed Parcels 1 and 2 as shown in **Figure 2**, below. .

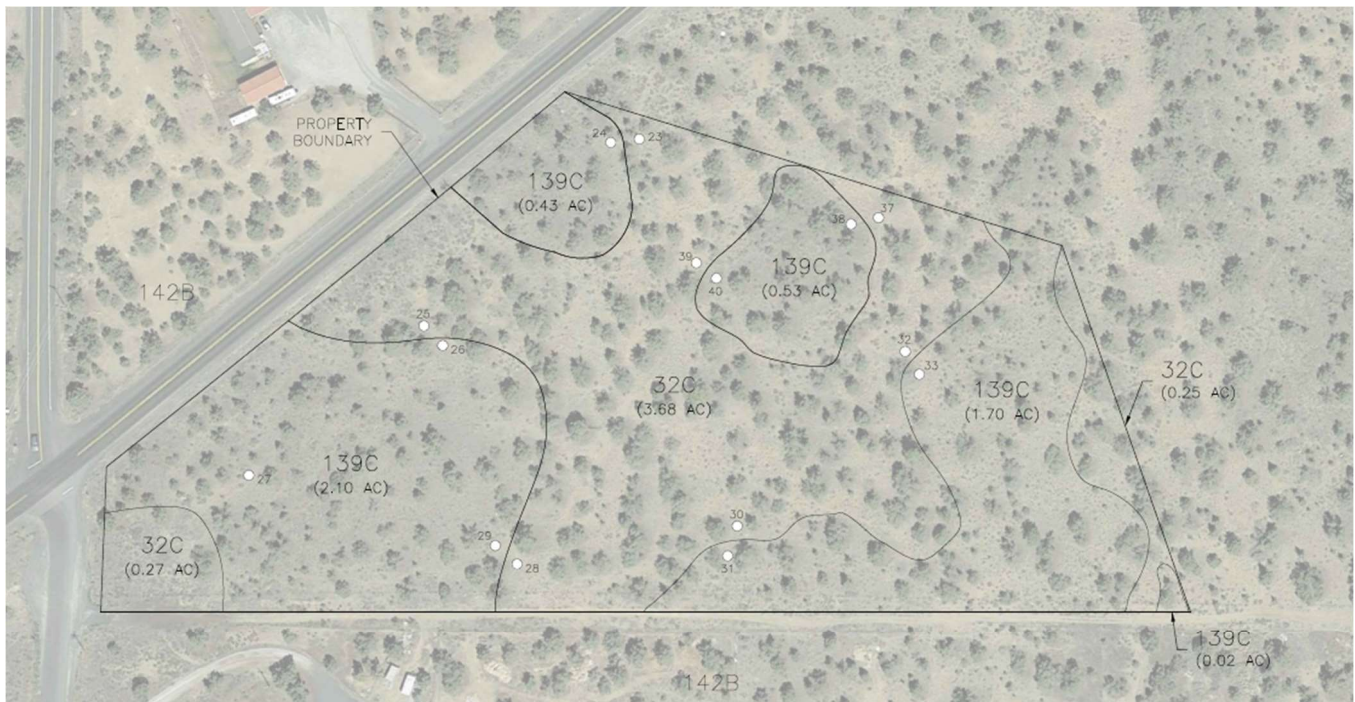
**Figure 2 – Location of Proposed Parcels 1 and 2**



**Adverse Soil or Land Conditions**

The applicant submitted two soil studies (one for proposed Parcel 1 and one for proposed Parcel 2) both dated July 15, 2020, which were prepared by Brian T. Rabe of Cascade Earth Sciences (CES), a certified professional soil scientist and soil classifier. The soil studies provide the County with a precise determination of the location of the soil units and types of soils found on the subject property in the areas proposed for Parcels 1 and 2. The submitted soils reports show that the proposed building envelopes contain the following soil types (labeled as Parcel 1 and Parcel 2) shown in **Figures 3 and 4**, below.

**Figure 3 - Proposed Parcel 1 Soil Types**



**NRCS SOIL LEGEND:**

<u>SYMBOL</u>	<u>NAME</u>
142B	STUKEL-ROCK OUTCROP-DESCHUTES COMPLEX, DRY, 0 TO 8 PERCENT SLOPES

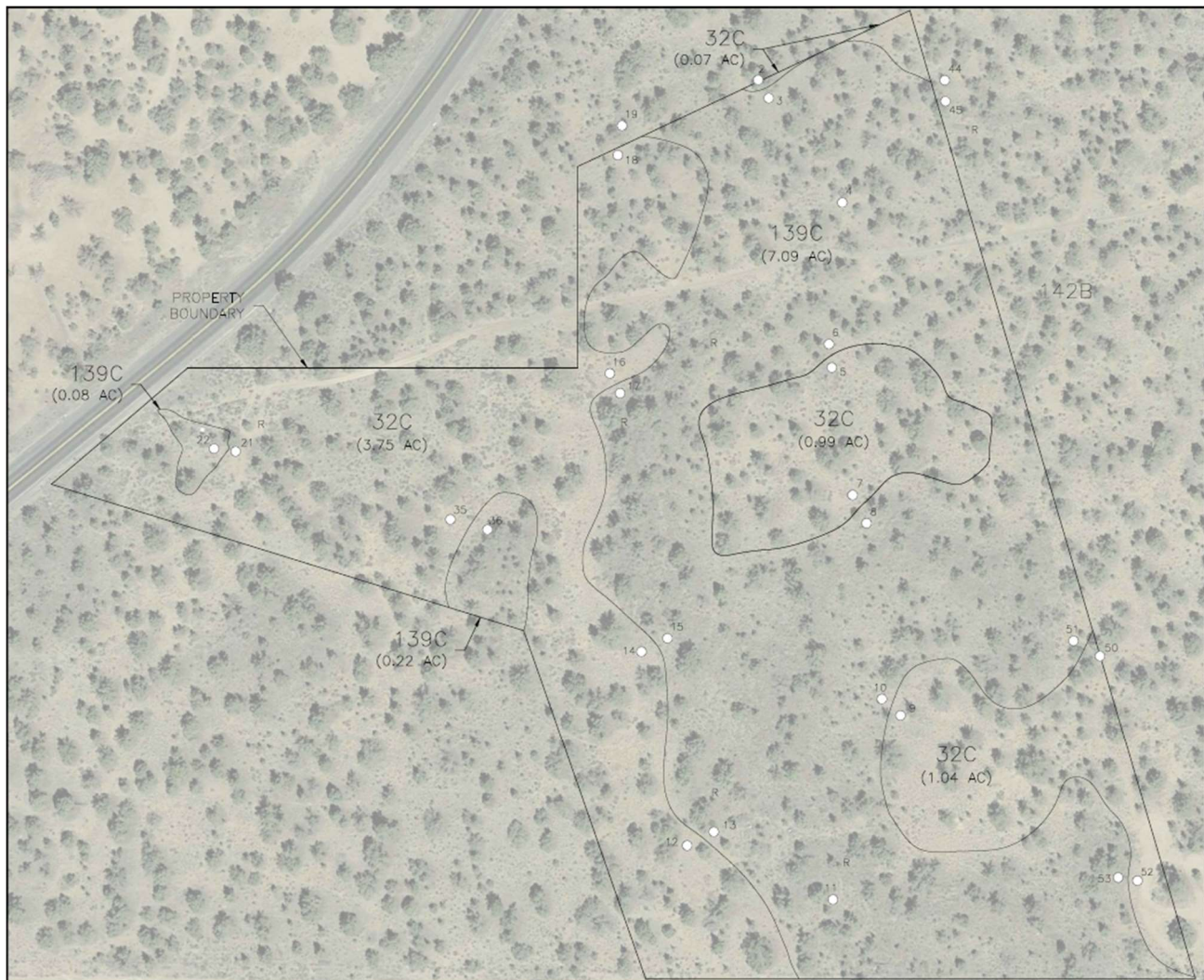
**SITE SOIL LEGEND:**

<u>SYMBOL</u>	<u>NAME</u>
32C	DESCHUTES SANDY LOAM, DRY, 0 TO 15 PERCENT SLOPES
139C	STUKEL SANDY LOAM, DRY (STONY PHASE), 0 TO 15 PERCENT SLOPES
R	ROCK OUTCROP
○12	TEST PITS/OBSERVATION POINTS

**ACREAGE DETERMINATIONS FOR HIGH RESOLUTION MAPPING**

The area of each delineation mapped within the Site as part of this effort was determined using Autodesk Civil 3D. The results of these measurements are presented on Figure 4. The entire 8.98 acres of the parcel were evaluated. There are 4.78 acres of Stukel (stony phase) soils (Class VII) and 4.20 acres of Deschutes (Class VI). The delineations of Deschutes soils range from 0.27 to 3.68 acres in size. The small size and irregular shape of the area in the southwest corner of the Site generally precludes its consideration for any form of commercial farm use. Therefore, a total of 5.05 acres of the parcel is considered “generally unsuitable” for farm use. None of the map units or component soils are defined as having any forest production potential.

**Figure 4 - Proposed Parcel 2 Soil Types**



**NRCS SOIL LEGEND:**

SYMBOL	NAME
142B	STUKEL-ROCK OUTCROP-DESCHUTES COMPLEX, DRY, 0 TO 8 PERCENT SLOPES

**SITE SOIL LEGEND:**

SYMBOL	NAME
32C	DESCHUTES SANDY LOAM, DRY, 0 TO 15 PERCENT SLOPES
139C	STUKEL SANDY LOAM, DRY (STONY PHASE), 0 TO 15 PERCENT SLOPES
R	ROCK OUTCROP
O12	TEST PITS/OBSERVATION POINTS

**ACREAGE DETERMINATIONS FOR HIGH RESOLUTION MAPPING**

The area of each delineation mapped within the Site as part of this effort was determined using Autodesk Civil 3D. The results of these measurements are presented on Figure 4. The entire 13.24 acres of the parcel were evaluated. There are 7.39 acres of Stukel (stony phase) soils (Class VII) and 5.85 acres of Deschutes (Class VI). The delineations of Deschutes soils range from 0.07 to 3.75 acres in size. The small size and irregular shape of the area in the central part of the Site generally precludes its consideration for any form of commercial farm use. Therefore, a total of 8.38 acres of the parcel is considered “generally unsuitable” for farm use. None of the map units or component soils are defined as having any forest production potential.

DCC 18.16.050(G)(2)(b) above specifies that a parcel is presumed suitable for the production of farm crops and livestock if it is predominately composed of LCC 1-6 soils. The soil study map shows the unsuitable soils are located in the areas designated as “139C” and “Stukel (stony phase)” in each



proposed building envelope, which contain class 7 soils. Finally, the soil study shows the remaining areas to be the “Deschutes sandy loam, dry” and “32C” soil unit, which is rated class 6.

**Figure 5** below is a table of the soil types present within the boundaries of proposed Parcels 1 and 2, along with LCC ratings and the percentage of total composition of each proposed parcel. In consideration of the soil study maps and ratings, the proposed building envelopes of proposed Parcel 1 and Parcel 2 are composed of class 7 soils and are therefore “generally unsuitable” for the production of farm crops and livestock.

**Figure 5 – Combined Soil Ratings for Subject Property**

<b>Proposed Parcel 1:</b>					
	<b>Soil Unit/Type</b>	<b>Size in Acres</b>	<b>LCC Rating</b>	<b>Percent of Property</b>	
<b>Soil Study:</b>	Stukel stony phase 139C	4.78	7	53.23%	<b><u>Class 7:</u></b> <b><u>53.23%</u></b>
	Deschutes Sandy Loam 32C	4.20	6	46.77%	<b><u>Class 6:</u></b> <b><u>46.77%</u></b>
<b>Proposed Parcel 2:</b>					
	<b>Soil Unit/Type</b>	<b>Size in Acres</b>	<b>LCC Rating</b>	<b>Percent of Property</b>	
<b>Soil Study:</b>	Stukel stony phase 139C	7.39	7	55.82%	<b><u>Class 7:</u></b> <b><u>55.82%</u></b>
	Deschutes Sandy Loam 32C	5.85	6	44.18%	<b><u>Class 6:</u></b> <b><u>44.18%</u></b>

**Farm Crops**

The soil study in the record indicates the soils within the subject property consist of the following two (2) soil units: Stukel stony phase 139C and Deschutes sandy loam 32C. Within the subject property, only the Deschutes sandy loam soils are rated LCC 6, regardless of irrigation, and comprise approximately 46.77 percent of proposed Parcel 1 and approximately 44.18 percent of proposed Parcel 2. The property does not have irrigation. As noted above, the approval criterion presumes LCC 1 through 6 soils are suitable for farm use, however, the soil study found that the proposed building envelopes are composed entirely of LLC 7 soils.

Consequently, staff finds the proposed building envelopes of proposed Parcels 1 and 2 are not suitable for the production of farm crops.

**Livestock Production**

Nonirrigated soils in Deschutes County are agriculturally suitable only as dry range land, and then only on a limited basis. Estimates on the value of beef production are based on the following assumptions, which have been derived through consultation with OSU Extension Service:

- One AUM<sup>2</sup> is the equivalent to the forage required for a 1000 lb. Cow and calf to graze for 30 days (900 pounds forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous: Once the forage is eaten, it generally will not grow back until the following spring.
- An average market price for beef is \$1.15 per pound.

The NRCS Rangeland and Forest Understory Productivity and Plant Composition table (September 18, 2015) provides forage capability for soil types, expressed in annual dry-weight production. The entire property is comprised of two soil types: Stukel stony phase 139C and Deschutes sandy loam 32C<sup>3</sup>. The 139C soil has a forage capability of 600 lbs. per acre for a “normal year”. The 32C soil has a forage capability of 900 lbs. per acre for a “normal year”. Since 900 pounds of forage equals 1.0 AUM and the average forage capability of both 139C and 32C soils is 750 lbs. per acre, proposed Parcels 1 and 2 provide the equivalent of 0.83 AUM per acre. Based on the OSU and NRCS assumptions, the value of beef production on the property can be calculated using the following formula:

$$(30 \text{ days}) \cdot (2 \text{ lbs./day/acre}) = 60 \text{ lbs. beef/acre}$$

$$0.83 \text{ AUM per acre}$$

The total acreage of proposed Parcels 1 and 2 is 22.22 acres in size

$$(60 \text{ lbs. beef per acre})(22.22 \text{ acres})(0.83 \text{ AUM per acre})(\$1.15 \text{ per lbs.}) = \$1,272.54$$

Thus, the total gross beef production potential for the entirety of proposed Parcels 1 and 2 would be approximately \$1,272.54 annually. This figure represents gross income and does not take into account any fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production. This calculation is also based on site-specific data provided in the soil study. The area has little forage for livestock and may support only minimal dry land grazing. For these reasons, staff finds the soils in the boundaries of proposed Parcels 1 and 2 are generally unsuitable for the production of livestock.

### ***Merchantable Trees***

The majority of trees on-site are juniper trees. Juniper trees are not a commercially viable tree. None of the soil units present are rated for forest productivity. For this reason, staff finds the subject property is not suitable for the production of merchantable trees.

---

<sup>2</sup> Animal Unit Month

<sup>3</sup> The soil study includes forage capabilities for both soil types observed on the proposed parcels. Staff relies on the soil survey data for these calculations as there is no other specific NRCS data related to the identified soil types.

Based on the information and case law cited above, staff finds proposed Parcels 1 and 2 are not generally suitable for production of farm crops and livestock, or merchantable tree species.

### ***Building Envelope***

In *Wetherell v. Douglas County*, LUBA found that “the portion of the parcel that is ‘generally unsuitable’ must be large enough to include not only the dwelling, but essential or accessory components of that dwelling.” Staff reads this decision to include the dwelling, detached residential-associated buildings (including garages), well, septic system, drainfield, and the septic reserve area, as essential or accessory components of the dwelling. LUBA however, expressly excluded driveways from “essential or accessory components of the dwelling”. The building envelopes of proposed Parcels 1 and 2 can reasonably be expected to accommodate these essential and accessory components of a dwelling.

Dwelling and essential or accessory components: As a Condition of Approval, the dwelling, detached residential-associated buildings (including garages), well, septic system, drainfield, and the septic reserve area, shall be located in the identified “generally unsuitable” building envelope.

- iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot or sales yard, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.***

**FINDING:** This criterion does not apply because the subject property is not within one-quarter mile of a dairy farm, feedlot, or sales yard.

- v. Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.***

### **FINDINGS:**

Electricity. The record includes letters from Central Electric Cooperative and Pacific Power indicating the subject property is within their service areas and they are prepared to serve this location.

Road access. Access to the proposed dwelling is via NE Coyner Ave, which is an undeveloped rural local road. Per Form A of the application, “Traffic Figures for Nonfarm Dwelling” and the Deschutes County Senior Transportation Planner’s comments, the proposed nonfarm dwelling would generate an estimated 8 vehicle trips per day and would not exceed the capacity of the road (250 to 1,500 vehicle trips per day). As a Condition of Approval, the applicant shall obtain driveway approach permits for the proposed parcels to ensure compliance with DCC 17.48.210(A).

Internet/telephone. Mobile phone service is available at the subject property. It is not clear whether internet service is available on the subject property.

Domestic water. The applicant proposes that domestic water will be provided by an onsite well. The record materials include two well reports for nearby wells that indicate a static water level of 140 to 227 feet. Staff finds there should be adequate water for a domestic well on this property.

Septic. The proposed dwelling will be served by an on-site septic disposal system. The following condition of approval has been added to ensure compliance with this criterion.

Septic: The applicant shall secure any necessary septic permit approval for the nonfarm dwellings.

Fire protection. The property is within the Redmond Fire & Rescue district boundaries. Redmond Fire responded to the Notice of Application with recommendations for fire safety, including fire apparatus access requirements (weight capacity, width, etc.). To ensure adequate fire service is provided under this criterion, the following condition of approval has been added.

Fire Safety: ***Prior to the issuance of building permits,*** the applicant shall coordinate with Redmond Fire & Rescue to ensure that any required fire codes are met. Proof of compliance shall be provided to the Planning Division.

Police protection. The property is served by the Deschutes County Sheriff.

Based on the information, staff finds the proposal will meet or already meets these criteria.

- vi. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).***

**FINDING:** The subject property was created as a remainder parcel in 1978 (originally patented in 1965) as verified in a county-issued Lot of Record approval (File no. 247-15-000247-LR). This standard is met.

- 2. For the purposes of DCC 18.16.050(G) only, "unsuitability" shall be determined with reference to the following:***
  - a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land***

***conditions, drainage and flooding, vegetation, location and size of the parcel.***

**FINDING:** The subject property is not under forest assessment. LUBA determined the issue of whether nonfarm parcels can be put to farm use in conjunction with other properties "is triggered under DCC 18.16.050(G)(2)(a) if the parcels are found to be unsuitable solely because of size or location." *Williams v. Jackson County*, 55 Or LUBA 223, 230 (2007). In this case, and as articulated below, staff finds the property is not suitable due to adverse soil and land conditions, which demonstrates that the property proposed for the nonfarm dwellings is generally unsuitable for farm use. Because staff does not claim unsuitability due to size or location, this criterion does not apply.

- b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.***

**FINDING:** The finding of general unsuitability is not based on the proposed nonfarm parcels being too small to be farmed profitably by themselves. There is no evidence in the record that the proposed nonfarm parcels can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch. The proposed nonfarm parcels are not presumed to be suitable as they are not composed predominantly of Class I-VI soils. The analysis of general unsuitability herein evaluates the proposed nonfarm parcels for crop and livestock production. No other generally accepted farm practices are identified in the record. The subject property is not under forest assessment.

- c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.***

**FINDING:** The subject property is not under forest assessment. Therefore, staff finds this rule does not apply.

- 3. Loss of tax deferral. Pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building***

***permit is issued the applicant must produce evidence from the County Assessor's office that the parcel upon which the dwelling is proposed has been disqualified under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855 and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.***

**FINDING:** Staff includes this requirement as a Condition of Approval.

Farm Tax Deferral Disqualification: **Prior to the issuance of building permits**, the applicant shall produce evidence from the County Assessor's Office that the parcels upon which the dwellings are proposed have been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

Section 18.16.055. Land Divisions.

- A. *General. A division of land in the exclusive farm use zone shall be identified on the land division application as either an irrigated land division, nonirrigated land division, or a division of land for a use permitted by Oregon Revised Statutes 215.263 other than a dwelling. An irrigated land division is subject to subsection B below; a nonirrigated land division is subject to subsection C below; and a land division for a use other than a dwelling is subject to subsection E below, as well as ORS 215.263.***

**FINDING:** The subject application is for a non-irrigated land division. As a result, the subject application is subject to subsection C, below.

- C. *Nonirrigated land division.***
- 1. *The minimum lot or parcel size for a nonirrigated land division is 80 acres.***
  - 2. *Notwithstanding 1 above, land divisions creating nonfarm parcels less than the minimum lot size may be allowed as follows:***
    - a. *If the parent parcel is greater than 80 acres in size, up to two new nonfarm parcels may be allowed subject to the following:***

**FINDING:** The subject parent parcel is greater than 80 acres in size, and the applicant is proposing two new nonfarm parcels. The provisions of DCC 18.16.055(C)(2)(a)(i-vi) are addressed below.

- i. *Parent parcel was lawfully created prior to July 1, 2001;***

**FINDING:** As addressed in previous findings, the subject property was created prior to July 1, 2001 in compliance with the above criterion.

- ii. *Remainder parcel shall be at least 80 acres in size;***

**FINDING:** The applicant proposes Parcel 3 (identified on the applicant's submitted preliminary partition map) as the remainder parcel associated with the proposed land division. Based on the submitted partition map, Parcel 3 will be approximately 220.27 acres in size, in compliance with the above criterion.

**iii. All standards established under 18.16.050(G) for the dwellings shall be met;**

**FINDING:** The standards outlined in DCC 18.16.050(G) are reviewed for compliance in previous findings. These criteria will be met.

**iv. The minimum size for the nonfarm parcels is 5 acres.**

**FINDING:** The applicant proposes to establish two (2) nonfarm parcels (Parcels 1 and 2 on the submitted preliminary partition map). The parcels will be at least 5 acres in size.

**v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.**

**FINDING:** As discussed above, staff finds the proposed nonfarm parcels are generally unsuitable for the production of farm crops, livestock, and merchantable trees. Staff incorporates the "unsuitable for the production of farm crops, livestock and merchantable" findings stated earlier in this decision as additional findings for this approval criterion. Further, staff does not find the nonfarm parcels are unsuitable based solely on size or location. This criterion is met.

**vi. Be located outside of the Horse Ridge East subzone.**

**FINDING:** The subject property is located outside of the Horse Ridge East subzone (EFUHR).

Section 18.16.060. Dimensional Standards.

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

**FINDING:** No height information was provided for the structure(s). To ensure compliance, staff includes the following as a Condition of Approval.

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 18.16.070. Yards.

- A. The front yard shall be a minimum of 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.**
- B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in Section 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 proposal is subject to 100-foot nonfarm dwelling setbacks. The 100-foot setback, however, is not applicable to the proposed nonfarm parcels as no adjoining properties are currently employed in farm use and receiving special assessment for farm use. Staff notes the remainder parcel (Parcel 3) is not currently employed in farm use nor receiving special assessment for farm use. Staff finds there is sufficient space on the proposed nonfarm parcel for the dwelling to comply with required setbacks. To ensure compliance with yards, solar, and additional setbacks, staff requires the following Conditions of Approval.

Yards. Structural setbacks from all lot lines shall meet the yard requirements in DCC 18.16.070.

Solar Setbacks. Structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180.

Other Setbacks. 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.

## **Title 17, Subdivision and Partition Ordinance**

### **Chapter 17.12, Administration and Enforcement**

Section 17.12.080. Statement of Water Rights.

**All applicants for a subdivision or partition shall be informed by the Planning Director or his designee of the requirement to include a statement of water rights on the final plat.**



**FINDING:** Staff includes this criterion to inform the applicant of the requirement to include a statement of water rights on the final plat.

## **Chapter 17.22, Approval of Tentative Plans for Partitions**

### Section 17.22.020. Requirements for Approval.

**A. No application for partition shall be approved unless the following requirements are met:**

- 1. Proposal is in compliance with ORS 92, the applicable comprehensive plan and applicable zoning ordinance. A proposed partition is not in compliance with the zoning ordinance if it would conflict with the terms of a previously issued approval for a land use on the property or would otherwise create a nonconforming use on any of the newly described parcels with respect to an existing structure or use;**

**FINDING:** The applicable sections of Oregon Revised Statute 92 are addressed below. Any applicable Comprehensive Plan goals have been codified into the zoning code. Compliance with the zoning code is addressed above. Staff finds the proposed partition does not conflict with any previous approval and would not create a nonconforming use.

- 2. Proposal does not conflict with existing public access easements within or adjacent to the partition;**

**FINDING:** The materials in record do not indicate the presence of any public access easements on this property with which the proposed partition would conflict. Staff finds that this approval criterion is met.

- 3. The partition is accessed either by roads dedicated to the public or by way of United States Forest Service or Bureau of Land Management roads where applicant has submitted a written agreement with the appropriate land management agency providing for permanent legal access to the parcels and any required maintenance. This provision shall not be subject to variance;**

**FINDING:** Parcels 1 and 2, the nonfarm parcels, will be accessed from NE Coyner Ave, a local access road, along the southern portion of the subject property. Parcel 3 will be accessed from NE Oneil Way (Highway 370) along the northern boundary of the subject property. These roadways are dedicated to the public. Staff finds this approval criterion will be met.

- 4. An access permit can be obtained from either the Community Development Department, the City Public Works Department or the State Highway Division;**

**FINDING:** As noted above, the applicant will be required to secure driveway access permits for the nonfarm parcels prior to final plat approval. This criterion will be met.

**5. *Each parcel is suited for the use intended or offered, considering the size of the parcels, natural hazards, topography and access;***

**FINDING:** Staff finds the proposed parcels (8.98 acres at the smallest) are ample to accommodate the proposed residential dwelling uses, including septic systems and wells. Further, staff finds the intended residential uses are not precluded by access or topography on the subject property.

In terms of natural hazards, the subject property is not particularly vulnerable to any natural hazard outside of wildfire. Wildfire is a county-wide pervasive risk to virtually all county properties and staff finds that the proposed residential use does not increase the vulnerability to, or the probability of, a wildfire event on the subject property.

As detailed in this decision, the applicant will be required to improve the newly-dedicated portions of the unnamed roadway, and construct a cul-de-sac or hammerhead turnaround at the southern terminus of the road.

Based on the above analysis, staff finds this criterion will be met.

**6. *All required utilities, public services and facilities are available and adequate and are proposed to be provided by the petitioner;***

**FINDING:** As noted previously under DCC 18.16.050(G), staff finds adequate utilities and services are or will be available on the subject property and proposed nonfarm parcels. This criterion will be met.

**7. *A water rights division plan, reviewed and approved by the appropriate irrigation district or the Watermaster's office, if water rights are associated with the subject property;***

**FINDING:** The subject property is not located within the boundaries of an irrigation district, and contains no water rights. The above criterion does not apply to the subject application.

**8. *For partitions or portions thereof within one half mile of SM zones, the applicant shows that a noise or dust sensitive use, as defined in DCC Title 18, can be sited consistent with the requirements of DCC 18.56, as demonstrated by the site plan and accompanying information required to be submitted under DCC 17.28.010(C).***

**FINDING:** The subject property is not within one-half mile of an SM Zone. Staff finds this approval criterion does not apply.

- B. *If the Planning Director determines that the proposed partition constitutes series partitioning, or if series partitioning has occurred in the past, then the Planning Director may refer the application to the hearings officer for a determination as to whether the application should be subject to the requirements of DCC 17.36.300, Public Water Supply System, and DCC 17.48.160, Road Development Requirements for Subdivisions.***

**FINDING:** DCC 17.04 provides the following definition:

*"Series partitioned lands" and "series partition" mean a series of partitions of land resulting in the creation of four or more parcels over a period of more than one calendar year.*

At the outset, staff finds the Planning Director has not referred the partition application to a Hearings Officer. According to Lot of Record decision 247-15-000247-LR, the subject property was originally created via Patent recorded February 19<sup>th</sup>, 1965 in Volume 142, Page 411 of the Deschutes County Book of Records. County records indicate that the subject property has not been divided since 1977 and that the current partition application is the first land division on record and that no other land divisions have been conducted in the past. As a result, staff finds the partition application does not constitute series partitioning and the above criterion does not apply to the subject application.

- C. *Protective covenants and homeowner's association agreements are irrelevant to any partition approval and will not be reviewed by the County. Any provision in such agreements not in conformance with the provisions of DCC Title 17 or applicable zoning ordinance are void as against the County.***

**FINDING:** No protective covenants or homeowner's association agreements are proposed. Staff finds this approval criterion does not apply.

Section 17.22.030. Improvement Requirements.

***In the approval of a land partition, the County shall consider the need for street and other improvements, and may require as a condition of approval any improvements that may be required for a subdivision under the provisions of DCC Title 17. All roads in partitions shall be dedicated to the public without reservation or restriction, except where private roads are allowed by the applicable zoning regulations, such as in planned or cluster developments.***

**FINDING:** Based on comment received from the County Road Department, the following improvements will be required in association with the proposal:

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

Prior to construction of public road improvements:

- Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. NE Coyner Ave between NE 33<sup>rd</sup> St and Proposed Parcel 3 shall be designed to the minimum aggregate road surface standard pursuant to 17.48.170(A) and 17.48A, which requires a 20 ft.-wide by 5 in.-depth aggregate road surface and a 45 ft.-radius by 5 inch-depth aggregate cul-de-sac bulb at the improved road terminus. Applicant may propose a turnaround facility other than a cul-de-sac bulb that will be subject to approval by the appropriate fire protection district. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.
- Applicant shall submit final improvement plans with all required approval signatures to Road Department.

Prior to final plat approval by Road Department:

- Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a register professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter to the Road Department from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
- Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.40.050.
- Applicant shall dedicate additional right of way along the subject property's frontage to NE Coyner Avenue to provide the minimum standard rural local right of way width of 60 ft. (30 ft. width north of the south section line of Section 35) pursuant to DCC 17.22.030, 17.36.040, 17.36.060, and 17.48A. Dedication shall also include area as required to provide for a minimum 50 ft.-radius right of way bulb to accommodate the required cul-de-sac bulb. Dedication shall be by plat declaration. Applicant shall cause for the removal of all private property, including fences, walls, landscaping, and other features, from the area to be dedicated.
- The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
- All easements of record or existing rights of way shall be noted on the final partition plat pursuant to DCC 17.24.060(E),(F), and (H).
- Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.

Prior to issuance of building permits on any parcel:

- Applicant or their successors in interest for the subject property shall obtain driveway access permits for all driveway accesses to NE Coyner Avenue for the subject property pursuant to DCC 12.28.050 and 17.48.210(A)."

Conditions of approval have been included to ensure compliance with the above required improvements.

## Chapter 17.24, Final Plat

### Section 17.24.060. Required Information.

***In addition to that required for the tentative plan or otherwise specified by law, the following information shall be shown on the submitted plat:***

- A. Name of subdivision and plat number for a final subdivision plat, or the partition application number and space for the partition plat number for a final partition plat.***
- B. Name of owner, applicant and surveyor.***
- C. The date, scale, true north, key to symbols, controlling topography such as bluffs, creeks and other bodies of water, and existing highways and railroads.***
- D. Legal description of the tract boundaries.***
- E. The exact location and width of streets and easements intercepting the boundary of the tract.***
- F. Tract, lot or parcel boundary lines and street rights of way and centerlines, with dimensions, bearing or deflection angles, radii, arcs, points of curvature and tangent bearings. Normal high water lines for any creek, bay or other body of water. Tract boundaries and street bearings shall be shown to the nearest second with the basis of bearings. Distances shall be shown to the nearest 0.01 feet.***
- G. Streets. The width of the streets being dedicated and the curve data shall be based on the street centerline. In addition to the centerline dimensions, the radius and central angle shall be indicated, together with the long chord distance and bearing.***
- H. Easements. The location, dimensions and purpose of all recorded and proposed public easements shall be shown on the plat along with the County Clerk's recording reference if the easement has been recorded with the County Clerk. All such easements shall be denoted by fine dotted lines and clearly identified. If an easement is not of record, a statement of the grant of easement shall be given. If the easement is being dedicated by the plat, it shall be properly referenced in the owner's certificate of dedication.***

**FINDING:** Staff includes this section to ensure the applicant is aware of the requirements for submittal of the final plat.

## Chapter 17.36, Design Standards

Section 17.36.020. Streets.

- A. *The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles and automobiles, with intersection angles, grades, tangents and curves appropriate for the traffic to be carried, considering the terrain. The subdivision or partition shall provide for the continuation of the principal streets existing in the adjoining subdivision or partition or of their property projection when adjoining property which is not subdivided, and such streets shall be of a width not less than the minimum requirements for streets set forth in DCC 17.36.***
- B. *Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned or cluster development, where roads can be privately owned. Planned developments shall include public streets where necessary to accommodate present and future through traffic.***
- C. *Streets in partitions shall be dedicated to the public.***

**FINDING:** No new streets are proposed or required. High levels of pedestrian and bicycle use are not anticipated due to the lack of dense residential development in the area and the lack commercial, public, educational, and other non-residential uses. No principal streets in an adjoining subdivision or partition terminate at the subject property. Therefore, staff finds that no continuation of principal streets is necessary. Staff finds these approval criteria are met.

Section 17.36.030. Division of Land.

***Any proposal for a condominium conversion which results in a division of real property shall comply with the provisions of DCC Title 17 and ORS 92.***

**FINDING:** No proposal for a condominium conversion is included in this application. Staff finds this approval criterion does not apply.

Section 17.36.040. Existing Streets.

***Whenever existing streets, adjacent to or within a tract, are of inadequate width to accommodate the increase in traffic expected from the subdivision or partition or by the County roadway network plan, additional rights of way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the Planning Director or Hearings Body, together with the Road Department Director, shall determine whether improvements to existing streets adjacent to or within the tract, are required. If so determined, such improvements shall be required as a condition of approval for the tentative plan. Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.***

**FINDING:** As noted in the Road Department comments, NE Coyner Ave must be improved with adequate right-of-way dimensions, surfacing, and a turnaround facility to ensure compliance with DCC 17.40 and 17.48 and to accommodate the increase in traffic generated by the proposal.

Section 17.36.050. Continuation of Streets.

***Subdivision or partition streets which constitute the continuation of streets in contiguous territory shall be aligned so that their centerlines coincide.***

**FINDING:** No new streets are proposed. Staff finds this approval criterion does not apply.

Section 17.36.060. Minimum Right of Way and Roadway Width.

***The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in DCC 17.48. Where DCC refers to street standards found in a zoning ordinance, the standards in the zoning ordinance shall prevail.***

**FINDING:** As mentioned in previous findings, the applicant will be required to complete the required improvements outlined by the County Road Department.

Section 17.36.070. Future Resubdivision.

***Where a tract of land is divided into lots or parcels of an acre or more, the Hearings Body may require an arrangement of lots or parcels and streets such as to permit future re-subdivision in conformity to the street requirements and other requirements contained in DCC Title 17.***

**FINDING:** All three proposed parcels are more than one-acre in size. While considering the minimum parcel sizes of the EFU Zone prohibit further division of the subject property, staff notes that all proposed parcels will be arranged to provide adequate frontage for future re-subdivision considering minimum road frontage requirements. Nothing in this decision should be construed to approve any future re-subdivision of any parcel. This criterion will be met.

Section 17.36.080. Future Extension of Streets.

***When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition.***

**FINDING:** Based on staff's review of surrounding lands, all adjoining properties that could be divided already have frontage on a county road. Staff finds no street extensions are required.

Section 17.36.100. Frontage Roads.

***If a land division abuts or contains an existing or proposed collector or arterial street, the Planning Director or Hearings Body may require frontage roads, reverse frontage lots or parcels with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. All frontage roads shall comply with the applicable standards of Table A of DCC Title 17, unless specifications included in a particular zone provide other standards applicable to frontage roads.***

**FINDING:** The subject property has frontage along NE Oneil Way/Highway 370, which is classified as an arterial road. The County Road Department provided comments requiring the applicant to dedicate additional right of way along the subject property's frontage to NE Coyner Ave to provide the minimum standard arterial right of way width pursuant to DCC 17.22.030, 17.36.040, 17.36.060, 17.48.175(B), and 17.48A. Based on the Road Department's comments, additional improvements to NE Oneil Way will not be required at this time. Staff notes that the applicant will still be required to complete all required improvements outlined in the County Road Department's comments and associated Conditions of Approval.

Section 17.36.110. Streets Adjacent to Railroads, Freeways and Parkways.

***When the area to be divided adjoins or contains a railroad, freeway or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right-of-way widths of the cross street.***

**FINDING:** The subject property is not adjacent to a railroad, freeway, or parkway. This approval criterion does not apply.

Section 17.36.120. Street Names.

***Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator.***

**FINDING:** No new streets are proposed. Staff includes a Condition of Approval requiring approval from the Property Address Coordinator for parcel addresses prior to issuance of any building permit for the nonfarm dwellings.



Parcel Addresses. Prior to issuance of any building permit for the nonfarm dwellings, the applicant shall secure address approval for both nonfarm parcels.

Section 17.36.130. Sidewalks.

- A. Within an urban growth boundary, sidewalks shall be installed on both sides of a public road or street and in any special pedestrian way within the subdivision or partition, and along any collectors and arterials improved in accordance with the subdivision or partition.**
- B. Within an urban area, sidewalks shall be required along frontage roads only on the side of the frontage road abutting the development.**
- C. Sidewalk requirements for areas outside of urban area are set forth in section 17.48.175. In the absence of a special requirement set forth by the Road Department Director under DCC 17.48.030, sidewalks and curbs are never required in rural areas outside unincorporated communities as that term is defined in Title 18.**

**FINDING:** Staff finds that these criteria do not apply to the proposed development because the subject property is located outside of an acknowledged Urban Growth Boundary. Sidewalks are not required for this partition pursuant to subsection (C) above.

Section 17.36.160. Easements.

- A. Utility Easements. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to un subdivided land may be reduced to 10 feet in width.**
- B. Drainage. If a tract is traversed by a watercourse such as a drainageway, channel or stream, there shall be provided a stormwater easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or parkways parallel to major watercourses or drainageways may be required.**

**FINDING:** As a Condition of Approval, all existing easements and necessary easements to provide the proposed parcels with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage shall be shown on the final plat. Such easements shall be labeled "Public Utility Easement" on the final plat and shall be at least 12 feet in width and centered on lot lines where possible. This criterion will be met. Staff finds approval criterion (B) above does not apply because the tract is not traversed by a watercourse.

Section 17.36.170. Lots, Size and Shape.

***The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of DCC Title 18 through 21, with the following exceptions:***

- A. In areas not to be served by a public sewer, minimum lot and parcel sizes shall permit compliance with the requirements of the Department of Environmental Quality and the County Sanitarian, and shall be sufficient to permit adequate sewage disposal. Any problems posed by soil structure and water table and related to sewage disposal by septic tank shall be addressed and resolved in the applicant's initial plan.***

**FINDING:** As addressed in the findings above, the proposed parcels are in conformance with the minimum parcel size provisions of DCC Title 18 and can allow all required setbacks to be met. The proposed parcels are not in an area identified as “high ground water area” on the County’s Dial GIS map and no comments were received from the Environmental Soils Division contesting the feasibility of obtaining the necessary septic approvals. Given the size of the new parcels, staff finds that septic approval is likely. To ensure compliance with the above criterion, staff adds the following Condition of Approval:

Septic Feasibility. Prior to final plat approval, the applicant shall secure septic feasibility approval for Parcels 1 and 2.

- B. Where property is zoned and planned for business or industrial use, other widths and areas may be permitted by the Hearings Body. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off street service and parking facilities required by the type of use and development contemplated.***

**FINDING:** The subject property is not zoned or planned for business or industrial use. Therefore, staff finds subsection (B) does not apply.

Section 17.36.180. Frontage.

- A. Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet, except for lots or parcels fronting on the bulb of a cul de sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards. Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.***
- B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.***

**FINDING:** As shown on the tentative plan, Parcels 1, 2, and 3 will abut on NE Oneil Way/Highway

370 and have at least 50 feet of frontage. Staff finds the proposed design of the side lots lines for the land division are suitable for the proposed development and that the configuration of side lot lines at right angles or radially is not practical given the limited road frontage and the remote location of the subject property.

Section 17.36.190. Through Lots.

***Lots or parcels with double frontage should be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots or parcels abutting such a traffic artery or other incompatible use.***

**FINDING:** The subject property currently has double frontage on NE Oneil Way/Highway 370 to the north and NE Coyner Ave to the south. As proposed, the three parcels will continue to have double frontage. Because the double-frontage orientation exists currently, and no change to the double-frontage will occur upon approval of the subject application, staff finds a planting screen is not necessary to provide adequate buffering for the existing dwelling on the subject property/proposed Parcel 3.

Section 17.36.210. Solar Access Performance.

- A. As much solar access as feasible shall be provided each lot or parcel in every new subdivision or partition, considering topography, development pattern and existing vegetation. The lot lines of lots or parcels, as far as feasible, shall be oriented to provide solar access at ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st. If it is not feasible to provide solar access to the southern building line, then solar access, if feasible, shall be provided at 10 feet above ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st, and three hours before and after the solar zenith from March 22nd to September 21st.***
- B. This solar access shall be protected by solar height restrictions on burdened properties for the benefit of lots or parcels receiving the solar access.***
- C. If the solar access for any lot or parcel, either at the southern building line or at 10 feet above the southern building line, required by this performance standard is not feasible, supporting information must be filed with the application.***

**FINDING:** Staff finds the north-south depth of all parcels will be adequate to allow solar access. Any future structures will be required to comply with the solar requirements of DCC 18.116.180. Staff includes the following Condition of Approval to ensure compliance:

Solar Access. All structures on the parcels shall comply with the solar requirements of DCC 18.116.180.

Section 17.36.230. Grading of Building Sites.

***Grading of building sites shall conform to the following standards, unless physical conditions demonstrate the property of other standards:***

- A. Cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally.***
- B. Fill slope ratios shall not exceed one foot vertically to two feet horizontally.***
- C. The composition of soil for fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.***
- D. When filling or grading is contemplated by the subdivider, he shall submit plans showing existing and finished grades for the approval of the Community Development Director. In reviewing these plans, the Community Development Director shall consider the need for drainage and effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.***

**FINDING:** Staff includes the following Condition of Approval to ensure compliance:

Grading of Building Sites. Grading of building sites shall conform to the standards under DCC 17.36.230.

Section 17.36.260. Fire Hazards.

***Whenever possible, a minimum of two points of access to the subdivision or partition shall be provided to provide assured access for emergency vehicles and ease resident evacuation.***

**FINDING:** The parent parcel has frontage on two (2) streets (NE Oneil Way/Highway 370 and NE Coyner Ave). For this reason, staff finds the proposed parcels will have multiple points of access.

Section 17.36.270. Street Tree Planting.

***Street tree planting plans, if proposed, for a subdivision or partition, shall be submitted to the Planning Director and receive his approval before the planting is begun.***

**FINDING:** No street trees have been proposed by the applicant. This approval criterion does not apply.

Section 17.36.280. Water and Sewer Lines.

***Where required by the applicable zoning ordinance, water and sewer lines shall be constructed to County and City standards and specifications. Required water mains and service lines shall be installed prior to the curbing and paving of new streets in all new subdivisions or partitions.***

**FINDING:** No water or sewer lines have been proposed nor are they required. The nonfarm parcels

will be served by on-site septic systems and wells. This approval criterion does not apply.

Section 17.36.290. Individual Wells.

***In any subdivision or partition where individual wells are proposed, the applicant shall provide documentation of the depth and quantity of potable water available from a minimum of two wells within one mile of the proposed land division. Notwithstanding DCC 17.36.300, individual wells for subdivisions are allowed when parcels are larger than 10 acres.***

**FINDING:** The proposed parcels will be served by on-site wells. Based on the submitted well logs, completed wells range in depth from 140 and 227 feet. For this reason, staff finds there will be adequate domestic water supply.

Section 17.36.300. Public Water System.

***In any subdivision or partition where a public water system is required or proposed, plans for the water system shall be submitted and approved by the appropriate state or federal agency. A community water system shall be required where lot or parcel sizes are less than one acre or where potable water sources are at depths greater than 500 feet, excepting land partitions. Except as provided for in sections 17.24.120 and 17.24.130, a required water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision or partition plat, prior to final approval.***

**FINDING:** No new public water system is proposed. Further, all resultant parcels will be greater than 1 acre in size and static water depths are less than 500 feet. Therefore, a community water system is not required. This approval criterion does not apply.

**Chapter 17.44, Park Development.**

Section 17.44.010. Dedication of Land.

- A. *For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.***
- B. *For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to \$350 per dwelling unit within the development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.***
- C. *For either DCC 17.44.010 (A) or (B), the developer shall either dedicate the land set aside to the public or develop and provide maintenance for the land set aside as a private park open to the public.***
- D. *The Planning Director or Hearings Body shall determine whether or not such land is***

*suitable for park purposes.*

- E. *If the developer dedicates the land set aside in accordance with DCC 17.44.010 (A) or (B), any approval by the Planning Director or Hearings Body shall be subject to the condition that the County or appropriate park district accept the deed dedicating such land.***
- F. *DCC 17.44.010 shall not apply to the subdivision or partition of lands located within the boundaries of a parks district with a permanent tax rate.***

**FINDING:** The subject property is located within the boundaries of the Redmond Area Park & Recreation District (RAPRD), which has a permanent tax rate. Pursuant to DCC 17.44.010(F), above, the entirety of DCC Section 17.44.010 does not apply as a result of the property's inclusion within the boundaries of the parks district and that a park dedication or alternative fees are not required under the above criteria.

## **Chapter 17.48, Design and Construction Specifications.**

### Section 17.48.050. Road Design.

***The design of roads covered by DCC Title 17 is to be prepared by a registered professional engineer and shall at a minimum conform to the design standards for new or existing roads set forth in Table A of DCC Title 17 (or in the design standards set forth for a particular zone in a zoning ordinance) and shall otherwise conform with AASHTO standards. Base and pavement dimensions set forth in Table A (or in specifications set forth for a particular zone) may be increased by the Road Department Director if necessitated by anticipated traffic volumes.***

**FINDING:** As noted in this decision, the applicant will be required to complete the required improvements outlined in the County Road Department's submitted comment.

### Section 17.48.210. Access.

- A. *Permit Required. Access onto public right of way or change in type of access shall require a permit. Permits are applied for at offices of the Community Development Department.***
- B. *Access Restrictions and Limitations. The creation of access onto arterials and collectors is prohibited unless there is no other possible means of accessing the parcel. In any event, residential access onto arterials and collectors shall not be permitted within 100 feet of an intersection or the maximum distance obtainable on the parcel, whichever is less.***

**FINDING:** As a Condition of Approval, the applicant will be required to secure driveway access permits for any new accesses onto public roads and for any accesses onto public roads that currently do not have a valid permit.

## OREGON REVISED STATUTES

### Chapter 92, Subdivisions and Partitions

Section 92.090. Approval of subdivision plat names; requisites for approval of a tentative subdivision or partition plan or plat.

**(2) No tentative plan for a proposed subdivision and no tentative plan for a proposed partition shall be approved unless:**

**(a) The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other aspects unless the city or county determines it is in the public interest to modify the street or road pattern.**

**FINDING:** The partition does not include new streets or roads. Staff finds this approval criterion does not apply.

**(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.**

**FINDING:** The partition does not include new streets or roads. Staff finds this approval criterion does not apply.

**(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances and regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.**

**FINDING:** This decision identifies applicable zoning ordinances and evaluates compliance with those ordinances. Staff finds the tentative plan, as conditioned, complies with the applicable DCC zoning ordinances and regulations, as well as and the ordinances and regulations adopted under ORS 92.044.

**(3) No plat of a proposed subdivision or partition shall be approved unless:**

**(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.**

**(b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.**

**(c) The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.**

- (d) *The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.*
- (e) *The subdivision or partition plat contains a donation to the public of all sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition plat.*
- (f) *Explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.*

**FINDING:** The partition does not include new streets or roads. Therefore, staff finds subsections (a) and (b) do not apply. Compliance with the zoning ordinance and regulations is addressed in this decision and will be reviewed when the final partition plat is submitted. Subsection (d) establishes a requirement for final plat review which staff includes as a Condition of Approval to comply with this statutory section.

Final Plat Conformity. The partition plat shall substantially conform to the provisions of the tentative plan for the partition, as approved.

No public sewage or water systems are proposed, therefore subsections (e) and (f) do not apply.

- (4) *Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted...*

**FINDING:** The applicant does not propose a subdivision. Staff finds this approval criterion does not apply.

- (5) *Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted...*

**FINDING:** The applicant does not propose a subdivision. Staff finds this approval criterion does not apply.

- (6) *Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.*



**FINDING:** The subject property is not located within the boundaries of an irrigation district. This criterion does not apply to the subject application.

**SYSTEM DEVELOPMENT CHARGE**

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$4,488 per p.m. peak hour trip. 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 \$3,635 ( $\$4,488 \times 0.81$ ). 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 SDC is for informational purposes only as the SDC is only triggered when new development occur.

**THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2021. 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 PULLED.**

**ON JULY 1, 2021, THE SDC RATE GOES UP TO \$4,757 PER P.M. PEAK HOUR TRIP AND THE SDC FOR A SINGLE-FAMILY HOME WILL BE \$3,853 ( $\$4,757 \times 0.81$ ) AND THAT SDC AMOUNT WILL BE GOOD THROUGH JUNE 30, 2022.**

**AGAIN THE ABOVE SDC AMOUNTS ARE INFORMATIONAL ONLY; THE SDC IS ONLY TRIGGERED WHEN NEW DEVELOPMENT OCCURS.**

**IV. CONCLUSION**

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

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

**V. DECISION**

**APPROVAL**, subject to the following Conditions of Approval.

**VI. CONDITIONS OF APPROVAL**

**AT ALL TIMES**

1. Application Materials: This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any

substantial change in this approved use will require review through a new land use application.

2. Height of Building: No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.
3. Solar Setbacks: All structures shall comply with the solar setback requirements of DCC 18.116.180.
4. Yards. Structural setbacks from all lot lines shall meet the yard requirements in DCC 18.16.070.
5. Other Setbacks. 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.
6. Grading of Building Sites: Grading of building sites shall conform to the standards under DCC 17.36.230.
7. Dwelling and essential or accessory components: the dwelling, detached residential-associated buildings (including garages), well, septic system, drainfield, and the septic reserve area, shall be located in the identified "generally unsuitable" building envelope.

#### **PRIOR TO CONSTRUCTION OF PUBLIC ROAD IMPROVEMENTS**

8. Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. NE Coyner Ave between NE 33<sup>rd</sup> St and Proposed Parcel 3 shall be designed to the minimum aggregate road surface standard pursuant to 17.48.170(A) and 17.48A, which requires a 20 ft.-wide by 5 in.-depth aggregate road surface and a 45 ft.-radius by 5 inch-depth aggregate cul-de-sac bulb at the improved road terminus. Applicant may propose a turnaround facility other than a cul-de-sac bulb that will be subject to approval by the appropriate fire protection district. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.
9. Road Department Signature: Applicant shall submit final improvement plans with all required approval signatures to Road Department.

#### **PRIOR TO ISSUANCE OF NONFARM DWELLING BUILDING PERMIT**

10. Fire Safety: The applicant shall coordinate with Redmond Fire & Rescue to ensure that any required fire codes are met. Proof of compliance shall be provided to the Planning Division.

11. Farm Tax Deferral Disqualification: Prior to the issuance of building permits, the applicant shall produce evidence from the County Assessor's Office that the parcels upon which the dwellings are proposed have been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.
12. Driveway Access: Applicant or their successors in interest for the subject property shall obtain driveway access permits for all driveway accesses pursuant to DCC 12.28.050 and 17.48.210(A).
13. Parcel Addresses: Prior to issuance of any building permit for the nonfarm dwellings, the applicant shall secure address approval for both nonfarm parcels.
14. Farm & Forest Management Easement. The property owner shall sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The applicant shall submit a copy of the recorded Farm and Forest Management Easement to the Planning Division.

#### **PRIOR TO OR CONCURRENT WITH FINAL PLAT APPROVAL**

15. Construction of Road Improvements: Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter to the Road Department from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
16. Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.40.050.
17. Applicant shall dedicate additional right of way along the subject property's frontage to NE Coyner Avenue to provide the minimum standard rural local right of way width of 60 ft. (30 ft. width north of the south section line of Section 35) pursuant to DCC 17.22.030, 17.36.040, 17.36.060, and 17.48A. Dedication shall also include area as required to provide for a minimum 50 ft.-radius right of way bulb to accommodate the required cul-de-sac bulb. Dedication shall be by plat declaration. Applicant shall cause for the removal of all private property, including fences, walls, landscaping, and other features, from the area to be dedicated.
18. Plat Preparation: The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way

to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).

19. Easements: All easements of record or existing rights of way shall be noted on the final partition plat pursuant to DCC 17.24.060(E),(F), and (H).
20. Road Department Plat Approval: Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.
21. Septic: The applicant shall secure any necessary septic permit approval for the nonfarm dwellings on Parcels 1 and 2.
22. Final Plat Conformity: The partition plat shall substantially conform to the provisions of the tentative plan for the partition, as approved.

## **VII. DURATION OF APPROVAL, NOTICE, AND APPEALS**

Development for the proposed nonfarm dwellings must be initiated within four (4) years of the date this decision becomes final, or obtain approval of an extension under Title 22 of the County Code, or this approval shall be void.

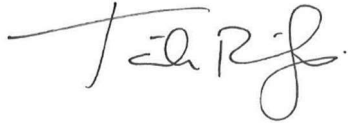
All conditions of approval related to the partition must be met and submission of an application for Final Plat Approval must occur within two (2) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

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

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

**DESCHUTES COUNTY PLANNING DIVISION**



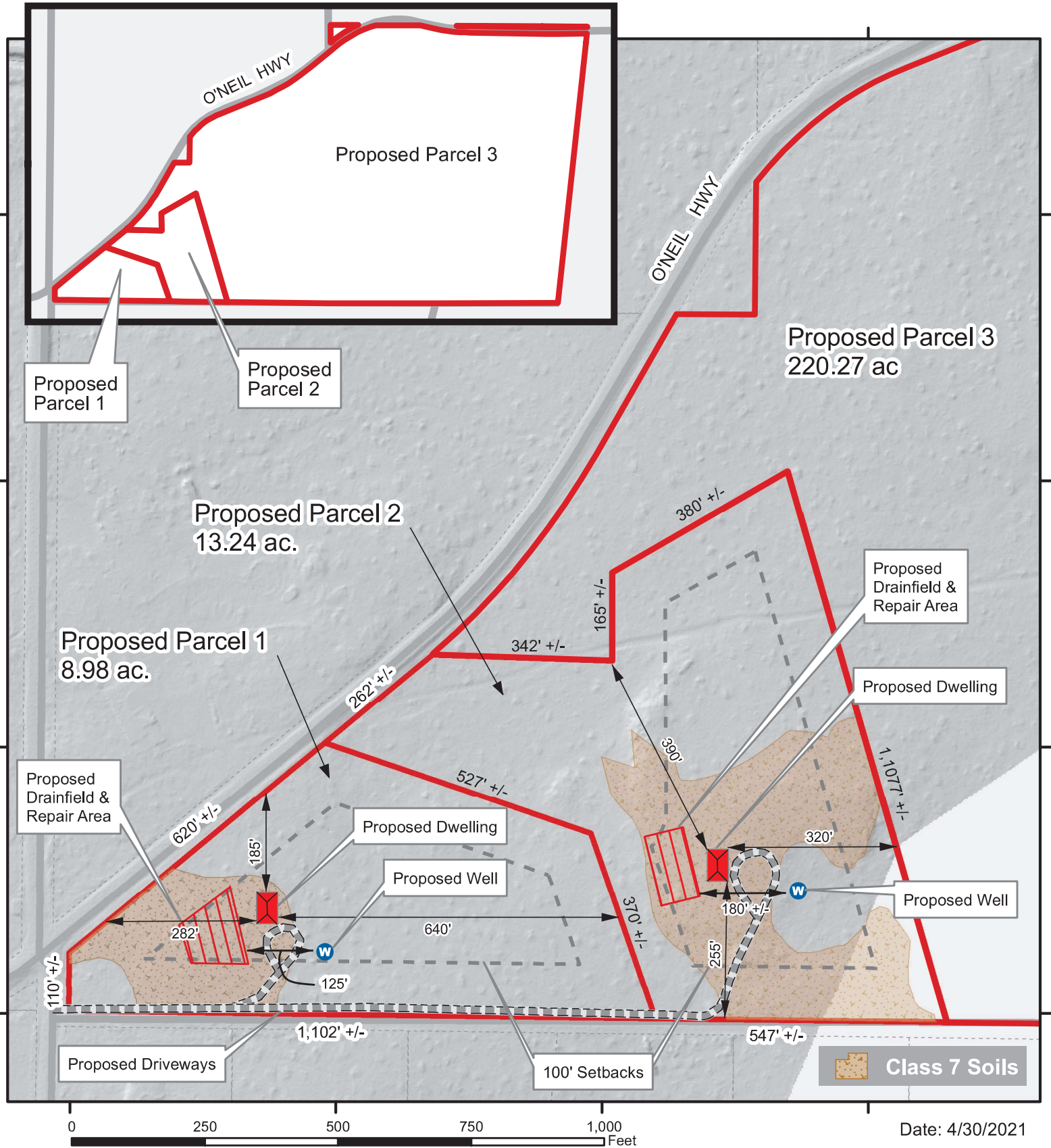
Written by: Tarik Rawlings, Associate Planner



Reviewed by: Peter Gutowsky, Planning Manager

Attachment(s): Site Plan  
Farm & Forest Management Easement

# EXHIBIT D1 - PROPOSED PARCELS & PLOT PLAN



Note: This information is prepared for reference purposes only and should not be used, and is not intended for, survey or engineering purposes. Kilpatrick Consulting LLC is not responsible for outsourced data accuracy.



**SIMMONS BROTHERS LLC**  
**T14S R13E Sec. 25 TL 1200 - 242.49 ac.**  
**located on O'Neil Hwy in Northeast**  
**Deschutes County, Oregon**

*Kilpatrick*  
**CONSULTING, LLC**

LAND USE CONSULTING SERVICES  
 GIS MAPPING SERVICES

OFFICE:  
 541.447.2724



Return to:  
Tarik Rawlings, Associate Planner  
Community Development Department  
117 NW Lafayette, P.O. Box 6005  
Bend, Oregon 97708-6005

*Space Reserved for Recorder's Use*

## **FARM AND FOREST MANAGEMENT EASEMENT - CONDITIONAL USE**

Simmons Brothers, LLC; their heirs, successors and/or assigns; herein called the Grantors, are the owners of real property described as set forth in that certain Bargain and Sale Deed, as recorded in the Official Records of Deschutes County as instrument number 2001-45403 and by this reference incorporated herein, and identified or depicted on Deschutes County Assessor's Map 14-13-25 as Tax Lot 1200. Grantors hereby grant to the owner(s) of all property adjacent to the above described property (Grantees), a perpetual non-exclusive farm and forest practices management easement as follows:

1. The Grantors, their heirs, successors, and assigns, hereby acknowledge by the granting of this easement that the above-described property is situated in a designated farm zone in Deschutes County, Oregon, and may be subjected to conditions resulting from farming or forest practices on adjacent lands. Such operations include management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, 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, and other accepted and customary farm and forest management activities conducted in accordance with federal and state laws. Such farm or forest management activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Except as allowed by ORS 30.930 through 30.947, Grantors hereby waive all common law rights to object to normal, non-negligent farm and forest management activities legally conducted on adjacent lands that may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby give an easement to the adjacent property owners for the resultant impact on Grantors' property caused by the farm and forest management activities on adjacent lands.
2. Grantors shall comply with all restrictions and conditions for maintaining residences in farm and forest zones that may be required by state, federal, and local land use laws and regulations. Grantors shall comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of Grantors, and shall endure for the benefit of the adjacent landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third-party enforcement of this easement.

***Signature pages to follow***





owner	agent	inCareOf	address	cityStZip	type	cdd id
Kilpatrick Consulting LLC			13790 NW O'Neil Highway	Redmond, OR 97756	FD	21-593-MP, 594-CU, 595-CU
Simmons Brothers LLC			139 NW 3rd St	Prineville, OR 97754	FD	21-593-MP, 594-CU, 595-CU



Mailing Date:  
Tuesday, September 21, 2021

## COMMUNITY DEVELOPMENT

### NOTICE OF DECISION

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

**FILE NUMBER:** 247-21-000593-MP, 594-CU, 595-CU

**SUBJECT PROPERTY/  
OWNER:**

Mailing Name: SIMMONS BROTHERS LLC  
Map and Taxlot: 1413250001200  
Account: 128367  
Situs Address: 4180 NE ONEIL WAY, REDMOND, OR 97756

**APPLICANT:** Kilpatrick Consulting LLC

**REQUEST:** The applicant requests approval of a Minor Partition to divide the subject property to create an 8.98-acre Parcel 1, a 13.24-acre Parcel 2, and a 220.27-acre Parcel 3. The applicant also requests Conditional Use Permit approval to establish a nonfarm dwelling on Parcel 1 and Parcel 2.

**STAFF CONTACT:** Tarik Rawlings, Associate Planner  
Phone: 541-317-3148  
Email: [Tarik.Rawlings@deschutes.org](mailto:Tarik.Rawlings@deschutes.org)

**DOCUMENTS:** Can be viewed and downloaded from:  
[www.buildingpermits.oregon.gov](http://www.buildingpermits.oregon.gov) and <http://dial.deschutes.org>

#### I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 17, Subdivision and Partition Ordinance

Chapter 17.22, Approval of Tentative Plans for Partition

Chapter 17.36, Design Standards

Chapter 17.44, Park Development

Chapter 17.48, Design and Construction Specifications

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes

Chapter 92, Subdivisions and Partitions

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

**CONDITIONS OF APPROVAL**

**AT ALL TIMES**

1. Application Materials: This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
2. Height of Building: No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.
3. Solar Setbacks: All structures shall comply with the solar setback requirements of DCC 18.116.180.
4. Yards. Structural setbacks from all lot lines shall meet the yard requirements in DCC 18.16.070.
5. Other Setbacks. 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.
6. Grading of Building Sites: Grading of building sites shall conform to the standards under DCC 17.36.230.
7. Dwelling and essential or accessory components: the dwelling, detached residential-associated buildings (including garages), well, septic system, drainfield, and the septic reserve area, shall be located in the identified “generally unsuitable” building envelope.

**PRIOR TO CONSTRUCTION OF PUBLIC ROAD IMPROVEMENTS**

8. Applicant shall submit road improvement plans to Road Department for approval prior to commencement of construction pursuant to DCC 17.40.020 and 17.48.060. NE Coyner Ave between NE 33<sup>rd</sup> St and Proposed Parcel 3 shall be designed to the minimum aggregate road surface standard pursuant to 17.48.170(A) and 17.48A, which requires a 20 ft.-wide by 5 in.-depth aggregate road surface and a 45 ft.-radius by 5 inch-depth aggregate cul-de-sac bulb at the improved road terminus. Applicant may propose a turnaround facility other than a cul-de-sac bulb that will be subject to approval by the appropriate fire protection district. Road improvement plans shall be prepared in accordance with all applicable sections of DCC 17.48.

9. Road Department Signature: Applicant shall submit final improvement plans with all required approval signatures to Road Department.

#### **PRIOR TO ISSUANCE OF NONFARM DWELLING BUILDING PERMIT**

10. Fire Safety: The applicant shall coordinate with Redmond Fire & Rescue to ensure that any required fire codes are met. Proof of compliance shall be provided to the Planning Division.
11. Farm Tax Deferral Disqualification: Prior to the issuance of building permits, the applicant shall produce evidence from the County Assessor's Office that the parcels upon which the dwellings are proposed have been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.
12. Driveway Access: Applicant or their successors in interest for the subject property shall obtain driveway access permits for all driveway accesses pursuant to DCC 12.28.050 and 17.48.210(A).
13. Parcel Addresses: Prior to issuance of any building permit for the nonfarm dwellings, the applicant shall secure address approval for both nonfarm parcels.
14. Farm & Forest Management Easement. The property owner shall sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The applicant shall submit a copy of the recorded Farm and Forest Management Easement to the Planning Division.

#### **PRIOR TO OR CONCURRENT WITH FINAL PLAT APPROVAL**

15. Construction of Road Improvements: Applicant shall complete road improvements according to the approved plans and all applicable sections of DCC 17.48. Improvements shall be constructed under the inspection of a registered professional engineer consistent with ORS 92.097 and DCC 17.40.040. Upon completion of road improvements, applicant shall provide a letter to the Road Department from the engineer certifying that the improvements were constructed in accordance with the approved plans and all applicable sections of DCC 17.48.
16. Applicant shall submit as-constructed improvement plans to Road Department pursuant to DCC 17.40.050.
17. Applicant shall dedicate additional right of way along the subject property's frontage to NE Coyner Avenue to provide the minimum standard rural local right of way width of 60 ft. (30 ft. width north of the south section line of Section 35) pursuant to DCC 17.22.030,

17.36.040, 17.36.060, and 17.48A. Dedication shall also include area as required to provide for a minimum 50 ft.-radius right of way bulb to accommodate the required cul-de-sac bulb. Dedication shall be by plat declaration. Applicant shall cause for the removal of all private property, including fences, walls, landscaping, and other features, from the area to be dedicated.

18. Plat Preparation: The surveyor preparing the plat shall, on behalf of the applicant, submit information showing the location of the existing roads in relationship to the rights of way to Deschutes County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated rights of way. In no case shall a road improvement be located outside of a dedicated road right of way. If research reveals that inadequate right of way exists or that the existing roadway is outside of the legally established or dedicated right of way, additional right of way will be dedicated as directed by Deschutes County Road Department to meet the applicable requirements of DCC Title 17 or other County road standards. This condition is pursuant to DCC 17.24.060(E),(F), and (G) and 17.24.070(E)(8).
19. Easements: All easements of record or existing rights of way shall be noted on the final partition plat pursuant to DCC 17.24.060(E),(F), and (H).
20. Road Department Plat Approval: Applicant shall submit plat to Road Department for approval pursuant to DCC 17.24.060(R)(2), 100, 110, and 140.
21. Septic: The applicant shall secure any necessary septic permit approval for the nonfarm dwellings on Parcels 1 and 2.
22. Final Plat Conformity: The partition plat shall substantially conform to the provisions of the tentative plan for the partition, as approved.

**This decision becomes final twelve (12) days after the date mailed**, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

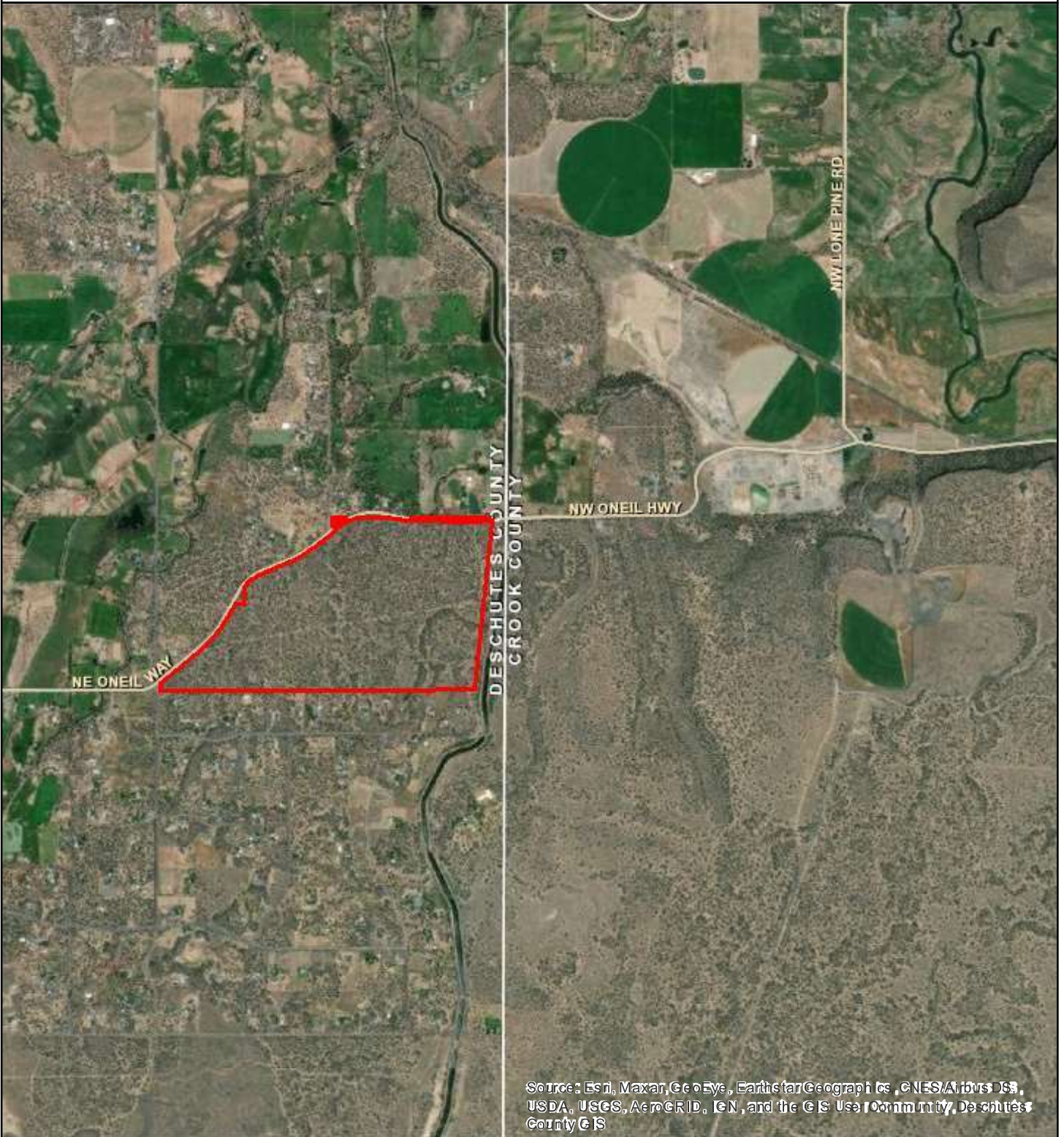
Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

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

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

# 247-21-000593-MP, 594-CU, 595-CU

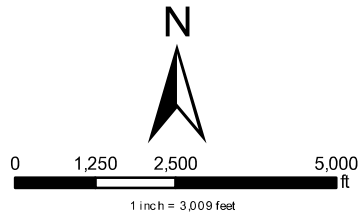
4180 NE ONEIL WAY, REDMOND, OR 97756



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Deschutes County GIS



Date: 9/21/2021



owner	agent	inCareOf	address	cityStZip	type	cdd id
Kilpatrick Consulting LLC			13790 NW O'Neil Highway	Redmond, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
Simmons Brothers LLC			139 NW 3rd St	Prineville, OR 97754	NOD	21-593-MP, 594-CU, 595-CU
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOD	21-593-MP, 594-CU, 595-CU
DESCHUTES CO. BUILDING SAFETY			ELECTRONIC		NOD	21-593-MP, 594-CU, 595-CU
DESCHUTES CO. ENVIRONMENTAL SOILS DIV.			ELECTRONIC		NOD	21-593-MP, 594-CU, 595-CU
DESCHUTES CO. ROAD DEPT.	CODY SMITH PETER		ELECTRONIC		NOD	21-593-MP, 594-CU, 595-CU
DESCHUTES CO. SR. TRANS. PLANNER	RUSSELL		ELECTRONIC		NOD	21-593-MP, 594-CU, 595-CU
PROPERTY ADDRESS COORDINATOR			ELECTRONIC		NOD	21-593-MP, 594-CU, 595-CU
	Ken Kehma (ken.kehman@redmondfireandrescue.org) Jeff Puller (jeff.puller@redmondfireandrescue.org) Wade Gibson (Wade.Gibson@redmondfireandrescue.org)					
REDMOND FIRE & RESCUE	RUSSELL, ZACHARY J & ELIZABETH A		341 NW DOGWOOD AVE	Redmond, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
ZACHARY & ELIZABETH RUSSELL JOINT TRUST	TTEES		3065 NE O'NEIL WAY	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
LEE PROPERTY MANAGEMENT LLC			4725 NE ONEIL WAY	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
SANDERS, VIRGINIA B			5910 NE 41ST ST	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
BENNETT, TODD D			3905 NE ONEIL WAY	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
HOWARD, JOSEPH W			3639 NE ONEIL WAY	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
LAMB, CHARLES F JR & CATHERINE L			3361 NE ONEIL WAY	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
NOBLE, MATTHEW A & TAMARA E			5837 NE 41ST ST	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
SPENCER, STUART MICHAEL & NANCY LYNN			5603 NE 41ST ST	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
EDMONDS, DOUG & BARBARA			PO BOX 919	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
APRILL,GARY E & TONI			PO BOX 789	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
ELROD FARMS LLC			64940 19TH ST	BEND, OR 97701	NOD	21-593-MP, 594-CU, 595-CU
DEVORE, CHARLES & KATHERINE			5055 NE 33RD ST	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
REDMOND TALLOW CO			PO BOX 1014	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
GULLEY,MICHAEL D & BARBARA D			PO BOX 1066	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
KEEN,DEBORAH L			4703 NE BUTLER AVE	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
ZORRILLA, HARRY R & MYERS, EILEEN M			4623 NE BUTLER AVE	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
WILSON, ALI F			4656 NE 45TH ST	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU
FARMER,ADAM P & KUEHN,DYAN R			PO BOX 2272	REDMOND, OR 97756	NOD	21-593-MP, 594-CU, 595-CU



CLARK, PATRICK & MOLLY	4285 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
SCHULTZ, PATRICIA A ET AL	775 NW 35TH ST	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
PANGELINAN,ROBIN J & JUNE A	4624 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
DAVIES, JENNIFER R & BENJAMIN J	63585 DESCHUTES MARKET RD	BEND, OR 97701	NOD 21-593-MP, 594-CU, 595-CU
PIERSON,TERRY L & KELLIE A	1075 N FALDO WAY	EAGLE, ID 83616	NOD 21-593-MP, 594-CU, 595-CU
SIMMONS BROTHERS LLC	PO BOX 400	PRINEVILLE, OR 97754	NOD 21-593-MP, 594-CU, 595-CU
LARSON,CONNIE M & JAMES O	4155 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
STILES,JASON ALAN & JOANNE	4075 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
GUERNSEY, MAX EDWIN GERALD III	752 VISCANIO PL	LAS VEGAS, NV 89138	NOD 21-593-MP, 594-CU, 595-CU
BRAD CARRELL LIV TRUST	PO BOX 1914	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
BESSEY, J LORAIN ET AL	PO BOX 300	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
WILLIAMS, CHARLES M	3555 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
PETE,DAVID S & BERNADINE L	%BERNADINE L PETE TRUSTEE (A) 3411 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
DAVIS, CHRISTOPHER J & CYNTHIA ANN	4750 NE 33RD ST	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
SCHMITT, DANIEL & JENNIFER	3840 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
BARTLETT, JAMES E & LISA A	3760 NE BUTLER AVE	REDMOND, OR 97756	NOD 21-593-MP, 594-CU, 595-CU
	SAY, BRIAN		
	L &		
	DORTHEA L		
BRIAN L & DORTHEA L SAY REV LIVING TRUST	TTEES	3650 NE BUTLER AVE	REDMOND, OR 97756 NOD 21-593-MP, 594-CU, 595-CU
	BARNETT,		
	DAVID &		
	JENNIFER		
BARNETT FAMILY TRUST	TTEES	3450 NE BUTLER AVE	REDMOND, OR 97756 NOD 21-593-MP, 594-CU, 595-CU
SWAGGER, NICK & JESSICA		4582 NE 33RD ST	REDMOND, OR 97756 NOD 21-593-MP, 594-CU, 595-CU
HARRANG, JON P & SHAWN L		4554 NE 40TH ST	REDMOND, OR 97756 NOD 21-593-MP, 594-CU, 595-CU
	GILBERT,		
	CAROL F		
CAROL F GILBERT TRUST	TTEE	4990 NE ONEIL WAY	REDMOND, OR 97756 NOD 21-593-MP, 594-CU, 595-CU
WILLIAMS, RICKY D & MARY E		4797 NE BUTLER AVE	REDMOND, OR 97756 NOD 21-593-MP, 594-CU, 595-CU



**Oregon Department of Transportation  
Application Form for State Highway Approach**

Date Received
---------------

<b>Applicant Information</b>			
Last Name: Kilpatrick		First Name: Craig	
Company Name (if applicable): Kilpatrick Consulting LLC			
Street Address: 13790 NW O'Neill Highway			
City: Redmond	State: OR	ZIP: 97756	County: Deschutes
Mailing Address:			<input checked="" type="checkbox"/> Check if the same
City:	State:	ZIP:	County:
Phone: 541-477-2724		Cell: 541-420-0260	FAX: N/A
Email: ckrimrock@yahoo.com			
<b>Location of Proposed Approach</b>			
<input checked="" type="checkbox"/> Check if the same as the street address above			
Street Address (if established): TBD, to be determined			
City: Redmond	State: OR	ZIP: 97756	County: Deschutes
Highway Name: O'Neill Highway		Route: 370	Milepoint: 2.87 approx.
Side of Highway: <input type="checkbox"/> North <input checked="" type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West			
<b>Type of Approach</b>			
<input checked="" type="checkbox"/> New approach <input type="checkbox"/> Change of Use <input type="checkbox"/> Temporary <input type="checkbox"/> Special Use <input type="checkbox"/> Grandfathered			
<b>Property Owner Information</b>			
Is the applicant the owner of the subject property? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO; if YES skip to Applicant Signature.			
<b>Authorization of Designated Agent</b>			
I/We	Simmons Brothers LLC by Jordan Simmons		<i>printed owner(s) name</i>
authorize	Craig Kilpatrick		<i>printed applicant name</i>
to represent me as my agent in the matter of this State Highway Approach Permit Application.			
Signature(s): <i>SEE ATTACHED LETTER OF AUTHORIZATION</i>			Date: <i>10/23/22</i>
<b>Applicant Signature</b>			
<i>I certify that to the best of my knowledge, the information on this application and the required attachments are true and correct, that I have the authority to apply for this permit, and if it is approved that throughout its operation I will be bound by the terms of OAR 734-051.</i>			
Printed name: Craig Kilpatrick			
Signature: <i>[Handwritten Signature]</i>			Date: 10/24/22

Property Use to be Served by Proposed Approach							
Describe the <u>existing</u> land use on the subject property: Unimproved dryl and with no access to irrigation							
Describe the <u>proposed</u> land use on the subject property: Two approved non-farm dwellings on lands zoned EFU-TE, one proposed access to serve two non-farm dwellings							
County Assessor Map Numbers							
Fill in the township, range, section, and tax lot numbers. Attach a copy of the current assessor map(s).							
Township	Range	Section	Tax Lot	Township	Range	Section	Tax Lot
14 South	13 East	25	1200				
Property Owner Information							
Last Name: Simmons				First Name: Jordan			
Company Name (if applicable): Simmons Brothers LLC							
Street Address: 139 NW 3rd Street							
City: Prineville		State: OR		ZIP: 97754		County: Crook	
Mailing Address:						<input checked="" type="checkbox"/> Check if the same	
City:		State:		ZIP:		County:	
Phone:			Cell:			FAX:	
Email:							
Are there co-owners of the property? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO; if YES attach the same details above in a separate document.							
Trip Generation							
Existing Average Daily Trips:				Proposed Average Daily Trips:			
<u>4</u> Total of all vehicles entering/exiting property				<u>12</u> Total of all vehicles entering/exiting property			
<u>0</u> Total of all vehicles ≥ 26,000 GVW				<u>0</u> Total of all vehicles ≥ 26,000 GVW			
Site Plan							
A site plan is a required attachment to the <i>Application Form for State Highway Approach</i> (see instructions Attachment A). Site plan attached? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							

ODOT Use Only			
Deviation requested? <input type="checkbox"/> YES <input type="checkbox"/> NO; if YES indicate the type of deviation(s) requested:			
<input type="checkbox"/> Access Spacing	<input type="checkbox"/> Channelization	<input checked="" type="checkbox"/> Sight Distance	
Traffic Impact Analysis required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Neighbor Notification required? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Traffic Impact Analysis waived? <input type="checkbox"/> YES <input type="checkbox"/> NO		Neighbor Notification complete? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Waived by:		Date:	

**Land Use Compatibility Statement (LUCS)****\*\*\* A FINAL LAND USE DECISION MAY BE ACCEPTED IN PLACE OF THIS LUCS \*\*\*****Instructions****Provide your complete application to the appropriate local jurisdiction, not just the LUCS section.**

Information on the subject property, the proposed approach, and the land use or activity to be served by the approach is necessary for the local jurisdiction to complete the LUCS.

Local land division and development regulations that have a bearing on access management:

- Comprehensive plan policies and implementing ordinances that support access management.
- Subdivision, partition, and lot line adjustment regulations (e.g., lot size, double frontage lots, and flag lots).
- Zoning ordinances (e.g., permitted use, conditional uses, and development density).
- Site plan/design review (e.g., access location, on-site circulation, easements, and shared/joint access).
- Sight distance and corner clearance.
- Arterial and collector road design and access policies and standards.
- Access control, access permitting, access spacing, and alternate access.

*OAR 731-015 requires ODOT to coordinate its highway approach permit program with statewide planning goals and local acknowledged comprehensive plans and implementing ordinances. The LUCS is the process ODOT uses to rely on local jurisdictions to certify the land use or activity to be served by a highway approach has obtained the necessary development approvals.*

**Subject Property Location** (check all that apply):       Inside UGB       Inside city limits  
 Outside UGB       Urban Unincorporated Community       Unincorporated Community in county  
 Designated Special Transportation Area within an unincorporated community

**Plan and Zone Designations:**

Current designation(s): AG      Proposed designation(s): Same  
Current zone(s): EFU-TE      Proposed zone(s): Same

Is the proposed approach to the highway a city street or county road?  YES  NO

**Does land use to be served by the approach require land use or development review?**       YES  NO; If YES...

Has an application been received?  YES  NO

Application currently under review for the use/activity to be served by the proposed approach?       YES  NO; If NO...

Final decision for the use/activity to be served by the proposed approach, including an appeal?       YES  NO; If YES...

Was the final decision to:       Approve       Approve with conditions       Deny

Land Use File No: 21-593 MP, 594-CU, 595-CU FD      Assigned Planner: Tarik Rawlings

The attached Site Plan is       Approved or  Under Review for the use/activity to be served.

A Traffic Impact Analysis       has been requested or  is under review for the use/activity to be served.

**Local Planning Official Certification**       Municipal Authority       County Authority

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Mailing Address:

City: \_\_\_\_\_ State: OR      ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Letter of Authorization

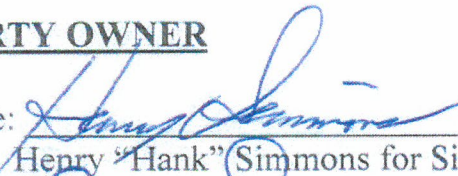
Let it be known that Kilpatrick Consulting LLC – Craig Kilpatrick has been retained to act as my authorized agent to perform all acts for development on the property noted below: These acts include: Pre-application conference, application negotiations, filing applications and/or other required documents relative to all Land Use applications.

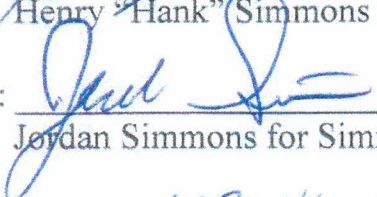
Physical address of property: 4180 NE O'Neil Highway, Redmond, OR  
It is described in the records of DESCHUTES COUNTY as:

Township 14 South, Range 13 East WM Section 25 Tax Lot 1200

The costs of the above actions, which are not satisfied by the agent are the responsibility of the undersigned property owner.

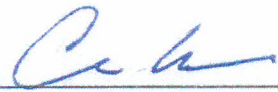
### PROPERTY OWNER

Signature:  Date: 2/24/20  
Henry "Hank" Simmons for Simmons Brothers LLC

Signature:  Date: 2/24/20  
Jordan Simmons for Simmons Brothers LLC

Mailing Address: 139 NW Third ST  
City: Prineville State: OR Zip: 97754

### AGENT

Signature:  Date: 2/27/2020  
Craig Kilpatrick for Kilpatrick Consulting LLC

Mailing Address: 13790 NW O'Neil Highway  
City: Redmond State: OR Zip: 97756

# VICINITY MAP



 Simmons Brothers LLC

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors 2018 and the GIS User Community

Date: 3/22/2021

0 2.5 5 7.5 10 Miles

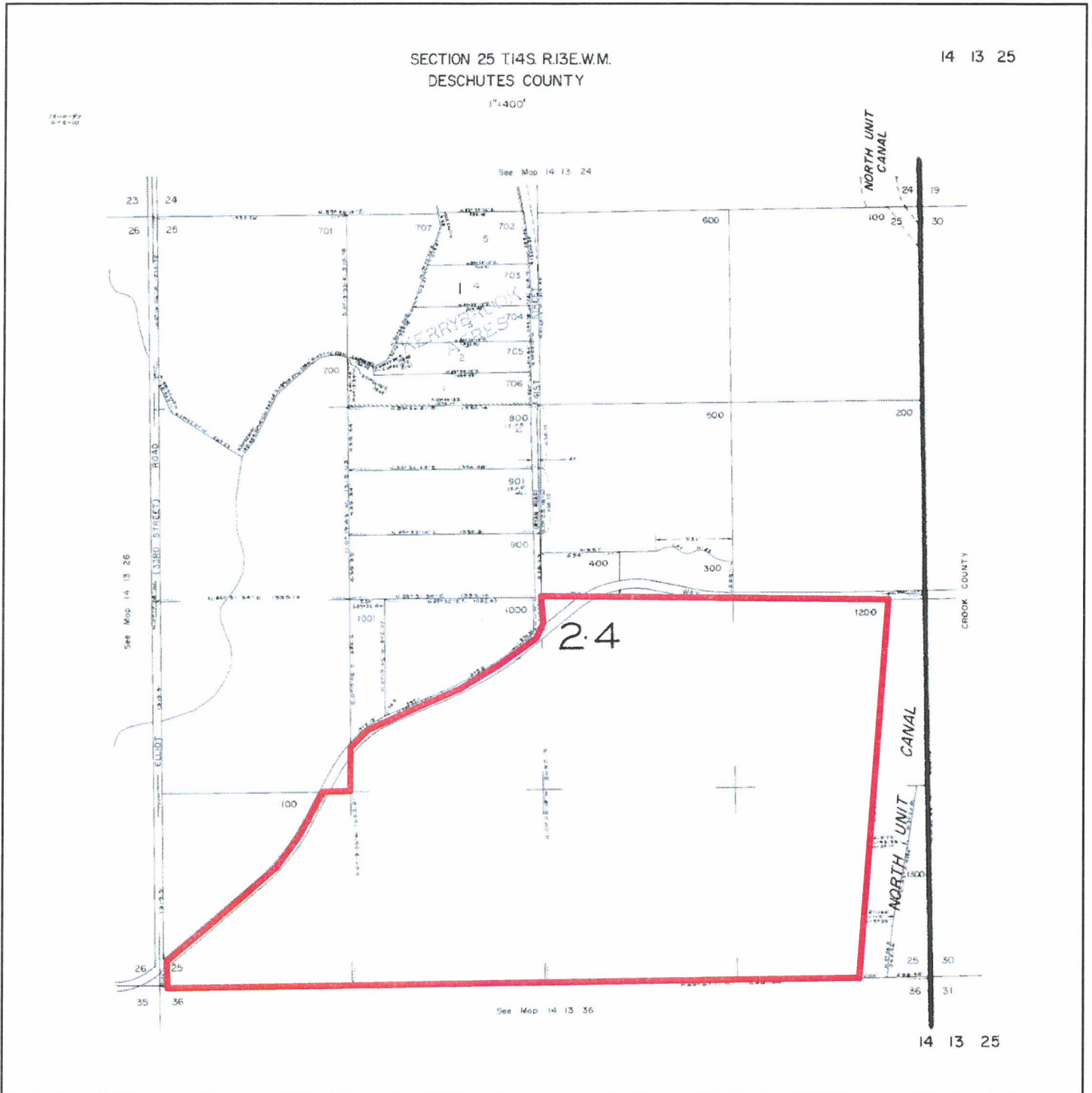
Note: This information is prepared for reference purposes only and should not be used, and is not intended for, survey or engineering purposes. Kilpatrick Consulting LLC is not responsible for outsourced data accuracy.



**SIMMONS BROTHERS LLC**  
**242.49 ac.**  
**T14S R13E Sec. 25 TL 1200**  
**located on O'Neil Hwy in Northeast**  
**Deschutes County, Oregon**

*Kilpatrick*  
**CONSULTING, LLC**  
 LAND USE CONSULTING SERVICES  
 GIS MAPPING SERVICES  
 OFFICE:  
 541.447.2724

# ASSESSOR'S MAP



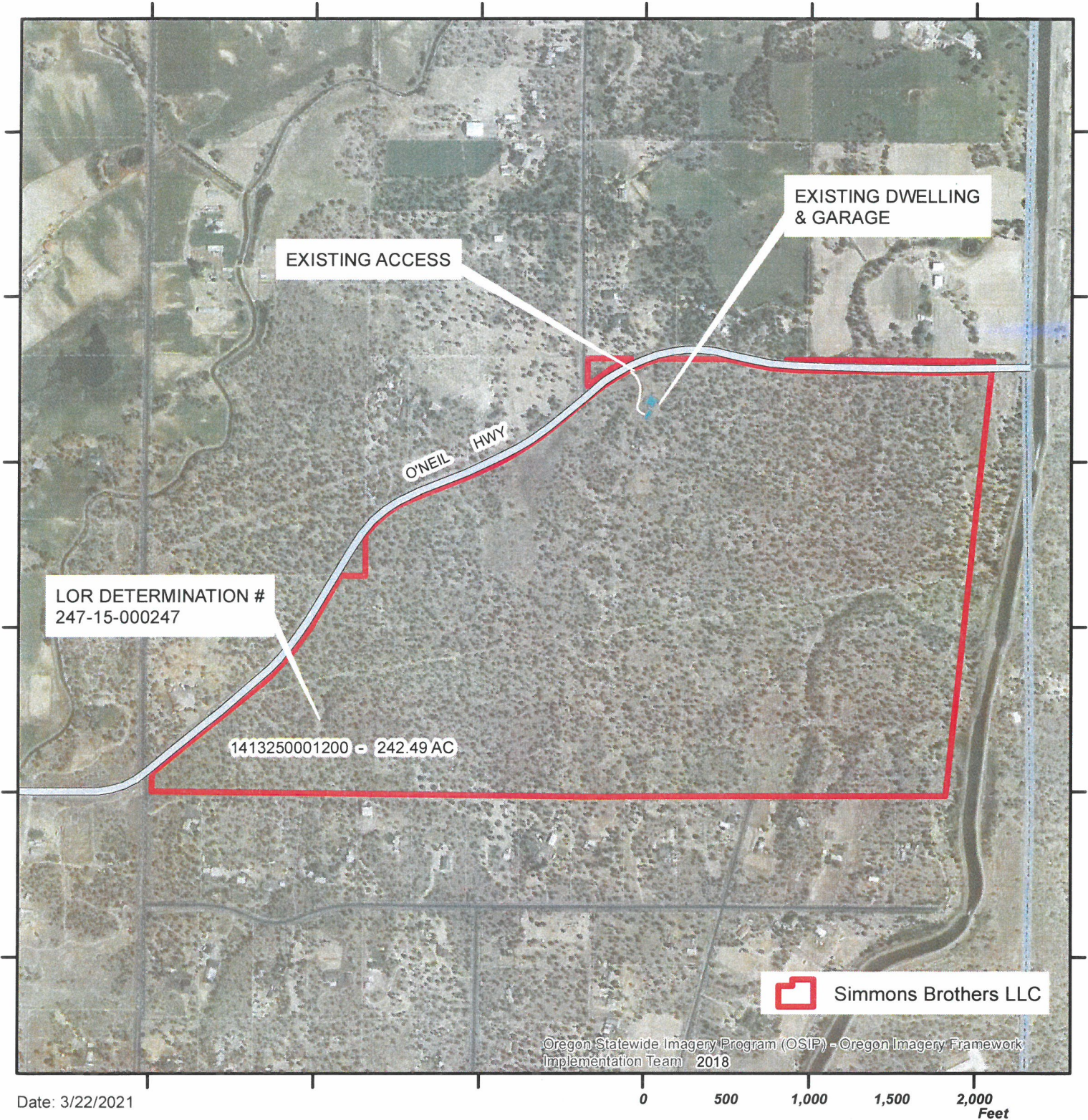
DATA SOURCE: ORMAP website



**SIMMONS BROTHERS LLC**  
 242.49 ac.  
 T14S R13E Sec. 25 TL 1200  
 located on O'Neil Hwy in Northeast  
 Deschutes County, Oregon

*Kilpatrick*  
**CONSULTING, LLC**  
 LAND USE CONSULTING SERVICES  
 GIS MAPPING SERVICES  
 OFFICE:  
 541.447.2724

# EXISTING PROPERTY - AERIAL



Date: 3/22/2021

Note: This information is prepared for reference purposes only and should not be used, and is not intended for, survey or engineering purposes. Kilpatrick Consulting LLC is not responsible for outsourced data accuracy.



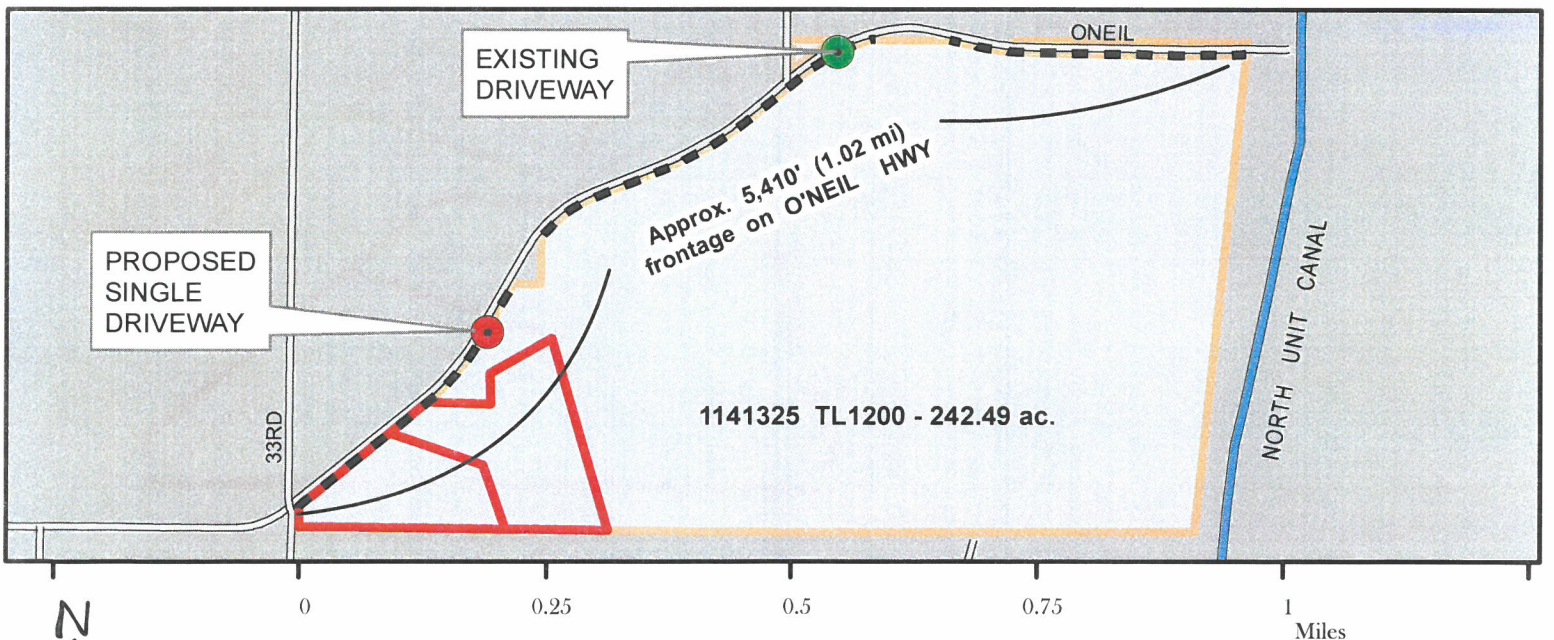
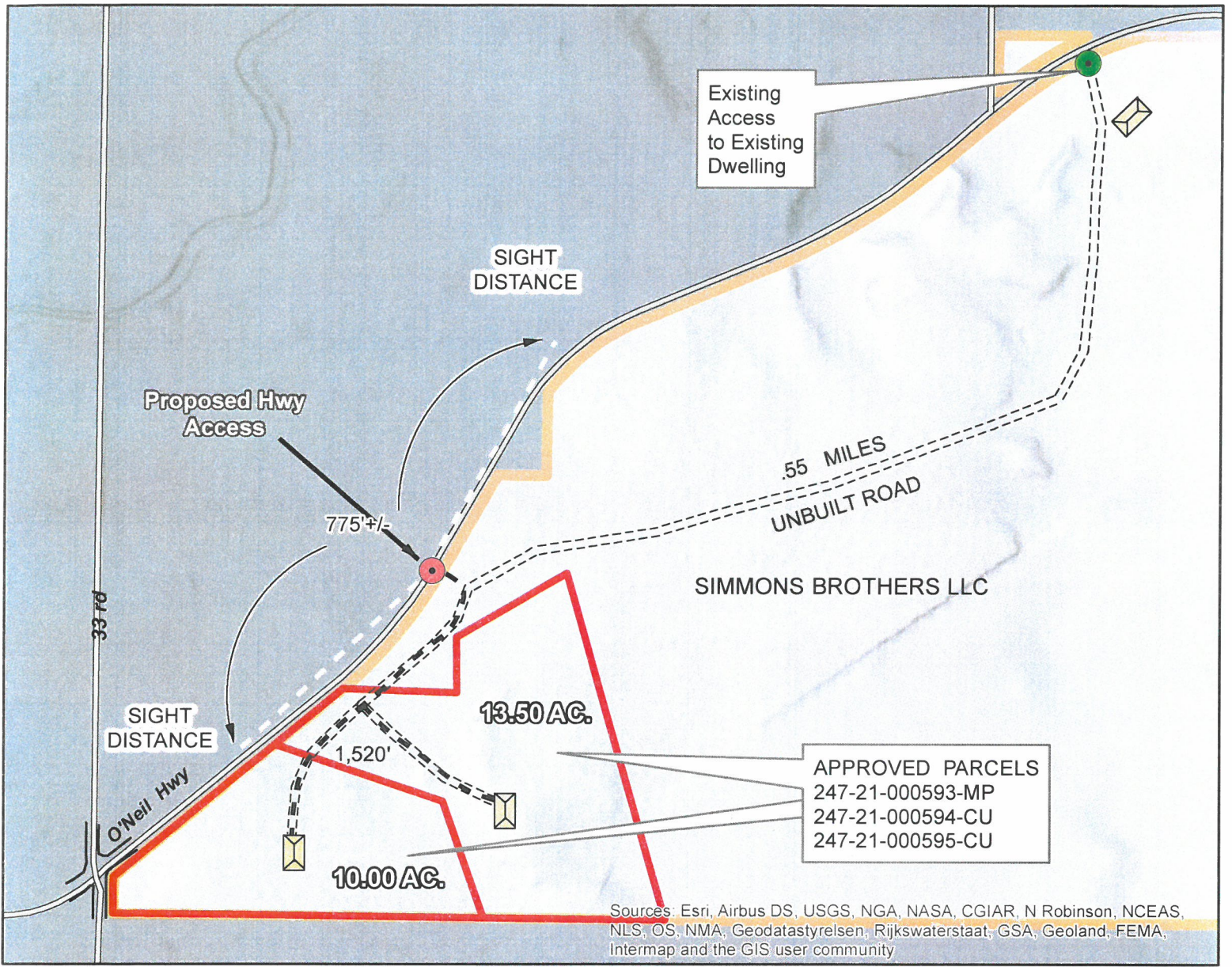
**SIMMONS BROTHERS LLC**  
**242.49 ac.**  
**T14S R13E Sec. 25 TL 1200**  
**located on O'Neil Hwy in Northeast**  
**Deschutes County, Oregon**

*Kilpatrick*  
CONSULTING, LLC

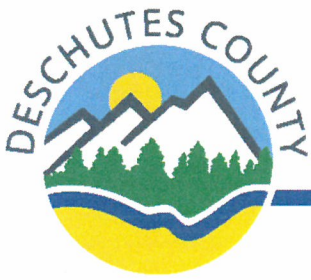
LAND USE CONSULTING SERVICES  
GIS MAPPING SERVICES

OFFICE:  
541.447.2724





**SIMMONS BROTHERS LLC**  
**T14S R13E Sec. 25 TL 1200 - 242.49 ac.**  
 located on O'Neil Hwy in Northeast in Deschutes County, Oregon



**CERTIFICATE OF MAILING**

**FILE NUMBER:** 247-22-000891-PS

**DOCUMENT/S MAILED:** ODOT LUCS

**MAP/TAX LOT NUMBER:** 1413250001200

I certify that on the 6<sup>th</sup> day of December, 2022 the attached LUCS, dated December 2, 2022, were mailed to the person(s) and address(es) set forth below.

Dated this 6<sup>th</sup> day of December, 2022

**COMMUNITY DEVELOPMENT DEPARTMENT**

By: Haleigh King, Associate Planner

Craig Kilpatrick 13790 NW O'Neil Highway Redmond, OR 97756	Fitch & Neary, P.C. Lisa Andrach 210 SW 5 <sup>th</sup> Street, Suite #2 Redmond, OR 97756
--	---



**Oregon Department of Transportation  
Application Form for State Highway Approach  
Instructions for completing the application form**

**Application Form for State Highway Approach (Form No. 734-2680).** This application represents the initial submission of basic information regarding your proposed approach. The permitting process varies with each applicant and additional information may be required after the application is submitted. For example, an approach in an area with drainage issues may require a hydrology report. A pre-application meeting with your district office can bring these supplemental requirements to your attention ahead of time.

**Pre-application meetings.** You may request a pre-application meeting for an approach permit application to review application requirements, timelines, technical elements, and other issues specific to your application. Pre-application are optional, but help clarify the process and avoid delays once an approach application is submitted. To request a meeting, complete the Pre-Application Form for State Highway Approach available on the [Access Management webpage](#).

**Application form.** Complete all boxes on the application form and attach any required items. The Application Form for State Highway Approach is attached to these instructions. Incomplete forms may be returned to the applicant for completion which may delay the processing of your application.

If you have questions about completing any part of this application, contact your ODOT District office for assistance. District maps and contact information are available on the [Maintenance and Operations Programs webpage](#).

Applicants may sign the application with a pen or sign electronically, and then email or send a hardcopy. All are acceptable. Submit your completed application to your ODOT District office where your application will be processed in accordance with Oregon Administrative Rules, Chapter 734, Division 51 Highway Approaches, Access Control, Spacing Standards and Medians. For email addresses, contact your ODOT District office for assistance. We will notify you within 30 days after receiving your application if additional information or documents are required to continue processing your application.

Instructions: Application for State Highway Approach

1. Provide applicant contact information.
2. Provide details about the location of the proposed approach.
3. Indicate the type of approach requested.
  - New Approach – when there is no existing driveway
  - Change of Use – when the property use/activity is changing
  - Temporary – limited duration (e.g., temporary logging access)
  - Special Use – specific use/limited volume (e.g., emergency services, utilities)
4. Provide property owner information.
5. Provide designated agent information (if applicable).
  - a. If the applicant and property owner are not the same, then the property owner must authorize the applicant to act as a designated agent on the owner's behalf.
  - b. The applicant must have the property owner complete this section or submit a signed letter from the property owner or co-owners authorizing the applicant to act as a designated agent. If there are co-owners, all the co-owners must sign a letter or letters authorizing the applicant to act as a designated agent.
6. Read the declaration before signing and dating the form.
7. Describe the existing land use and the proposed land use.
8. Assessor Maps  
List all of the county assessor's tax lot numbers for the property served by the approach. Attach a copy of the current assessor map(s) for the subject property and all the adjacent tax lots with the following notations:
  - a. Highlight all tax lots to be served by the requested approach
  - b. Show the location of the requested approach on the tax lot map
  - c. Provide the names and addresses for all owners of adjacent tax lots, including tax lots under the same ownership as the subject property
9. Provide property owner(s) contact information.
10. Trip Generation  
Trip generation refers to the number of vehicles entering and exiting a property. A "trip" is the one-way movement (either the entering or exiting) of a standard vehicle at an approach. For example, three customers at a business would count as (6) trips with each vehicle entering and exiting the approach. The exception to this deals with vehicles weighing 26,000 pounds GVW or more, which count entering and exiting as just one trip. Using the same example, three semi-trucks delivering supplies to a business would only count as (3) trips.
11. See Attachment A for information on submitting a site plan.
12. Land Use Compatibility Statement (LUCS)  
The LUCS is required as part of every Application for State Highway Approach and must be completed and signed by the appropriate local planning official. DO NOT DETACH the LUCS from the application form. The planning official will need to review information about the property, requested approach, and proposed land use in order to complete the LUCS. ODOT may accept a final land use decision in lieu of a LUCS.

### **Attachment A: Site Plan**

Applicants are required to submit a site plan. If there is a pending local land use approval for the proposed use, you must attach a copy of the site plan that is being reviewed or has been approved by the local jurisdiction. Use the following guidelines when submitting a site plan.

- **Submit drawings on separate paper no larger than 11" x 17" in size.**
  - Include a north arrow
  - Include a scale, if applicable
  - Provide a vicinity map showing the location of the subject property and the location and name of the nearest landmark or cross street
- **Use solid lines to show the subject property and abutting streets.**
  - Show the boundaries of all tax lots that are part of the subject property or the proposed development. Label all tax lots with the corresponding tax lot numbers.
  - Show all public streets abutting the subject property. Label street names. Show number of lanes, lane widths, and the direction of traffic flow for each lane.
- **Use solid lines to show site elements (proposed as well as remaining):**
  - The location of existing approaches or access connections
  - The location of proposed approach, the width, and turning movements
    - Label distances from center of requested approach to property lines
    - Label distance from center of requested approach to nearest cross street
  - The location of the nearest existing approaches or access connections on both sides of the highway within 500 feet of the center line of the requested approach
  - On-site parking and circulation
    - The location of parking areas and parking spaces
    - The location of on-site access aisles, lane widths, direction of traffic flow
    - The location of access to the parking lots
  - The footprint of all existing buildings and structures that will remain
    - Label the proposed use and square footage of each
  - The footprint of proposed new buildings and structures
    - Label the proposed use and square footage of each.
  - Other new equipment or facilities
    - Label the square footage and use of each item
- **Use dashed lines to show any access or "cross-over" easements as well as existing site elements that will be removed, including:**
  - Existing access or "cross-over" easements with neighboring properties
    - Label whether the easement will remain
  - Proposed new access or "cross-over" easements with neighboring properties
  - The location of existing approaches and access connections that will be removed
    - Label the width and turning movements for each
  - The footprint of existing buildings or structures that will be removed
  - Any other existing equipment or facilities that will be removed
  - Place an "X" over any easement, building, equipment, or facility to be removed



**Oregon Department of Transportation  
Application Form for State Highway Approach**

Date Received

<b>Applicant Information</b>			
Last Name: Kilpatrick		First Name: Craig	
Company Name (if applicable): Kilpatrick Consulting LLC			
Street Address: 13790 NW O'Neill Highway			
City: Redmond	State: OR	ZIP: 97756	County: Deschutes
Mailing Address:			<input checked="" type="checkbox"/> Check if the same
City:	State:	ZIP:	County:
Phone: 541-477-2724	Cell: 541-420-0260	FAX: N/A	
Email: ckrimrock@yahoo.com			
<b>Location of Proposed Approach</b>			
<input checked="" type="checkbox"/> Check if the same as the street address above			
Street Address (if established): TBD, to be determined			
City: Redmond	State: OR	ZIP: 97756	County: Deschutes
Highway Name: O'Neill Highway		Route: 370	Milepoint: 2.87 approx.
Side of Highway: <input type="checkbox"/> North <input checked="" type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West			
<b>Type of Approach</b>			
<input checked="" type="checkbox"/> New approach <input type="checkbox"/> Change of Use <input type="checkbox"/> Temporary <input type="checkbox"/> Special Use <input type="checkbox"/> Grandfathered			
<b>Property Owner Information</b>			
Is the applicant the owner of the subject property? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO; if YES skip to Applicant Signature.			
<b>Authorization of Designated Agent</b>			
I/We	Simmons Brothers LLC by Jordan Simmons		printed owner(s) name
authorize	Craig Kilpatrick		printed applicant name
to represent me as my agent in the matter of this State Highway Approach Permit Application.			
Signature(s): <i>SEE ATTACHED LETTER OF AUTHORIZATION</i>			Date: <i>10/23/22</i>
<b>Applicant Signature</b>			
<i>I certify that to the best of my knowledge, the information on this application and the required attachments are true and correct, that I have the authority to apply for this permit, and if it is approved that throughout its operation I will be bound by the terms of OAR 734-051.</i>			
Printed name: Craig Kilpatrick			
Signature: <i>[Handwritten Signature]</i>			Date: 10/24/22

<b>Property Use to be Served by Proposed Approach</b>							
Describe the <u>existing</u> land use on the subject property: Unimproved dryl and with no access to irrigation							
Describe the <u>proposed</u> land use on the subject property: Two approved non-farm dwellings on lands zoned EFU-TE, one proposed access to serve two non-farm dwellings							
<b>County Assessor Map Numbers</b>							
Fill in the township, range, section, and tax lot numbers. Attach a copy of the current assessor map(s).							
<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Tax Lot</b>	<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Tax Lot</b>
14 South	13 East	25	1200				
<b>Property Owner Information</b>							
Last Name: Simmons				First Name: Jordan			
Company Name (if applicable): Simmons Brothers LLC							
Street Address: 139 NW 3rd Street							
City: Prineville		State: OR		ZIP: 97754		County: Crook	
Mailing Address:						<input checked="" type="checkbox"/> Check if the same	
City:		State:		ZIP:		County:	
Phone:			Cell:			FAX:	
Email:							
Are there co-owners of the property? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO; if YES attach the same details above in a separate document.							
<b>Trip Generation</b>							
Existing Average Daily Trips:				Proposed Average Daily Trips:			
4 _____ Total of all vehicles entering/exiting property				12 _____ Total of all vehicles entering/exiting property			
0 _____ Total of all vehicles ≥ 26,000 GVW				0 _____ Total of all vehicles ≥ 26,000 GVW			
<b>Site Plan</b>							
A site plan is a required attachment to the <i>Application Form for State Highway Approach</i> (see instructions Attachment A). Site plan attached? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							

<b>ODOT Use Only</b>			
Deviation requested? <input type="checkbox"/> YES <input type="checkbox"/> NO; if YES indicate the type of deviation(s) requested:			
<input type="checkbox"/> Access Spacing		<input type="checkbox"/> Channelization	
<input checked="" type="checkbox"/> Sight Distance			
Traffic Impact Analysis required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Neighbor Notification required? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Traffic Impact Analysis waived? <input type="checkbox"/> YES <input type="checkbox"/> NO		Neighbor Notification complete? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Waived by:		Date:	

Land Use Compatibility Statement (LUCS)	
<b>*** A FINAL LAND USE DECISION MAY BE ACCEPTED IN PLACE OF THIS LUCS ***</b>	
<b>Instructions</b>	
<p><b>Provide your complete application to the appropriate local jurisdiction, not just the LUCS section.</b>                      Information on the subject property, the proposed approach, and the land use or activity to be served by the approach is necessary for the local jurisdiction to complete the LUCS.</p> <p>Local land division and development regulations that have a bearing on access management:</p> <ul style="list-style-type: none"> <li>Comprehensive plan policies and implementing ordinances that support access management.</li> <li>Subdivision, partition, and lot line adjustment regulations (e.g., lot size, double frontage lots, and flag lots).</li> <li>Zoning ordinances (e.g., permitted use, conditional uses, and development density).</li> <li>Site plan/design review (e.g., access location, on-site circulation, easements, and shared/joint access).</li> <li>Sight distance and corner clearance.</li> <li>Arterial and collector road design and access policies and standards.</li> <li>Access control, access permitting, access spacing, and alternate access.</li> </ul> <p><i>OAR 731-015 requires ODOT to coordinate its highway approach permit program with statewide planning goals and local acknowledged comprehensive plans and implementing ordinances. The LUCS is the process ODOT uses to rely on local jurisdictions to certify the land use or activity to be served by a highway approach has obtained the necessary development approvals.</i></p>	
<p><b>Subject Property Location</b> (check all that apply):</p> <div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> Inside UGB</span> <span><input type="checkbox"/> Inside city limits</span> </div> <div style="display: flex; justify-content: space-between;"> <span><input checked="" type="checkbox"/> Outside UGB</span> <span><input type="checkbox"/> Urban Unincorporated Community</span> <span><input type="checkbox"/> Unincorporated Community in county</span> </div> <div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> Designated Special Transportation Area within an unincorporated community</span> </div>	
<p><b>Plan and Zone Designations:</b></p> <div style="display: flex; justify-content: space-between;"> <span>Current designation(s): <u>Agriculture (Ag)</u></span> <span>Proposed designation(s): <u>NA</u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Current zone(s): <u>EXCLUSIVE FARM USE (EFU)</u></span> <span>Proposed zone(s): <u>NA</u></span> </div>	
<p>Is the proposed approach to the highway a city street or county road? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>	
<p><b>Does land use to be served by the approach require land use or development review?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO; If YES...</p> <p>Has an application been received? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>Application currently under review for the use/activity to be served by the proposed approach? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO; If NO...</p> <p>Final decision for the use/activity to be served by the proposed approach, including an appeal? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO; If YES...</p> <p>Was the final decision to: <input type="checkbox"/> Approve <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Deny</p> <p>Land Use File No: _____ Assigned Planner: _____</p>	
<p>The attached Site Plan is <input type="checkbox"/> Approved or <input type="checkbox"/> Under Review for the use/activity to be served.</p> <p>A Traffic Impact Analysis <input type="checkbox"/> has been requested or <input type="checkbox"/> is under review for the use/activity to be served.</p>	
<b>Local Planning Official Certification</b>	
<div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> Municipal Authority</span> <span><input checked="" type="checkbox"/> County Authority</span> </div>	
Name: <u>Haleigh King</u>	Title: <u>Associate Planner</u>
Mailing Address: <u>PO BOX 6005 Attn: community development</u>	
City: <u>Bend</u>	State: <u>OR</u> ZIP: <u>97708</u>
Phone: <u>541-383-6710</u>	Cell: _____ FAX: _____
Email: <u>haleigh.king@deschutes.org</u>	
Signature: <u>Haleigh King</u>	Date: <u>12-2-22</u>



**Letter of Authorization**

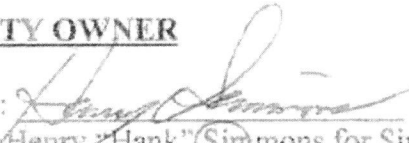
Let it be known that Kilpatrick Consulting LLC – Craig Kilpatrick has been retained to act as my authorized agent to perform all acts for development on the property noted below: These acts include: Pre-application conference, application negotiations, filing applications and/or other required documents relative to all Land Use applications.

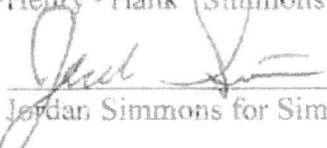
Physical address of property: 4180 NE O'Neil Highway, Redmond, OR  
It is described in the records of DESCHUTES COUNTY as:

Township 14 South, Range 13 East WM Section 25 Tax Lot 1200

The costs of the above actions, which are not satisfied by the agent are the responsibility of the undersigned property owner.


**PROPERTY OWNER**

Signature:  Date: 2/24/20  
Henry "Hank" Simmons for Simmons Brothers LLC

Signature:  Date: 2/24/20  
Jordan Simmons for Simmons Brothers LLC

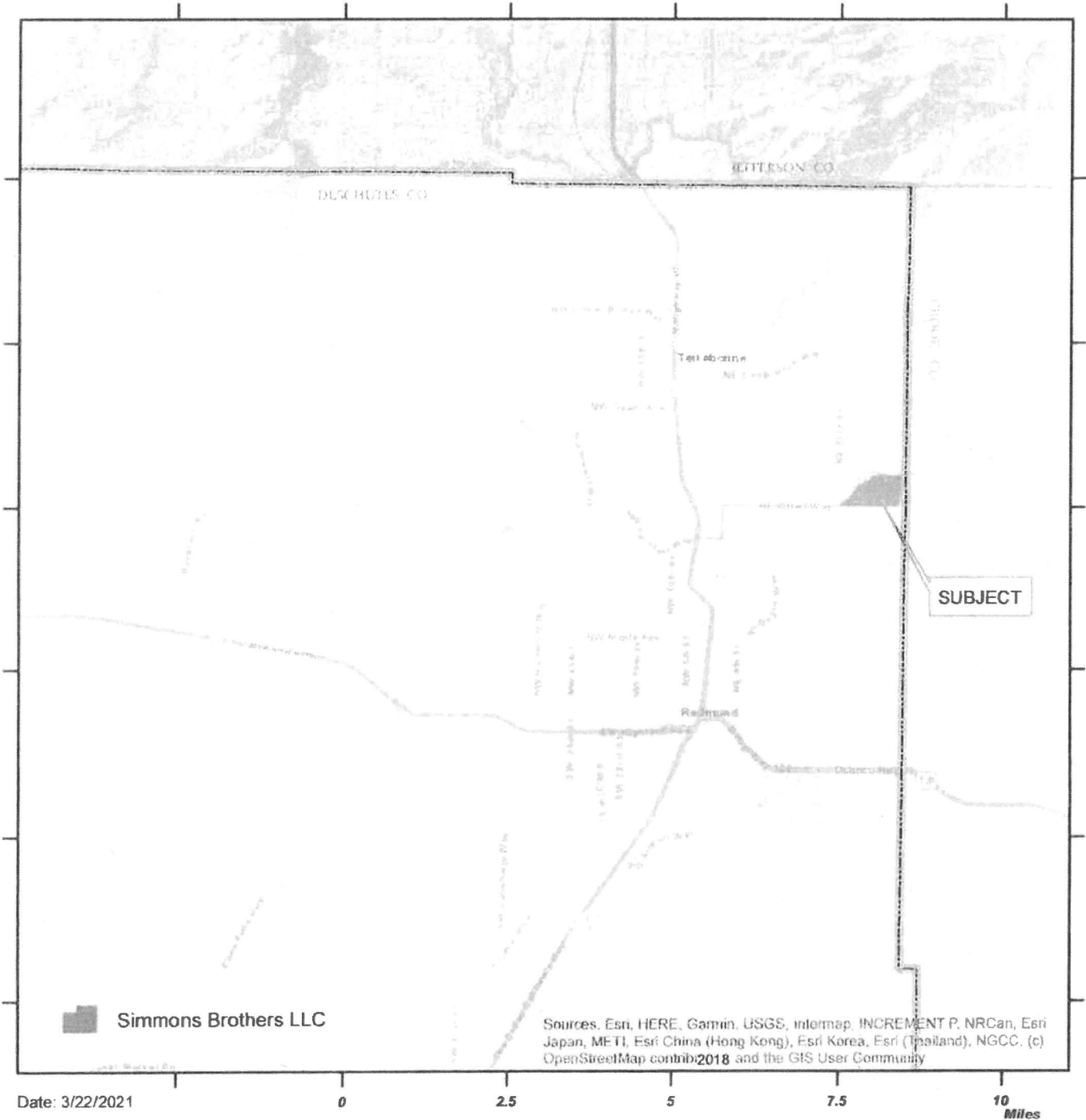
Mailing Address: 139 NW Third St.  
City: Prineville State: OR Zip: 97754

**AGENT**

Signature:  Date: 2/27/2020  
Craig Kilpatrick for Kilpatrick Consulting LLC

Mailing Address: 13790 NW ONEil Highway  
City: Redmond State: OR Zip: 97756

# VICINITY MAP



 Simmons Brothers LLC

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors 2018 and the GIS User Community

Note: This information is prepared for reference purposes only and should not be used, and is not intended for, survey or engineering purposes. Kilpatrick Consulting LLC is not responsible for outsourced data accuracy.



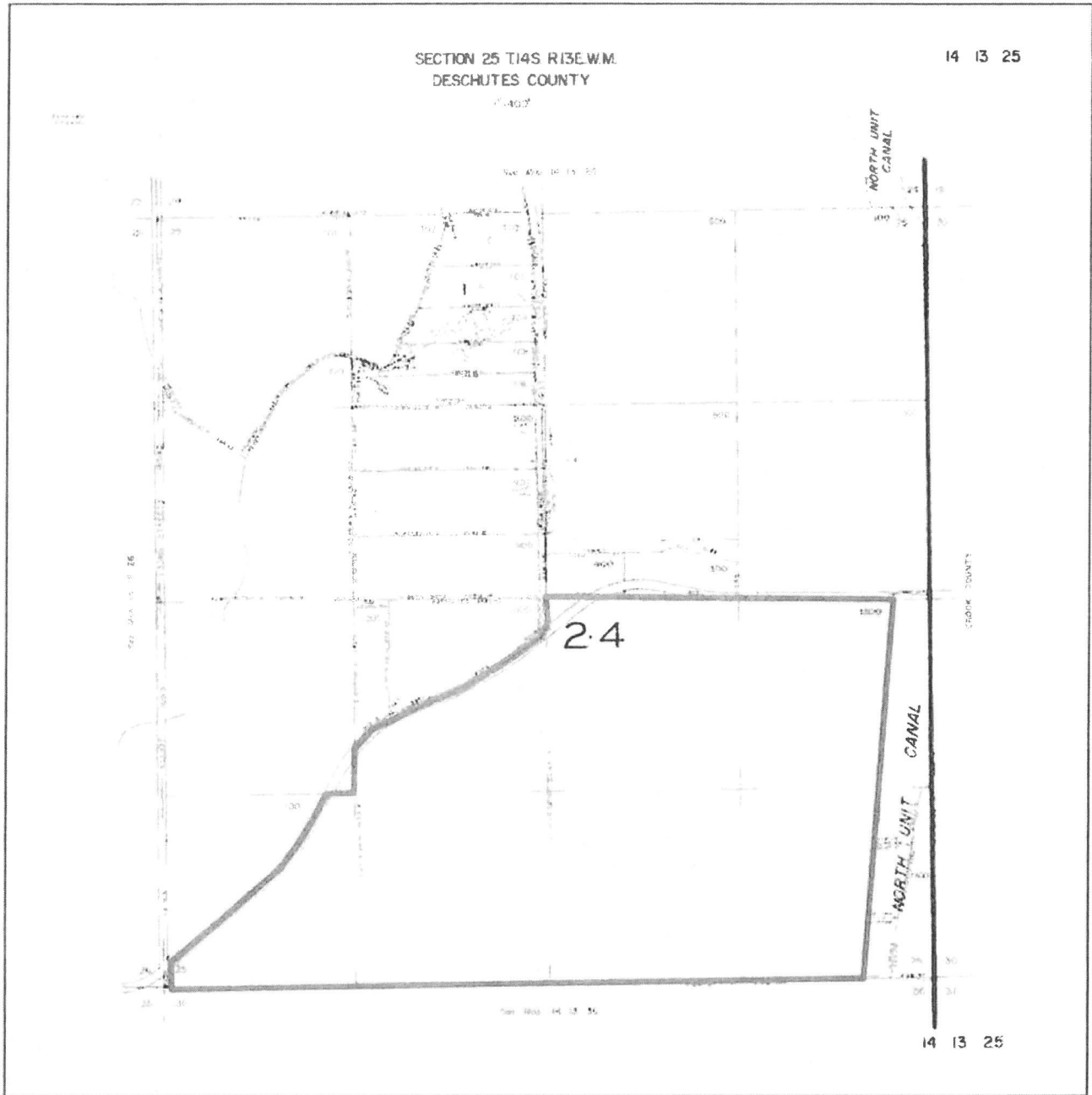
**SIMMONS BROTHERS LLC**  
**242.49 ac.**  
**T14S R13E Sec. 25 TL 1200**  
**located on O'Neil Hwy in Northeast**  
**Deschutes County, Oregon**

*Kilpatrick*  
 CONSULTING, LLC

LAND USE CONSULTING SERVICES  
 GIS MAPPING SERVICES

OFFICE  
 541.447.2724

# ASSESSOR'S MAP



DATA SOURCE: ORMAP website

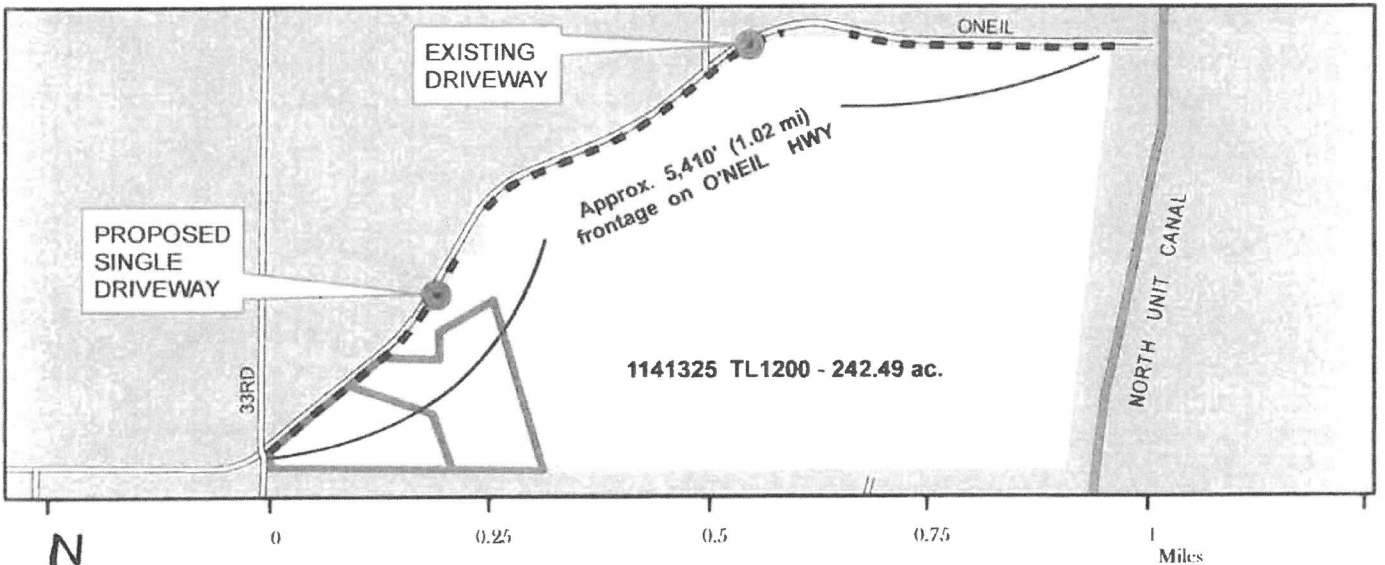
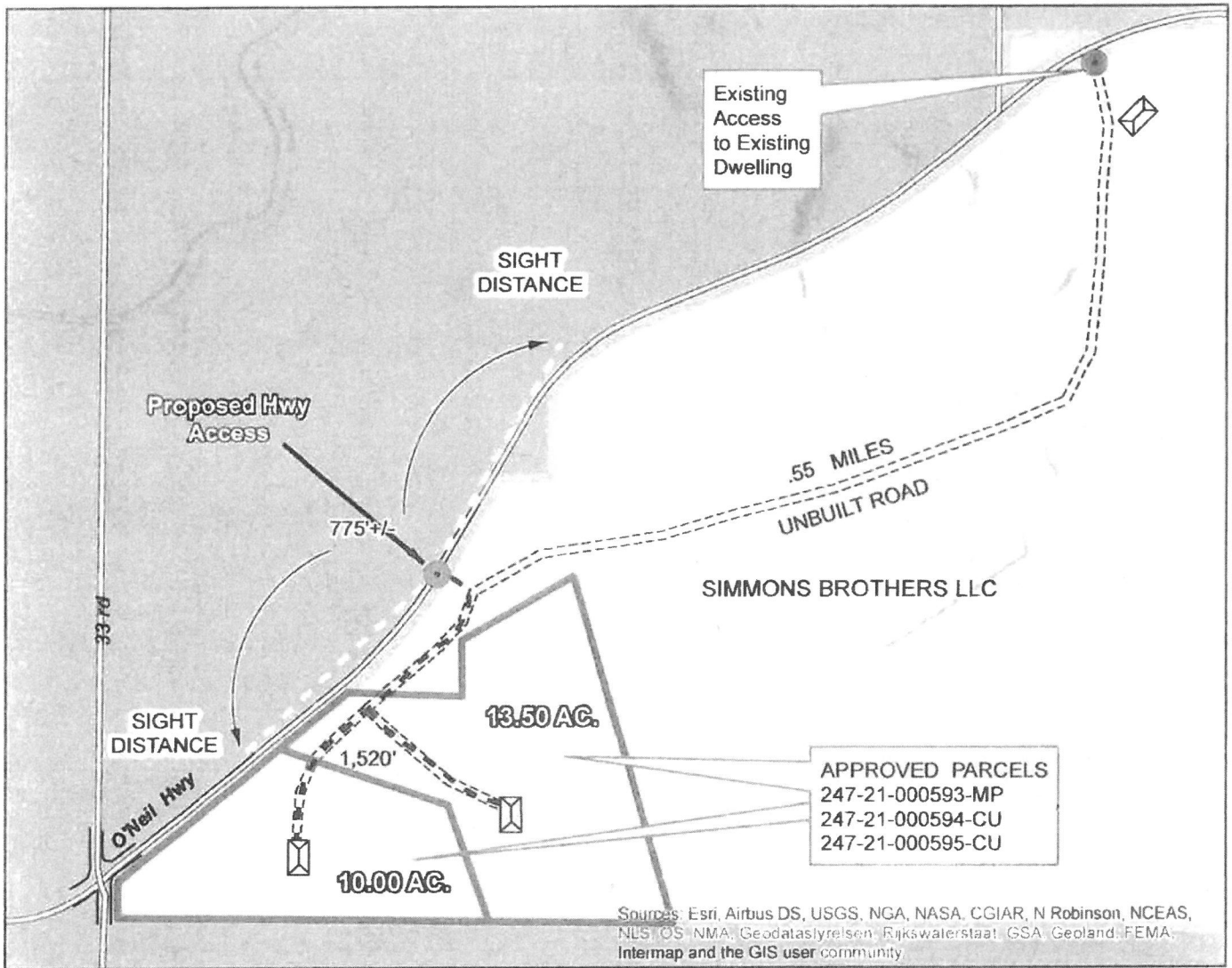


**SIMMONS BROTHERS LLC**  
**242.49 ac.**  
**T14S R13E Sec. 25 TL 1200**  
**located on O'Neil Hwy in Northeast**  
**Deschutes County, Oregon**

*Kilpatrick*  
CONSULTING, LLC

LAND USE CONSULTING SERVICES  
GIS MAPPING SERVICES

OFFICE  
541 447 2124



**SIMMONS BROTHERS LLC**  
**T14S R13E Sec. 25 TL 1200 - 242.49 ac.**  
**located on O'Neil Hwy in Northeast in Deschutes County, Oregon**

**From:** [CDD Planning](#)  
**To:** [Tracy Griffin](#)  
**Subject:** FW: Simmons Brothers LLC  
**Date:** Tuesday, November 15, 2022 10:39:58 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[22-891-PS App Mtrls.pdf](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)  
[image012.png](#)

---

Tracy,

Another incoming PS application. This one is 22-891-PS. App materials are attached.

Thanks,  
Haleigh



Haleigh King, AICP | Associate Planner  
Deschutes County Community Development  
117 NW Lafayette Ave | Bend, Oregon 97708  
Tel: (541) 383-6710 | [www.deschutes.org/cd](http://www.deschutes.org/cd)



Let us know how we're doing: [Customer Feedback Survey](#)

*Disclaimer: Please note that the information in this email is an informal statement made in accordance with DCC 22.20.005 and shall not be deemed to constitute final County action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person.*

**From:** Tarik Rawlings <[Tarik.Rawlings@deschutes.org](mailto:Tarik.Rawlings@deschutes.org)>  
**Sent:** Tuesday, November 15, 2022 10:04 AM  
**To:** CDD Planning <[planning@deschutes.org](mailto:planning@deschutes.org)>  
**Subject:** FW: Simmons Brothers LLC

Good afternoon Planner-on-duty,

Would you mind please taking in the attached LUCS application – this is for property at [1413250001200](#)

As long as the 6<sup>th</sup> page is blank (it is as far as I can see), then there should be no issues with taking in this form.

You can call Linda Nichols/Lisa Andrach at Fitch & Neary for payment/coordination.

Thanks very much and please let me know if you need any other info.

Best,

Tarik Rawlings | Associate Planner



Deschutes County Community Development  
117 NW Lafayette Ave | Bend, Oregon 97703  
Tel: (541) 317-3148 | [www.deschutes.org/cd](http://www.deschutes.org/cd)



Let us know how we're doing: [Customer Feedback Survey](#)

*Disclaimer: Please note that the information in this email is an informal statement made in accordance with DCC 22.20.005 and shall not be deemed to constitute final County action effecting a change in the status of a person's property or conferring any rights, including any reliance rights, on any person*

**From:** Linda Nichols <[linda@fitchandneary.com](mailto:linda@fitchandneary.com)>  
**Sent:** Monday, November 14, 2022 4:27 PM  
**To:** Tarik Rawlings <[Tarik.Rawlings@deschutes.org](mailto:Tarik.Rawlings@deschutes.org)>  
**Cc:** Lisa Andrach <[lisa@fitchandneary.com](mailto:lisa@fitchandneary.com)>  
**Subject:** Simmons Brothers LLC

[EXTERNAL EMAIL]

---

Tarik,

Attached is the corrected ODOT application with page 6 being blank. Please let us know once the form has been submitted so we can pay the application fee. Thank you.

Linda

Linda J. Nichols

Paralegal

Fitch & Neary, P.C.

210 SW 5th St., Ste. #2

Redmond OR 97756

Tel: 541-316-1588

Fax: 541-316-1943

Email: [linda@fitchandneary.com](mailto:linda@fitchandneary.com)



# Oregon

Tina Kotek, Governor

Department of Transportation

District 10

63055 N. Highway 97, Bldg. K

Bend, OR 97703

(541) 388-6192

Fax: (541) 388-6022

Kristin.L.THELEN@odot.oregon.gov

## FINDINGS WORKSHEET FOR APPLICATION FOR STATE HIGHWAY APPROACH

File Code: PMT 4-70

January 30, 2023

### ENGINEERING STAMP:



RENEWS: 06-30-2023

**DECISION:** The requested application for State Highway Approach is Approved.

**SUBJECT:** Highway Number 370, (O'Neil),  
at Mile Point 2.88  
Application Number 93027

### BACKGROUND INFORMATION

**APPLICANT**

Hank Simmons  
Simmons Brothers LLC by Jordan  
Simmons  
139 NW Third St.  
Prineville, OR 97754

**PROPERTY OWNER**

Simmons Brothers LLC  
PO Box 400  
  
Prineville, OR 97754

All requested information for this application was received and the application was deemed complete on January 30, 2023. The application is located in Region 4, District 10.

## PROPOSED APPROACH LOCATION:

Highway Classification: District, Other, None  
Posted Speed: 55 Design Speed: 70  
Urban or Rural: Rural  
Lane Configuration: 2 lanes

Highway AADT: 3481

## PROPERTY INFORMATION

Property Location: Redmond  
Tax Map and Lot Number(s): T14S-R13E-S25-TL1200  
Current Use of the Property: Exclusive Farm Use  
Proposed Use of the Property: Exclusive Farm Use  
Local Government Agency: Deschutes County Land Use Case Number: Not Applicable  
Description of Site Boundaries and Adjoining Properties: To the north is Hwy 370, to the east is vacant land and irrigation canal ROW. To the south is a rural residential subdivision, and to the west is NE 33<sup>rd</sup>.  
Average Daily Traffic of the Proposed Use of the Property: 30 vehicles per day

## ACCESS INFORMATION

Reason for the Application: New Approach

## FINDINGS:

### ***OAR 734-051-4020(6)(b) Alternate Access – Rural 2<sup>nd</sup> Approach***

***(6) Applications Where the Department Shall Consider Alternate Access.*** The region manager shall consider alternate access to a property only for an application for an approach to a highway designated as an expressway as described in subsection (a) of this section, or for a second or subsequent approach to a property in a rural area as described in subsection (b) of this section.

***(b) A Second or Subsequent Approach in a Rural Area.*** The region manager may approve an application for a second or subsequent approach to a property in a rural area that has alternate access when the criteria in (A) through (C) are met:

***(A)*** The department determines that either:

***(i)*** The alternate access to the property cannot be made reasonable based on findings under section (7) of this rule;

#### **Findings of Fact:**

The alternate access is the existing approach on the property at mile point 3.36.



The Alternate Access Cannot Be Made Reasonable based on the analysis in Section 7.

Or

*(ii) The approach will serve rural infill or redevelopment and approval of the approach will result in a net reduction of connections to the highway or the net result improves safety for any remaining approaches;*

**Findings of Fact:**

The approach will not serve rural infill or redevelopment of property.

And

*(B) The application meets the applicable standards and criteria of this rule or a deviation is approved as set forth in OAR 734-051-3050; and*

**Findings of Fact:**

The application meets the spacing, sight distance and channelization standards specified in OAR 734-051-4020(2). See applicable findings on OAR 734-051-4020(2).

and

*(C) The approach does not cause any of the safety or operations concerns set forth in section (3) of this rule, or those concerns can be adequately mitigated.*

**Findings of Fact:**

The application does not cause any of the safety or operations concerns specified in OAR 734-051-4020(3). See applicable findings on OAR 734-051-4020(3).

**FINDINGS of ULTIMATE FACT for Alternate Access – Rural Approaches:**

Considering the alternate access to the property, the application for a state highway approach in the rural area can be approved as follows:

The alternate access cannot be made reasonable to serve the property.

The application meets the spacing, sight distance and channelization standards specified in OAR 734-051-4020(2)

The application does not cause any of the safety or operations concerns specified in OAR 734-051-4020(3).

## **OAR 734-051-4020(2) General Approval Criteria**

**734-051-4020(2)** Except for applications where the department identifies safety or operations concerns set forth in section (3), and except for applications that are subject to alternate access considerations as set forth in sections (5) through (7), the Region Manager shall approve an Application for State Highway Approach that meets the general approval criteria (a)-(c) in this section. Additional criteria set forth in section (9) apply to interchange areas.

### **Approach Spacing Standards**

**(2)(a) Approach Spacing Standards.** Section (8) of this rule sets forth the approach spacing standards, except that the spacing standards applicable to interchanges and interchange areas are set forth in section (9).

**(8) Approach Spacing Tables.** Tables 3, 4, 5, 6, 7, 8, 9 and 10 set forth the approach spacing standards; Tables 7, 8, 9, and 10, including Figures 1, 2, 3 and 4, specifically set forth the approach spacing standards for interchanges and interchange areas. Tables 3 and 6 provide spacing standards for unclassified highways such as service roads and frontage roads. An application meets the spacing standards of this rule if the spacing of the proposed approach is equal to or greater than the distance shown in the applicable table. The spacing standards in Tables 3 through 6 are subject to the method of measurement and exceptions in subsections (a) through (c) below:

#### **Findings of Fact if Tables 3 – 6 apply:**

Highway Average Annual Daily Traffic: 3481  
Highway Classification: District; Other: None  
Posted Speed: 55  
Urban or Rural: Rural

Based on the highway annual average daily traffic, highway classification, posted speed and urban or rural designation at the location of the proposed approach, Table 3 applies. The applicable spacing dimension is 650 feet based on the table and any of the applicable exceptions in (b)(A) through (E) below.

The measured spacing distances to the nearest connections along the highway are 2470 feet to the right and 1440 feet to the left. Therefore, the approach spacing standard is met in both directions and no deviation is required.

**(b)** The following exceptions in subsections (A) through (E) apply to the spacing standards described in Tables 3 through 6:

**(A)** On one-way highways or highways with a non-traversable median, where turning movements to and from the highway are limited to either right in/right out or left in/left out turns only, the applicable approach spacing standards equal one-half the spacing standards in Tables 3 through 6.

**Findings of Fact:** Not applicable.

The approach is not on a one-way highway or highway with a non-traversable median, where turning movements to and from the highway are limited to either right-in/right-out or left-in/left-out turns only.

The applicable spacing standard equals 650 feet.

Or

*(C) The spacing standards identified by special transportation area management plans, access management plans, corridor plans, interchange area management plans or interchange management areas, as adopted by the Oregon Transportation Commission, take precedence over the spacing standards described in Tables 3 through 6.*

**Findings of Fact: Not applicable.**

The approach spacing standard is not governed by a special transportation area management plan, access management plan, corridor plan, interchange area management plan or interchange management area.

**or**

*(D) For special transportation areas where no management plan was adopted, the minimum access management spacing for public road approaches is the existing city block spacing or the city block spacing as identified in the local comprehensive plan. Public road connections are preferred over private approaches and in STAs, private approaches are discouraged; however where private approaches are allowed and where land use patterns permit, the minimum access management spacing for private approaches is 175 feet or mid-block if the current city block spacing is less than 350 feet.*

**Findings of Fact: Not applicable.**

The approach is not within a special transportation area and thus the spacing standard is 650 feet.

**Or**

*(E) For a signalized private approach, the signal spacing standards as established in OAR 734-020-0400 through 734-020-0500 supersede the approach road spacing standards described in Tables 3 through 6;*

**Findings of Fact: Not applicable.**

The approach will not be signalized.

**FINDINGS of ULTIMATE FACT: Application of Approach Road Spacing Standards if Tables 3 – 6 apply**

Based on the highway annual average daily traffic, highway classification, posted speed and urban or rural designation at the location of the proposed approach, Table 3 applies. The applicable spacing dimension is 650 feet based on the table and any of the applicable exceptions in (b)(A) through (E) below.

The measured spacing distances to the nearest connections along the highway are 2470 feet to the right and 1440 feet to the left. Therefore, the approach spacing standard is met in both directions and approval of a deviation not is required.

**Channelization Standards**

**(2)(b) Channelization Standards.** An application meets the channelization standards of this rule if none of the conditions in (A) through (C), exist; where a condition in (A) through (C) exists, an application may meet the channelization standards if the existing or proposed lane configuration on the highway conforms to the design requirements of the ODOT Highway Design Manual in effect at the time the application is filed.

**FINDINGS of ULTIMATE FACT for Channelization Standards:**

Neither the combination of average daily trips for the site, lane configuration and average daily trips on the highway, nor application of OAR 734-051-4020 Table 1 creates a situation which requires channelization. The channelization standard is met in that channelization is not required.

**Sight Distance Standards**

**(2)(c) Sight Distance Standards.** Table 2 sets forth the sight distance standards for approaches. An Application for State Highway Approach meets the sight distance standard of this rule if the intersection sight distance at the intersection of the proposed approach and highway is equal to or greater than shown in Table 2. Intersection sight distance shall never be less than stopping sight distance, as calculated in accordance with the 2004 AASHTO Policy on Geometric Design of Highways and Streets. Sight distance must be unobstructed within the sight triangle based on the following positions of measurement:

**Findings of Fact:**

The posted speed is 55.

The Sight Distance Standard is based upon: 1 lane crossed by a vehicle making a left turn from the approach.

The required intersection sight distance drawn from Table 2 is a minimum of 775 feet.

The measured sight distance to the right is 775 feet and to the left is 1000 feet.

**FINDINGS of ULTIMATE FACT for Sight Distance Standards:**

Based on table 2, the intersection sight distance is 775 feet. The measured sight distance to the right is 775 feet and to the left is 1000 feet. Sight Distance Standard is met.

**Findings of Ultimate Fact: General Approval Criteria**

**Spacing Standard:**

The measured spacing distances to the nearest connections along the highway are 2470 feet to the right and 1440 feet to the left. Therefore, the approach spacing standard is met in both directions and approval of a deviation is not required.

**Channelization Standard:**

Neither the combination of average daily trips for the site, lane configuration and average daily trips on the highway, nor application of OAR 734-051-4020 Table 1 creates a situation which requires channelization. The channelization standard is met in that channelization is not required.

**Sight Distance Standard:**

Based on table 2, the intersection sight distance standard is 775 feet. The measured sight distance to the right is 775 feet and to the left is 1000 feet. Sight Distance Standard is met.

**DECISION:**

**Application for Approach: Approved**

Attachments: 4020(7) Reasonable Alternative Test

## **OAR 734-051-4020(7) Reasonable Alternate Access Criteria Attachment**

**734-051-4020(7) Reasonable Alternate Access Criteria.** *In determining whether alternate access is or can be made reasonable pursuant to section (6) of this rule, the department shall consider all of the following provisions in (a) through (e), below:*

**(a) Authorized Uses.** *Alternate access to the property is adequate to allow the authorized uses for the property identified in the acknowledged local jurisdiction comprehensive plan and local land use regulations, taking into account the economic development needs of the property;*

### **Findings of Fact:**

The authorized use for the property identified in the acknowledged local jurisdiction comprehensive plan is Exclusive Farm Use and local land use regulation is Exclusive Farm Use. The proposed zoning is Exclusive Farm Use.

The applicant says the economic development needs of the property are:

To partition the greater tax lot into 3 lots, all containing a SFR.

The alternate access is not reasonable to serve the authorized use and economic development needs due to the large size and geographical features of the original mother parcel. These factors make access to the proposed lot partitions extremely difficult and will significantly reduce the functionality of the partitioned lots as single family homes.

**(b) Type, Number, Size and Location of Alternate Access.** *The type, number, size and location of alternate access are adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property and taking into account the economic development needs of the property;*

### **Findings of Fact:**

The planned use of the property is Exclusive Farm Use.

The volume and type of traffic reasonably anticipated to enter and exit the property is 30 trips per day.

The type, number, size and location of the alternate access is not reasonable to serve these needs. The size of the mother parcel means that the existing driveway is nearly a half mile away from the partitioned lots, additionally the geography of the lot greatly reduces the ability of a vehicle to traverse the lot.

**(c) Constraints to Alternate Access.** *The presence of constraints that limit the development of alternate access including:*

**(A) Legal restrictions;**

*(B) Geographic restrictions;*

*(C) Historical or cultural resources; and*

*(D) Physical considerations such as planned streets, roadway width, and weight and size restrictions;*

**Findings of Fact:**

The following constraints limit the development of the alternate access:

(A) Legal restrictions:

Access off the local road system has been denied by the county and cannot be approved without site improvements that exceed what is reasonable for the partition of two lots.

(B) Geographic restrictions:

Multiple rock outcroppings make it very difficult to traverse the lot, given the distance of the partitions to the first approach the geographic restrictions make the alternate access unreasonable.

(C) Historical or cultural resources: None

(D) Physical considerations such as planned streets, roadway width, and weight and size restrictions: None

***(d) Availability of Mitigation Measures.*** *The availability of mitigation measures set forth in OAR 734-051-3070 that the applicant could make on the property or along the roadway frontage of the property, including situations in which the applicant or the local jurisdiction commits proportional shares toward the cost of removal or mitigation of geographic, safety, or physical restrictions on the property or local street network. Neither the lack of commitment by a local government to share the cost of mitigation nor the cost of mitigation alone is conclusive in evaluating whether a vehicle access is or could be made reasonable;*

**Findings of Fact:**

There are no mitigation measures that the applicant could make on the property or along the roadway frontage of the property that would make the alternate access reasonable to serve the property.

***and***

***(e) Phasing.*** *In circumstances where a significant difference exists between the existing and the planned local road network the department may consider a phased method to establishing reasonable alternative access as follows:*

***(A)*** *Where a planned public street or road network cannot be provided at the time of development, an application for an approach may be approved with conditions requiring a connection to the planned local street or road network when it becomes available;*

*(B) The approach permit to the state highway may be revoked and the approach removed, or the approach permit may be modified and additional mitigation required when the planned street or road network becomes available; and*

*(C) ODOT and the local government enter into an agreement regarding the timing, cost and responsibility for the development of the planned street or road network.*

**Findings of Fact:**

There is not a significant difference between the existing and the planned local road network.

**FINDINGS of ULTIMATE FACT for Reasonable Alternate Access Criteria:**

The Alternate Access Cannot Be Made Reasonable based on an analysis of the reasonable alternate access criteria as follows: due to large parcel size combined with rocky terrain as well as legal issues regarding access of the local street system.





# Oregon

Tina Kotek, Governor

Department of Transportation

ODOT District 10

63055 N. Highway 97, Bldg. K

Bend, OR 97703

(541) 388-6054

Fax: (541) 388-6022

Kristin.L.THELEN@odot.oregon.gov

February 23, 2023

File Code: PMT 4-15

Hank Simmons  
Simmons Brothers LLC by Jordan Simmons  
139 NW Third St.  
Prineville, OR 97754

**Subject: Approval of *Application for State Highway Approach*  
(Standard Drawings and Plans)  
Highway Number 370, (O'Neil),  
at Mile Point 2.88  
Application Number 93027**

Dear Hank Simmons:

### **Approval of *Application for State Highway Approach***

I am pleased to inform you that the Oregon Department of Transportation (ODOT) has approved your *Application for State Highway Approach*, which means the department has successfully reached a final decision about the location and concept for the approach that satisfy the department's basic safety and operations standards.

### **Remaining Actions to be Completed Prior to Issuance of Construction Permit**

To ensure that your approach design and the construction process allow for continuing safe highway operations during and after construction, the following actions must be completed before ODOT can issue the required *Permit to Construct a State Highway Approach*:

1. ODOT will provide you and your contractor with drawings and plans designed and approved by ODOT, *Preliminary Construction Specifications* letter.
2. ODOT will provide you and your contractor with construction specifications to accompany the drawings and plans. The *Preliminary Construction Specifications* letter will also address requirements for liability insurance and performance bond. [OAR 734-051-5020(2)(a)] [OAR 734-051-5060]
3. You (or your contractor if he is a designated agent) will sign and return the construction specifications to ODOT signifying your acceptance of the terms. [OAR 734-051-5020(2)(a)&(c)]
4. You or your contractor will provide evidence of insurance and bond. [OAR 734-051-5020(2)(d)]

5. ODOT will issue a *Permit to Construct a State Highway Approach* which authorizes the work to be accomplished and describes in detail how to communicate with ODOT before and after construction. [OAR 734-051-5020(5)]

**You may not initiate any construction in the ODOT right-of-way until all of these steps have been fulfilled.** [OAR 734-051-5020(3)]

Throughout the process, ODOT will notify you when the next item is needed.

*Kristin Thelen*

Kristin Thelen, Permit Specialist  
ODOT District 10  
63055 N. Highway 97, Bldg. K  
Bend, OR 97703



# Oregon

Tina Kotek, Governor

**Department of Transportation**

**ODOT District 10**

63055 N. Highway 97, Bldg. K

Bend, OR 97703

(541) 388-6054

Fax: (541) 388-6022

Kristin.L.THELEN@odot.oregon.gov

February 27, 2023

File Code: PMT 4-11

Hank Simmons  
Simmons Brothers LLC by Jordan Simmons  
139 NW Third St.  
Prineville, OR 97754

**Subject: Notice of Conditional Approval for State Highway Approach,  
Without Permission to Construct**  
Highway Number 370, (O'Neil),  
at Mile Point 2.88  
Application Number 93027

Dear Hank Simmons:

### ***Approval of Application for State Highway Approach***

I am pleased to inform you that the Oregon Department of Transportation (ODOT) has **conditionally approved** your *Application for State Highway Approach*, which means ODOT has reached a final decision about the location and concept for the approach that satisfy the department's basic safety and operations standards.

Pursuant to OAR 734-051-3040(8)(a), your *Application for State Highway Approach* Application number 93027, is **conditionally approved** subject to receipt of the following materials:

- A copy of the final local jurisdiction's land use approval, including the approved site plan and project description.

It is important that the plans and project description approved by your local jurisdiction are consistent with the plans submitted to ODOT. If the approach location on the locally approved plans and project description varies from the plans submitted to ODOT, it may be necessary to reapply to ODOT for the highway approach or request approval of a modified site plan from the local jurisdiction.

A copy of this letter has been sent to the local jurisdiction because ODOT and your local jurisdiction are required to coordinate on matters involving land development. ODOT's coordination rule is set forth in OAR 734-051-1030(3)<sup>1</sup>.

<sup>1</sup> If you would like a complete copy of the Chapter 734 Division 51 Rules, you may obtain them by either visiting our website at: [http://www.odot.state.or.us/tdb/planning/access\\_mgt/](http://www.odot.state.or.us/tdb/planning/access_mgt/) or by contacting ODOT's Rules Coordinator, Brenda Trump, at (503) 945-5278

Your submittal deadline will be **no later than 5:00 p.m. on 04/28/2023**, sent to the following address:

Kristin Thelen, Permit Specialist  
ODOT District 10  
63055 N. Highway 97, Bldg. K  
Bend, OR 97703

Under Oregon Administrative Rule (OAR) 734-051-3040(7)(c), you are required to submit the requirements or request a time extension by the submittal deadline or the **conditional approval of your application will expire**. If necessary, the Department may extend the time for your submittal if both you and the Department agree in writing before the deadline listed above. Please contact me if you would like to request an extension of time.

**PLEASE NOTE: This conditional approval is an approval of your concept plan only. It is NOT a construction permit.**

**Remaining Actions to be Completed Prior to  
Issuance of Construction Permit**

After we have received the local land use approval with site plan and project description as described above, the District Office will contact you regarding the next steps. To give you a heads up when your Land Use approval is complete with the Local Jurisdiction, your next steps with ODOT will be dealing with the following approval process:

- Notice of Denial of *Application for State Highway Approach*, Findings, and Appeal Options**
- Approval of *Application for State Highway Approach* (Standard Drawings and Plans) (Attached)**
- Mitigation Required for Issuance of *State Highway Approach Permit* (with Appeal Rights) (Attached)**
- Approval of *Application for State Highway Approach* (Custom Drawings and Plans) (Attached)**

or

- Approval of *Application for TEMPORARY State Highway Approach* (Attached)**

If you have any questions about the content of this letter or specifically about what we are asking for, please feel free to contact me at (541) 388-6054.

Sincerely,

*Kristin Thelen*

Kristin Thelen, Permit Specialist  
ODOT District 10, Maintenance Office

c: Jim Scholtes, District Manager  
David Knitowski, Regional Access Management Engineer  
Haleigh King, Local Government Official