

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

An Order Approving Applications of 2T *
Sustainable Land & Cattle, LLC in * ORDER NO. 2023-048
Compliance with Stipulated Peremptory Writ *
of Mandamus

WHEREAS, 2T Sustainable Land & Cattle, LLC (the “Applicant”) filed a Petition for Alternative Writ of Mandamus Pursuant to ORS 34.130 in Deschutes County Circuit Court, Cause No. 23CV38008 on or about September 18, 2023 concerning the Applicant’s land use applications for conditional use permit, site plan approval and lot line adjustments, Deschutes County File Nos. 247-22-000883-CU; 247-22-000884-SP; 5 247-22-000885-LL; and 247-22-000886-LL (collectively, the “application”); and

WHEREAS, the Deschutes County Circuit Court administrator issued an Alternative Writ of Mandamus Pursuant to ORS 34.130 on September 22, 2023, attached hereto as **Exhibit A**, commanding Deschutes County to return that Writ with its certificate annex approving the Applicant’s application or showing cause why it has not done so on or before October 19, 2023; and

WHEREAS, the Applicant and Deschutes County agreed to a Stipulated Peremptory Writ of Mandamus and General Judgment of Dismissal (“Stipulated Peremptory Writ”), attached hereto as **Exhibit B**, which compels Deschutes County to approve the Applicant’s application by adopting the Hearings Officer’s September 5, 2023 decision, attached as Exhibit 1 to the Stipulated Peremptory Writ, as the County’s final decision made in response to the peremptory writ of mandamus; and

WHEREAS, the Stipulated Peremptory Writ was entered in the Deschutes County Circuit Court registry on October 18, 2023.

now therefore,

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

Section 1. The Hearings Officer's September 5, 2023 decision, attached hereto as **Exhibit C**, shall be Deschutes County's final decision on the application and is made in response to the Stipulated Peremptory Writ.

Section 2. This Order is effective upon signing.

Dated this ____ day of _____, 2023.

THE BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice-Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

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FOR THE COUNTY OF DESCHUTES

2T SUSTAINABLE LAND & CATTLE HOLDINGS LLC, an Oregon limited liability company,

Relator,

v.

DESCHUTES COUNTY, an Oregon municipal corporation,

Defendant.

Case No.

ALTERNATIVE WRIT OF MANDAMUS PURSUANT TO ORS 34.130

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To: Deschutes County and David Doyle, Deschutes County Attorney

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From the petition of the State of Oregon on the relation of 2T Sustainable Land & Cattle

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Holdings LLC (“Relator”), the following facts appear:

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Relator is a limited liability company located in Sisters, Oregon with the address 71285

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Holmes Road, Sisters, Oregon 97759.

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2.

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Pursuant to ORS 203.010, Defendant, Deschutes County (the “County”), is a body politic

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and corporate that can sue and be sued. Its principal offices are located at 117 NW Lafayette

16

Avenue, Bend, Oregon 97703.

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3.

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ORS 197.825(3) provides that notwithstanding LUBA’s jurisdiction to review final land

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use decisions, the circuit court retains jurisdiction to grant injunctive and mandatory relief to

1 enforce final land use decisions. ORS 215.429 authorizes the circuit court to hear mandamus
2 actions on a petition establishing that a county has not taken final action on an application for a
3 land use permit on land not within an urban area within 150 days of the application being
4 deemed complete.

5 4.

6 On November 9, 2022, Relator applied to the County for a Conditional Use Permit and
7 Site Plan Review, with two lot line adjustments. The County assigned file numbers 247-22-
8 000883-CU; 247-22-000884-SP; 247-22-000885-LL; and 247-22-000886-LL to Relator's
9 application.

10 5.

11 Pursuant to ORS 215.427(1), the County was required to take final action on the
12 application within 150 days after the application was deemed complete. The application was
13 deemed complete on March 28, 2022, making the City's final action due on or before August 25,
14 2023. Pursuant to ORS 215.427(5), the 150-day period in which the City was required to take
15 final action can only be extended at the request of the applicant. Pursuant to ORS 197.797(6), if
16 an applicant requests or agrees to an open record period for the submission of new and rebuttal
17 evidence, the extended period for such submissions is not subject to the 150-day period. On July
18 25, 2023, the applicant agreed to keep the local record open for 14 days for new and rebuttal
19 evidence extending the date that County was required to take final action to September 15, 2023.
20 The applicant was also allowed seven days after the record closed to other parties to submit final
21 written argument and this period is not subject to the 150-day limit. ORS 197.797(6)(e).

22 6.

23 On September 5, 2023, the County land use hearings officer issued a decision approving

1 the application with conditions (“Hearings Officer’s Decision”). The Hearings Officer’s
2 Decision recited that it became final unless it was appealed within 12 days of the mailing of the
3 decision. Notice of the Hearings Officer’s Decision was mailed September 5, 2023.

4 7.

5 On September 14, 2023, Central Oregon Landwatch appealed the Hearings Officer’s
6 Decision to the Deschutes County Board of Commissioners by submitting a written notice of
7 appeal with the required fee. As a result, the Hearings Officer’s Decision did not become a final
8 action within the 150-day period provided for in ORS 215.427(1).

9 8.

10 As of the date of filing this petition, which is after the period the County had to take final
11 action on the application under ORS 215.427(1), the County had not taken final action to resolve
12 Central Oregon Land Watch’s appeal.

13 9.

14 On the date of filing this action, written notice of this petition was sent to all persons
15 entitled to notice under ORS 215.429(3). See Declaration of Christopher P. Koback attached as
16 Exhibit 1. Service is not required on an adverse party before the court issues the alternative writ
17 of mandamus. ORS 34.130(2).

18 10.

19 Pursuant to ORS 215.429(5), Relator is entitled to a peremptory writ commanding the
20 County to approve the application, as submitted, unless it is shown that approval violates
21 substantive provisions of the County’s comprehensive plan or other land use regulation. Relator
22 is entitled to a writ approving the application because approval will not violate any provisions in
23 the County’s comprehensive plan or land use regulations.

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The County is required to refund to Relator the greater of either the unexpended portion of any application fees or deposits previously paid, or 50% of the total amount of such fees or deposits paid by Relator. ORS 215.429(8).

12.

Relator has no plain, speedy, and adequate remedy at law.

13.

Pursuant to ORS 34.210, the court should exercise discretion to award Relator its reasonable attorney fees incurred in this action.

WHEREFORE, you are commanded, immediately after your receipt of this Writ, to approve Relator’s application; or to appear before this Court or a Judge hereof, on the 19th day of October, 2023, at 11am a.m./p.m. in Room _____ of the Deschutes County Courthouse, Bend, Oregon, to show cause why you have not approved Relator’s application. You are further commanded then and there to return this Writ with its Certificate Annex, showing that you have approved the application or showing cause for your omission to do so.

9/22/2023 1:15:23 PM

Alycia N. Sykora

Circuit Court Judge Alycia N. Sykora

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

2T SUSTAINABLE LAND & CATTLE
HOLDINGS LLC, an Oregon limited liability
company;

Relator,

v.

DESCHUTES COUNTY, an Oregon
municipal corporation,

Defendant.

Case No. 23CV38008

**STIPULATED PEREMPTORY WRIT
OF MANDAMUS AND GENERAL
JUDGMENT OF DISMISSAL**

This matter comes before the court on the parties' stipulation, the court being advised that (1) on September 21, 2023, the court entered an order allowing Petitioner's Alternative Writ of Mandamus and the court administrator issued an Alternative Writ of Mandamus commanding Deschutes County to return that Writ with its certificate annex approving Relator's application or showing cause why it has not done so; (2) the original return date for the County's certificate annex was October 19, 2023; (3) on October 11, 2023, the County Board of Commissioners decided to resolve the writ of mandamus proceeding and eliminate the County's exposure to attorney fees by stipulating to a peremptory writ of mandamus and general judgment that (a) compels the County to approve Relator's applications by adopting the Hearings Officer's decision as the County's final decision made in response to the peremptory writ of mandamus and (b) dismisses Relator's action without an award of attorney fees against the County.

1 NOW, THEREFORE, IT IS HEREBY ORDERED and ADJUDGED as follows:

2 1. Based upon the stipulation of the parties, the Defendant, Deschutes County, is
3 commanded to approve Relator’s Application for a Conditional Use Permit and Site Plan
4 Review, with two lot line adjustments files numbered 247-22-000883-CU; 247-22-000884-SP;
5 247-22-000885-LL; and 247-22-000886-LL by adopting the decision attached to this Peremptory
6 Writ as Exhibit 1.

7 2. This matter is dismissed with prejudice and without costs or attorney fees to either
8 party.

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18 IT IS SO STIPULATED:

HATHAWAY LARSON LLP

DESCHUTES COUNTY LEGAL COUNSEL

By: s/ Christopher P. Koback
Christopher P. Koback, OSB No. 913408
Of Attorneys for Relator

By: s/ David Doyle
David Doyle, OSB No. 901477
Of Attorneys for Defendant

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**DECISION AND FINDINGS OF
THE DESCHUTES COUNTY HEARINGS OFFICER**

FILE NUMBER(S): 247-22-000883-CU, 247-22-000884-SP, 247-22-000885-LL, 247-22-000886-LL

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: 2T SUSTAINABLE LAND & CATTLE HOLDINGS LL
Map and Taxlot: 1412060000400
Account: 124840
Situs Address: 71275 HOLMES RD, SISTERS, OR 97759

Mailing Name: 2T SUSTAINABLE LAND & CATTLE HOLDINGS LL
Map and Taxlot: 1412070000100
Account: 271598
Situs Address: 71275 HOLMES RD, SISTERS, OR 97759

Mailing Name: 2T SUSTAINABLE LAND & CATTLE HOLDINGS LL
Map and Taxlot: 1412070000200
Account: 264846
Situs Address: 71285 HOLMES RD, SISTERS, OR 97759

Mailing Name: 2T SUSTAINABLE LAND & CATTLE HOLDINGS LL
Map and Taxlot: 1412070000300
Account: 150338
Situs Address: 71295 HOLMES RD, SISTERS, OR 97759

APPLICANT: Sarahlee Lawrence, 2T Sustainable Land and Cattle Holdings LLC

AGENT FOR Greg Blackmore, Blackmore Planning and Development Services, LLC

APPLICANT:

ATTORNEY FOR Liz Fancher
APPLICANT:

REQUEST: Review of Conditional Use and Site Plan Review to establish a guest ranch in the Exclusive Farm Use (EFU) Zone. The Applicant also requested two property line adjustments.

STAFF CONTACT: Audrey Stuart, Associate Planner

Phone: 541-388-6679
Email: Audrey.Stuart@deschutes.org

RECORD:

Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000883-cu-884-sp-885-ll-886-ll-conditional-use-permit-and-site-plan-review-guest>

I. APPLICABLE CRITERIA

Deschutes County Code (“DCC”)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Chapter 18.88, Wildlife Area Combining Zone (WA)

Chapter 18.116, Supplementary Provisions

Chapter 18.124, Site Plan Review

Chapter 18.128, Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

Oregon Revised Statutes (ORS)

Chapter 92, Subdivisions and Partitions

II. BASIC FINDINGS

LOT OF RECORD: Tax Lot 200 is a legal lot of record because it was created as Parcel 2 of Minor Partition MP-07-32, and subsequently adjusted through file LL-09-138. Tax Lots 100 and 400 together constitute one legal lot of record because they were together created as Parcel 1 of Minor Partition MP-07-32, and subsequently adjusted through files 247-14-000323-LL and 247-14-000324-LL. Tax Lot 300 was determined to be a legal lot of record through file LR-93-50.

SITE DESCRIPTION: The Subject Property is located at the intersection of NW Lower Bridge Way and Holmes Road, and consists of Tax Lots 100, 200, 300 and 400. The Applicant proposed one consolidation and one property line adjustment, which will create one 186.26-acre property, where the proposed guest ranch (the “Guest Ranch”) will be located, and one five-acre property. Tax Lot 300 is part of one of the proposed property line adjustments. However, the Guest Ranch will not be located on Tax Lot 300. Therefore, for the purposes of the Conditional Use Permit and Site Plan Review, the Subject Property refers to Tax Lots 100, 200, and 400. The submitted Burden of Proof included the following description of the adjusted parcel where the Guest Ranch is proposed:

“The majority [of the] property (approximately 155 acres, the northern portion of the site) is used for agricultural purposes, including hay production and cattle grazing. The southwestern area (approximately 15 acres) is used for farm related purposes. It includes various farm buildings, a dwelling for the farm manager, a pond, a well and a septic system. The southcentral area (current tax lot 200) is 6.5 acres in size and developed with a non-farm dwelling, a well, a septic system, and non-irrigated land that is established with Juniper Trees.”

Lastly, there is a non-irrigated area of juniper trees to the southeast which is approximately 9 acres in size. The site overall has 133.5 acres of water rights which are primarily on the northern and southwestern portions of the site.”

REVIEW PERIOD: The subject application(s) were submitted on November 9, 2022. Ultimately the application was deemed complete on March 28, 2023 and the initial 150th day was August 25, 2023. At the July 25, 2023 public hearing the Applicant agreed to a 21-day open record period (7 days for new evidence, 7 days for rebuttal evidence and 7 days for Applicant final argument). The Applicant submitted documents during each of the 7-day open record periods. The Applicant’s agreement to the 21-day open-record period extends the 150-day final decision date. The 150-day deadline that the County must take final action is September 15, 2023.

PROPOSAL: The Applicant proposed to establish a guest ranch, which will consist of ten, 1,200-square foot cabins. A portion of an existing nonfarm dwelling will be converted into a lodge with common area for visitors of the guest ranch. This building will continue to contain a dwelling unit as well as a lodge for the guest ranch. The Applicant also proposed one property line consolidation and one subsequent property line adjustment. The proposed adjustments will result in one 186.26-acre parcel and one five-acre parcel. McGe

SURROUNDING LAND USES: Immediately surrounding properties on all sides of the Subject Property are zoned EFU, which range in size from 834 to 6.5 acres. The surrounding area includes a mix of medium-to-large scale farms with large, irrigated fields. The surrounding area includes several commercial activities operating alongside farm uses, such as Long Hollow Guest Ranch and Rainshadow Organics, which hosts farm-to-table dinners. The surrounding area also includes nonfarm dwellings, as well as undeveloped land with native vegetation.

LAND USE HISTORY:

- 247-23-000324-LL: A property line adjustment between Tax Lot 100 and 400 of the Subject Property (which together constitute one legal lot of record), and Tract B (which is now identified as Tax Lot 201 and Tax Lot 200).
- 247-14-000323-LL: Property line adjustment between current Tax Lot 300 and the Subject Property. Staff notes that due to subsequent property line adjustments, Tax Lot 300 is no longer adjacent to the Subject Property.
- MP-07-32, CU-07-90, CU-07-96: Minor Partition to divide a 221-acre property into three parcels, and Condition Use Permits to establish a nonfarm dwelling on two of those parcels.
- D-93-62: Nonfarm dwelling deposit packet for Tax Lot 300. Records indicate a Conditional Use Permit for a nonfarm dwelling on this parcel was never submitted.
- LR-93-50: Lot of Record Verification for Tax Lot 300 (identified as Tax Lot 998 at the time).

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on November 16, 2022, to several public agencies and Planning Staff received a number of responses. Staff, in the Staff Decision, included public agency comments. The Hearings Officer incorporates those comments into this decision.

PUBLIC COMMENTS: The Planning Division mailed notice of the subject application(s) to all property owners within 750 feet of the Subject Property on November 16, 2022. 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 November 16, 2022. A total of eight public comments were received prior to the public hearing. COLW provided record comments stating concerns regarding whether applicable criteria were met. Additional submissions were submitted into the record in close proximity to the Hearing and during the open-record period. The Hearings Officer addresses the relevant evidence, arguments and issues raised by timely and accepted record submissions in the findings below.

III. FINDINGS & CONCLUSIONS

A. Preliminary Findings. Appellant, Central Oregon LandWatch (“COLW”) appealed the Staff Decision approving Applicant’s proposed guest ranch. COLW raised numerous appeal issues. Many of COLW’s appeal issues are set forth in its July 25, 2023 record submission. COLW either added to the issues or expanded upon the appeal issues in its July 31, 2023 record submission. The Hearings Officer addresses COLW’s appeal issues directly in these Preliminary Findings and where appropriate in findings for relevant approval criteria. The Hearings Officer also addresses two procedural issues in the Preliminary Findings.

1. Procedural Issues

a. COLW 8/8/23 Open-Record Submission

Applicant objected (Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 2 & 3) to the Hearings Officer’s consideration of the COLW August 8, 2023 open-record submission. Appellant’s argument, in part, is summarized as follows:

“On August 8, 2023, just prior to the close of the rebuttal period, COLW filed new evidence and argument that does not rebut evidence filed in the record by any participant during the post-hearing comment period that closed on August 1, 2023. This violates DCC 22.24.130(2) and DCC 22.24.140(D).”

As background, the Hearings Officer notes that at the July 25, 2023 public hearing (the “Hearing”) COLW, through its legal representative Rory Isbell (“Isbell”), requested that the record remain open following the close of oral testimony. Applicant agreed to a 7/7/7 open-record period.

Consistent with ORS 197.797(6)(a) & (c) and DCC 22.24.140(D) the Hearings Officer granted COLW’s open-record request and established the following 7/7/7 schedule:

Open-record for the submission of new evidence:	August 1, 2023 (4:00 pm)
Open-record for the submission of responsive/rebuttal evidence:	August 8, 2023 (4:00 pm)
Open-record for Applicant’s submission of final argument:	August 15, 2023 (4:00 pm)

The Hearings Officer, at the close of the Hearing, during the discussion of the open-record schedule, provided his interpretation of what evidence/argument could be submitted during each open-record period. The Hearings Officer stated that during the first open-record period (ending August 1, 2023) any interested person/entity could submit new evidence into the record. The Hearings Officer stated that during the second open-record period (ending August 8, 2023) submissions of evidence/argument must be in response to evidence/argument received during the first open-record period. Finally, the Hearings Officer stated that the third open-record period was limited to a final argument submission from the Applicant. The Hearings Officer, at the Hearing, indicated that if anyone disagreed with his interpretation of the open-record laws/rules such disagreement should be raised at the Hearing or in an open-record submission. The Hearings Officer notes that no person/entity formally objected/disagreed with the Hearings Officer's above-stated interpretation as to what evidence/argument could be submitted during each open-record period.

The Hearings Officer finds that his above-stated interpretation of what evidence/argument is permitted during each open-record period is supported by language contained in ORS 197.797(6)(c) and DCC 22.24.140(D). ORS 197.797(6)(c) states in part:

“If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open.”

DCC 22.24.140(D) states, in part, the following:

“If at the conclusion of the initial hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.”

The Hearings Officer finds that any person/entity may submit new/additional evidence during the first open-record period. The Hearings Officer finds ORS 197.797(6)(c) and DCC 22.24.140(D) limit what evidence/argument can be submitted during the second open-record period. The limitation is that evidence/argument submitted during the second open-record period must be in “response to the evidence received while the record was left open,” per DCC 22.24.140(D).

The Hearings Officer shall now address the specific objections raised by Applicant to COLW's August 8, 2023 open-record submission.

There is no dispute that the COLW August 8, 2023 open-record submission was made during the second open-record period; the responsive or rebuttal evidentiary open-record period. Therefore, the COLW August 8, 2023 open-record submission must meet the ORS 197.797(6)(c) and DCC 22.24.140(D) responsive evidence standard. COLW, in its August 8, 2023, open-record submission stated the following:

“Central Oregon LandWatch ("LandWatch") submits these additional comments during the seven-day rebuttal period following the July 25, 2023 public hearing and August 1, 2023 initial 7-day open record period. These comments respond to the additional information and testimony submitted by the applicant during the initial open record period.

In our August 1, 2023 submittal, we explained how the subject property is part of a tract with the property neighboring to the south. The applicant's August 1, 2023 submittal discusses the property neighboring to the west owned by LHR, Ltd. in its discussion of the ‘incidental and accessory’ criteria at DCC 18.16.037(B). Applicant August 1, 2023 submittal at page 2. The applicant describes how this property "is operated as a County-approved guest ranch." Id., Exhibit 7 (Deschutes County decision in File No. CU-99-71). As explained below, the applicant here owns the LHR, Ltd. property, making that property and its existing guest ranch part of a tract that includes the subject property.”

The balance of COLW’s August 8, 2023 submission addresses the ownership of the LHR, Ltd property and the implications or consequences of its argument that the LHR, Ltd property is owned by the Applicant (same persons owning the Subject Property).

The Hearings Officer finds COLW’s reference to *its* August 1, 2023 submittal to be irrelevant to the Hearings Officer’s decision as to whether its August 8, 2023 submittal is proper responsive/rebuttal evidence. The second open-record period is not intended for a person/entity to **add to or supplement** its own prior testimony.

The Hearings Officer finds that COLW’s comment below is determinative of whether the COLW August 8, 2023 submission is proper responsive or rebuttal evidence:

“The applicant's August 1, 2023 submittal discusses the property neighboring to the west owned by LHR, Ltd. in its discussion of the ‘incidental and accessory’ criteria at DCC 18.16.037(8). Applicant August 1, 2023 submittal at page 2. The applicant describes how this property "is operated as a County-approved guest ranch." Id., Exhibit 7 (Deschutes County decision in File No. CU-99-71).”

The Hearings Officer agrees with COLW that Applicant’s August 1, 2023 open-record submission “discusses the property neighboring to the west owned by LHR, Ltd.” Applicant, in its August 1, 2023 open-record submission, does state that an approved guest ranch is located on the neighboring LHR, Ltd. property. Applicant, in the August 1, 2023 open-record submission does state that an approved guest ranch is located on the LHR, Ltd. property. Applicant, in the August 1, 2023 open-record submission discusses the LHR, Ltd. property and the approved guest ranch use in the context of the ‘incidental and accessory’ criteria at DCC 18.16.037(B).

The Hearings Officer finds that Appellant’s August 8, 2023 open-record submission does not dispute that the property to the west of the Subject Property is owned by LHR, Ltd. The Hearings Officer finds that Appellant’s August 8, 2023 open record submission does not dispute that the LHR, Ltd. property has received guest ranch approval. At this point in the analysis Appellant has not disagreed with anything that was contained in Applicant’s August 1, 2023 open-record submission.

The Hearings Officer finds that what COLW does attempt to establish, in its August 8, 2023 open-record submission, is that the Subject Property is under the same ownership as the LHR, Ltd. property.

At this point the Hearings Officer finds it necessary to review the context of Applicant's August 1, 2023 LHR, Ltd. comments. Applicant, in its August 1, 2023 open-record submission, references LHR, Ltd. in a section titled *DCC 18.16.037(B), Incidental and Accessory*. DCC 18.16.037 (B) states the following:

*“Guest ranch” means a facility for overnight guest lodging units, including passive recreational activities and food services, as set forth in ORS 215 that are **incidental and accessory** to an existing livestock operation that qualifies as a farm use under DCC 18.04.030. (**bolding added by the Hearings Officer**)*

The Hearings Officer finds that Applicant's *DCC 18.16.037(B), Incidental and Accessory* evidence/argument contained in its August 1, 2023 open-record submission is directed and limited to demonstrating whether the proposed guest ranch use at the Subject Property should be considered “incidental and accessory.” The Hearings Officer finds that Applicant, in its August 1, 2023 open-record submission, references a prior Hearings Officer decision and three nearby properties as examples of uses (wedding/event venue, guest ranch and vineyard hosting events) that have been determined by the County to be incidental and accessory. The Hearings Officer finds that Applicant's incidental and accessory evidence is not directed in any way to the ownership of the properties referenced by Applicant in the August 1, 2023 open-record submission. The Hearings Officer finds that Applicant's incidental and accessory evidence is not directed to proving or disproving the inclusion of one or more parcel (term used generically and not intended to relate to a “legal parcel” as defined in law) of real property not described as the Subject Property as being part of a “tract.” The Hearings Officer finds it is unnecessary to address “ownership” in DCC 18.16.037(B).

The Hearings Officer finds that Appellant had ample opportunity to provide the evidence/argument presented in its August 8, 2023 open-record submission before the Hearing, during the Hearing and during the first open-record period. The Hearings Officer finds that Appellant's August 8, 2023 open-record period is not responsive and does not rebut anything in Applicant's August 1, 2023 open-record submission. The Hearings Officer finds that other first open-record submissions were filed but COLW does not claim to be rebutting any evidence or argument in those submissions. The Hearings Officer shall not consider the COLW August 8, 2023 open-record submission in making this decision.

b. Galloway 8/8/23 Open-Record Submission

Mike and Robin Galloway, on August 8, 2023, submitted a letter into the evidentiary record. The Hearings Officer, as noted in the preceding findings (COLW Rebuttal submission), established an open-record time schedule. New evidence from any person/entity would be accepted prior to 4:00 pm on August 1, 2023, responsive/rebuttal evidence from any person/entity would be accepted prior to 4:00 pm on August 8, 2023 and final argument from the Applicant would be accepted prior to 4:00 pm on August 15, 2023.

The Hearings Officer reviewed the Galloway August 8 2023 submission in the context of the established open-record schedule. The Hearings Officer finds that Galloway's references to water, environment, noise and light pollution and traffic concerns do not respond or rebut any evidence submitted during the first open-record period (running from the Hearing until 4:00 pm on August 1, 2023). The Hearings Officer considers Galloway's references to water and traffic to be “new evidence” which would have been appropriately submitted during the first open-record period.

The Hearings Officer finds the Galloway August 8, 2023 reference to two existing guest accommodations is consistent with Applicant's representations and therefore does not disagree, dispute or rebut any evidence submitted during the first open-record period.

While the Hearing Officer appreciates the Galloway's effort in submitting the August 8, 2023 letter, the Hearings Officer finds that procedurally the August 8, 2023 letter is not responsive or rebuttal evidence/argument and therefore not properly submitted during the second open-record period. The Hearings Officer shall not consider the Galloway August 8, 2023 open-record submission in making this decision.

2. Short-Term Rental Use (Alleged Violation)

COLW (Isbell, July 25, 2023, page 5) provided the following comments:

"We note that it appears this nonfarm dwelling is currently being used as a short-term rental or vacation rental for up to 12 guests, in the absence of any land use permits, and counter to the recent Court of Appeals decision in 1000 Friends of Oregon v. Clackamas County, 320 Or App 444 (2022). Exhibit 2 (AirBnB.com listing for nonfarm dwelling on subject property, accessed July 21, 2023). The current unauthorized short-term rental use of this EFU-zoned property triggers a code violation under DCC 18.08.010(A) and prevents the County from approving "any application for land use development." DCC 22.20.015(A)(1)"

Staff provided a comprehensive response to COLW's violation issue set forth in the preceding paragraph (Audrey Stuart, July 27, 2023). The Staff response is set forth in full below:

"Materials submitted by Central Oregon LandWatch (COLW) at the July 25, 2023, hearing (Exhibit A) raise the question of whether the subject property is in violation of applicable land use regulations, and therefore is precluded from receiving new land use permits pursuant to Deschutes County Code ("DCC") 22.20.015.

The appellant submitted a copy of an AirBnB.com posting for the nonfarm dwelling on the subject property. As noted on page 59 of the staff report, a recent Court of Appeals decision (1000 Friends of Oregon v. Clackamas County) has found that using an existing dwelling as a short term rental is not permitted outright in resource zones. DCC 22.20.015 describes the limited situations in which the County may approve a new land use permit when a property is found to be in violation of applicable land use regulations.

COLW asserts the County may not approve a land use permit for the subject property due to evidence of a land use violation, consisting of an unpermitted short term rental in a resource zone. The Board of County Commissioners ("Board") provided guidance on how to interpret DCC 22.20.015 in the decision for land use files 247-17-000775-ZC, 247-17-000776-PA. This Board interpretation differentiates between 'adjudicated violations,' and allegations raised during a land use application process. Adjudicated violations are those that have been conclusively determined through a prior land use decision or through a code complaint pursuant to the County's adopted Code Enforcement Policy and Procedures Manual.

The alleged land use violation on the subject property is an un-adjudicated violation. Based on the Board's interpretation in files 247-17-000775-ZC, 247-17-000776-PA, a determination on unadjudicated violations should only be made in instances when there is enough time for a sufficient investigation, and the current land use application is the appropriate forum to address the violation. A code complaint and subsequent investigation is the customary forum for determining whether there is a violation on a property, and staff notes that no code complaint has been filed for the subject property. For these reasons, staff's opinion was that the current land use application was not the appropriate forum, and nor did it afford sufficient time to conduct an investigation and make a
Page 2 of 2 *conclusive determination on whether the subject property was in violation of applicable land use regulations. (Hearings Officer Note: attachments included in Staff's submission not included in the quoted statements above)*

The Hearings Officer reviewed the July 27, 2023 attachment (Board of Commissioners decision on land use file no. 247-17-00075ZC, 247-17-000776-PA). The Hearings Officer finds the analysis by Staff in the July 27, 2027 submission quoted above is consistent with the referenced Board of Commissioners decision. The Hearings Officer concurs with Staff's analysis and conclusions stated in the July 27, 2023 submission. The Hearings Officer finds that the application that is subject to this decision is not the proper forum, does not afford sufficient time to conduct an investigation, and make a conclusive determination whether the Subject Property was or is in violation of applicable County land use regulations. The Hearings Officer shall not consider any alleged code violations related to the Subject Property in this decision.

3. Location of Forest Service Leases

COLW (Isbell, July 25, 2023, page 2) argued that DCC 18.16.037(A) requires the Applicant to identify the location of United States Forest Service leases used by Applicant to seasonally graze cattle. COLW described this argument as follows:

"DCC 18.16.037(a) allows a guest ranch that "shall not be located within the boundaries of or surrounded by" four classes of federal land described in DCC 18.16.037(a)(1)-(4). The decision quotes the application which states "[t]he ranch cattle are rotated to several Forest Service leases between April and October[.]" Decision at 17. The decision does not identify where those Forest Service leases are located and thus it is unclear whether the criteria at DCC 18.16.037(a)(1)-(4) are satisfied."

Applicant responded (Fancher, August 15, 2023, 2T Sustainable's Final Argument and Objection to COLW Rebuttal, page 1) to COLW's Forest Service argument as follows:

"None of the lands leased by 2T Sustainable are within the boundaries of or surrounded by:

- (a) A federally designated wilderness area or a wilderness study area;*
- (b) A federally designated wildlife refuge;*
- (c) A federally designated area of critical environmental concern; or*

(d) An area established by an Act of Congress for the protection of scenic or ecological resources.

This statement is based on 2T's understanding of the status of the lands they lease confirmed by a review of publicly available listings of the areas identified above including, but not limited to Attachments A and B."

The Hearings Officer finds that COLW did not provide any meaningful legal analysis or argument demonstrating that the Hearings Officer is required to consider "leased lands" utilized by Applicant. While a plausible argument could be made that a "livestock operation," as described in DCC 18.16.037 (A), must include "leased lands" the Hearings Officer finds that COLW did not provide the Hearings Officer with sufficiently specific legal support for such argument.

The Hearings Officer finds, based upon the evidence in the record that the Subject Property, where the "guest ranch" facility will be located, is not within the four areas described in DCC 18.16.037(A).

4. Person Conducting Farm Operation

COLW asserted that the Staff Decision failed to adequately address DCC 18.128.360(B)(2). COLW's argument is set forth below:

"DCC 18.128.360(B)(2) requires that "the guest ranch shall be located on a lawfully established unit of land that" "[c]ontains the dwelling of the person conducting the livestock operation[.]" The decision errs by failing to identify the person conducting the livestock operation. Decision at 60. Without knowing who that person is, it is impossible to find that the person lives in a dwelling on the same unit of land where the proposed guest ranch will be located.

The decision finds that "[t]he submitted site plan indicates the existing dwelling for the farm/ranch manager is located to the southwest of the proposed guest ranch." Id. It is unclear whether this dwelling is even currently on the same lawfully established unit of land as the proposed guest ranch.

Adding to the confusion, the decision describes the site plan as indicating the "existing dwelling for the farm/ranch manager." The "farm/ranch manager" is not necessarily the person "conducting the livestock operation" as described in DCC 18.128.360(B)(2).

Without clarity in the decision on these issues of who is the person conducting the livestock operation and where that person's dwelling is located, the decision fails to find whether, and to what extent, the requisite "livestock operation" occurs on the subject property. The code and statute require a particular 160-acre unit of land, outside certain federal land designations, to be the site of a ranch or livestock operation, where the person conducting the livestock operation lives. ORS 215.461 (3), (5)."

Applicant responded (Fancher, Applicant's Initial Response To COLW's Listed Issues, July 24, 2023, page 6) to the COLW DCC 18.128.360 (B)(2) argument as follows:

2T's ranch manager resides in the 1910 farm dwelling that is located on the subject property. The manager is "the person conducting the livestock operation." A finding to that effect satisfies the

requirements of DCC 18.128.360(B)(2). As the ranch manager is a person hired by the property owner to conduct the livestock operation and employees may quit their job and be replaced by a new ranch manager who will live in the same residence, naming the current ranch manager only creates the possibility of confusion in enforcement of permit conditions. Regardless of who is the ranch manager now, when the ranch manager changes the new ranch manager must reside in a residence on the subject property.

Applicant provided further evidentiary and/or legal analysis in 2T Sustainable’s Rebuttal Evidence (Fancher, August 8, 2023, pages 1 & 2) and 2T Sustainable’s Final Argument and Objection to COLW Rebuttal (Fancher, August 15, 2023, pages 22 & 23).

The Hearings Officer finds the Applicant’s above-quoted statement and the additional evidence contained in 2T Sustainable’s Rebuttal Evidence and Final Argument to be credible and persuasive. The Hearings Officer adopts the 2T Sustainable’s Final Argument Objection to COLW Rebuttal (pages 22 & 23) related to the “Dwelling Of The Person Conducting The Livestock Operation” as additional findings for this issue. The Hearings Officer finds that a “ranch manager” will reside on the Subject Property.

5. Food Service

Appellant COLW argued that the Staff Decision was in error because the Applicant’s proposed guest ranch does not include food services. Specifically, COLW (Isbell, July 25, 2023, page 2; also see page 7), stated the following:

“Provision of food service for guests of the guest ranch is part of the definition of “guest ranch,” which is “a facility for overnight guest lodging units, including passive recreational activities and food services[.]” DCC 18.16.037(b) (emphasis added). The decision errs in approving a guest ranch that does not provide food services. Decision at 19-20. More practically, where will guests of the guest ranch eat? If food services will be provided, they “shall be incidental to the operation of the guest ranch and shall be provided only for the guests of the guest ranch, individuals accompanying the guests, and individuals attending a special event at the guest ranch.” DCC 18.128.360(E). Further, “[t]he sale of individual meals to persons who are not guests of the guest ranch, an individual accompanying a guest, or an individual attending a special event at the guest ranch shall not be allowed.” DCC 18.128.360(E)(2). See the discussion of DCC 18.128.360(E) in section IV(d) below.”

The Hearings Officer characterizes Appellant’s food service argument set forth in the quoted section above as contending that food service is **required** if an application for a guest ranch application is to be approved. Applicant (Fancher 8, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, page 20) responded to Appellant’s DCC 18.26.037(b) food service argument as follows:

“In relevant part, DCC 18.16.037(B) says that a guest ranch is ‘a facility for overnight guest lodging units, including passive recreational activities and food services, as set forth in ORS 215...’ [emphasis added]. ORS Chapter 215 makes it clear that food services are optional. ORS 215.461 (b), in relevant part, defines a ‘Guest ranch’ as ‘a facility for guest lodging units, passive recreational activities described in subsection (6) of this section and food services described in subsection (7) of this section ...’ ORS 215.461(7) makes it clear that food service is optional using the words ‘may’ and ‘if any’ as follows:

'(7) A guest ranch may provide food services only for guests of the guest ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch. The cost of meals, if any, may be included in the fee to visit or stay at the guest ranch. A guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.' [emphasis added by Applicant]."

The Hearings Officer agrees with Applicant's response quoted immediately above. The Hearings Officer finds that ORS 215.461(1)(b) and DCC 18.16.037(B) describe the scope or limits of what may be part of a guest ranch. The Hearings Officer agrees with COLW that a guest ranch may include food services (with limitations). The Hearings Officer also finds that a guest ranch may include passive recreational activities.

The Hearings Officer finds that ORS 215.461 and DCC 18.16.037(A) use the same language to define guest ranch. The Hearings Officer finds that ORS 215.461(6) states that passive recreational uses **may** be part of a guest ranch. ORS 215.461(7) states that "a guest ranch may provide food services..." Similar language can be found in DCC 18.128.360(D) and (E). The use of the word "may" is interpreted to mean "permissive." The Hearings Officer finds that ORS 215.461 and DCC 18.16.037 "permit" or "allow" food services and/or passive recreational activities but do not "require" food services and/or passive recreational activities to be part of a guest ranch approval.

The Hearings Officer finds that the Deschutes County Board of Commissioners, had it intended food service and/or recreational activities to be **required** to approve a "Guest Ranch" application, could have easily included such mandatory language. The Hearings Officer finds that Appellant's DCC 18.16.037(B) argument is not persuasive. The Hearings Officer finds that food service is a permissive, not a required use under DCC 18.16.037(B).

6. Definition of Guest Lodging Unit

The Hearings Officer incorporates as additional findings for this section the Preliminary Findings section II.A.5 (Food Services).

COLW raised an issue related to the definition of Guest Lodging Units. COLW (Isbell, July 25, 2023, pages 4 & 5) stated the following:

"DCC 18.16.037(c) defines a "guest lodging unit" as "a guest room in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for permanent residence accommodations." The decision here errs in approving ten "cabins," 1,200 square feet each, decision at 3, but without finding how many "guest lodging units" are within each cabin. If these "cabins" include more than ten rooms used for transient overnight lodging, then the decision will violate the DCC 18.128.360(A)(1) limitation of "not less than four nor more than 10 overnight guest lodging units[.]"

COLW provided additional discussion of the definition of guest lodging unit issue ("Guest Lodging Unit Issue") in its DCC 18.128.360(A) section of its July 25, 2023 submission (pages 5 & 6) and in its July 31, 2023 submission (page 1). COLW stated that "*lodging units at a guest ranch may be 'used only for transient overnight lodging' and not for 'cooking by guests' as proposed by the applicant here.*"

Applicant addressed the COLW Guest Lodging Unit issue in its July 24, 2023 (Applicant’s Initial Response to COLW’s Listed Appeal Issues, page 6) and August 15, 2023 (2T Sustainable’s Final Argument and Objection to COLW Rebuttal, page 20 & 21) open-record submissions. The Hearings Officer includes the following comments by Applicant as representative of its Guest Lodging Unit Issue argument:

“The guest lodging unit in this case is the guest room in each of the cabins. All guest rooms will be used only for transient overnight lodging. None will be used as a permanent residence. The definition of a guest lodging unit clearly allows cabins and cottages. Cabins and cottages typically include kitchens or kitchenettes for use by transient guests. The transient overnight lodging requirement is a restriction on the duration of use of the cottages; not a prohibition against cooking by ranch guests. Compliance with this rule has been achieved by the County’s imposition of a condition of approval limiting guest occupancy of the cabins to thirty days. We recommend that this restriction be clarified to state that the occupancy is limited to thirty days in any calendar year.”

The Hearings Officer concurs with Applicant’s Guest Lodging Unit arguments set forth above and also in its other above-referenced open-record submissions. The Hearings Officer agrees with Applicant that guest lodging units, as described in DCC 18.16.037(C), are not required to be located in a single building. The Hearings Officer finds DCC 18.16.037(C) clearly includes guest rooms in a lodge, bunkhouse, cottage or cabin. Therefore, the Hearings Officer finds that guest lodging units may be in a single building such as a lodge or bunkhouse. However, by including “cottages” and “cabins” the Hearings Officer finds that Guest Lodging Units may be located in separate, free standing and/or individual buildings.

The Applicant is proposing ten “cabins.” Cabin is defined (Dictionary.com) as a “small house or cottage, usually of simple design.” The Hearings Officer finds that a “cabin” necessarily includes a sleeping area, a bathroom and possibly a food preparation/processing area (I.e., small kitchen or kitchenette). The Hearings Officer interprets “guest room in a lodge, bunkhouse, cottage or cabin” includes sleeping, bathing and possibly other associated rooms that are frequently found in a transient overnight lodging unit. As noted by the Applicant, even a simple hotel room has a bathroom and that bathroom is included within that transient overnight lodging unit.

The Hearings Officer finds that COLW’s blanket conclusion that DCC 18.16.037 (C) does not allow “cooking by guests” is simply not supported by a plain reading of the text of DCC 18.16.037(C). DCC 18.16.037(C) does not contain any reference to “cooking by guests.” Further, the Hearings Officer finds that the language contained in ORS 215.461 is consistent with DCC 18.16.037 (C) and supports the Hearings Officer’s interpretation set forth above.

7. Farm Impact Test

COLW argued that the Staff Decision failed to adequately address the “farm impacts test” as required by ORS 215.296 and DCC 18.16.040. COLW summarized (Isbell, July 25, 2023, page 8) the “Farm Impact Test issue” as follows:

“The setting of the subject property in the Lower Bridge valley is one of the most productive agricultural communities in the region. The decision fails to describe with adequate specificity the actual farm uses occurring on nearby properties, which results in a failure to satisfy the “farm impacts test” at ORS 215.296 and DCC 18.16.040. The farm impacts test applies on a farm-by-farm and farm-practice-by-farm-practice basis. Stop the Dump Coalition v. Yamhill County, 364 Or 432, 435 P3d 698 (2019).

The decision quotes language from the application about providing buffers and makes assumptions about the types of impacts the proposed guest ranch might have on neighboring properties. Decision at 21-22. It also acknowledges that “the additional vehicle traffic generated by the proposed guest ranch will generate noise and be visible from surrounding properties” and finds that “the increased vehicle traffic will not prevent or otherwise significantly impact nearby farm practices[.]” Id.

Without more detailed information about the farms and farm practices in the area that the proposed commercial activities could impact, there is no evidence to substantiate this finding, and it is impossible to determine the significance of the proposed guest ranch’s impacts on those farm practices on surrounding lands. Those impacts are likely to include increased traffic on area roads and increased human presence that would conflict with the odors, dust, chemicals, and noise of accepted farm practices occurring in the area.”

The Hearings Officer takes note of Staff’s findings in the Staff Decision (pages 21 & 22) and Applicant’s Final Argument (Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 16 & 17, See also Fancher, July 24, 2023, Applicant’s Initial Response to COLW’s Listed Appeal Issues, page 6). The Hearings Officer finds it unnecessary to repeat the Staff and Applicant comments again in this decision. The Hearings Officer finds Staff’s “farm impact test” discussion is thorough and correct. The Hearings Officer finds Applicant, prior to the Staff Decision (Burden of Proof, see quoted section in Staff Decision page 21), provided sufficient credible evidence to satisfy the “Farm Impact Test.” Further, the Hearings Officer finds that Applicant, in its final argument (Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 16 & 17) provided a summary of the evidence in the record related to the Farm Impact Test Issue. The Hearings Officer incorporates the Applicant’s final argument (pages 16 & 17) as additional findings for this Farm Impact Test Issue. The Hearings Officer finds substantial credible evidence in the record that the Staff Decision findings related to DCC 18.16.040 are correct.

8. Tract

COLW (Isbell, July 25, 2023, page 7) submitted the following comments related what the Hearings Officer refers to as the “Tract Issue.” The Hearings Officer notes that COLW’s Tract Issue is intertwined with its “High Value Farmland Issue.” The Hearings Officer addresses the Tract Issue in this section of findings and the High Value Farmland Issue in subsequent findings. COLW’s July 25, 2023 Tract Issue comments follow:

“DCC 18.128.360(B)(3) requires that a guest ranch ‘be located on a lawfully established unit of land that’ [i]s not classified as high value farmland as defined in DCC 18.04.030.

'High-value farmland' is defined as 'land in a tract composed predominantly of the following soils when they are irrigated' and includes 'Deschutes sandy loam (31A, 31B and 32A)[.]'

The decision acknowledges that the subject property includes Class 31B Deschutes sandy loam soils, which are 'high-value farmland' under DCC 18.04.030. Decision at 60. It is unclear what boundaries are being used to identify the 'lawfully established unit of land' for purposes of DCC 18.128.360(B)(3). Further, to determine whether this criterion is met, the decision must determine the bounds of the 'tract' at issue and as used in DCC 18.04.030.

'Tract' is defined at DCC 18.04.030: 'Tract' as used in DCC 18.16, 18.36 and 18.40, means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.'

'Owner' is also defined in DCC 18.04.030: 'Owner' means the owner of real property or the authorized agent thereof or the contract purchaser of real property of record as shown on the last available complete tax assessment roll or County Recorder's records.'

The 'tract' at issue likely includes adjacent property owned by the applicant, including the property at 71290 Holmes Road, and that adjacent property is likely 'high-value farmland' under DCC 18.04.030 because it grows 'specified perennials.' The County interpreted the meaning of "tract" in file no. 247-18-000381-AD, finding that "ownership" as used in the definition of "tract" is not determined simply by identifying the record owner, but rather includes other entities affiliated with the record owner. Exhibit 3 at pages 6-9 (Hearings Officer decision in file no. 247-18-000381-AD). The decision errs in not considering the bounds of "tract" at issue to determine whether the subject property is 'high-value farmland' under DCC 18.128.360(B)(3)."

COLW (Isbell, July 31, 2023, pages 2-4) expanded upon its "Tract Issue" argument in the following comments:

"The subject property is part of a larger 'tract,' as defined at DCC 18.16.030, that extends beyond the bounds of the tax lots on the subject property and includes other properties under the same ownership. 'Tract' is defined at DCC 18.04.030:

... [omitted definition]

... [omitted definition]

Further, a 'farm or ranch operation' is defined at OAR 660-033-0135(8)(b) as 'all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.' The Hearings Officer in file no. 247-18-000381-AD (Exhibit 3 in LandWatch's July 25, 2023 submittal) found this definition of "farm or ranch operation" relevant to interpreting the definition of 'ownership' and 'tract' in DCC 18.04.030, finding that 'ownership' is not determined simply by identifying the record owner. If that were the case, then a farm operator could convey separate lots to different trusts or business entities[.]' Decision in file no. 247-18-000381-AD at page 8.

A 'member' of a limited liability company is defined as 'a person with both an ownership interest in a limited liability company and all the rights and obligations of a member specified under this

chapter.’ ORS 63.001(21)(a). ‘The persons who own an LLC are its ‘members.’ Cortez v. Nacco Material Handling Group, Inc., 356 Or 254, 257 (2014).

In the context of dwelling applications under ORS 215.705, LUBA has differentiated between trusts and business entities when discussing ownerships of EFU property, finding that a trust and its trustees may not be the same ‘owner’ under the definition of ‘tract’ at ORS 215.010 in the same way that a “business entity” and its members are the same ‘owner.’ Central Oregon Landwatch v. Deschutes County, 81 Or LUBA 75, 83 (2020). In other words, a trust and trustee owning adjacent properties may not create a ‘tract,’ but two business entities with the same member do.

Here, as discussed below, the same ‘farm or ranch operator,’ OAR 660-033-0135(8)(b), is the same member and the same “owner” of the business entities that own adjacent properties, creating a ‘tract.’

The owner of the subject property is 2T Sustainable Land and Cattle Holdings LLC (“2T Sustainable”). In its business registration with the Oregon Secretary of State, 2T Sustainable lists as a member Ashanti Samuels Enterprises LLC. Exhibit 1. In its business registration with the Oregon Secretary of State, Ashanti Samuels Enterprises LLC lists as a member Sarah Lawrence. Exhibit 2. The owner of the property immediately adjacent to the south of the subject property, with address 71290 Holmes Rd and taxlot number 1412070000600, is Lawrence Farm, LLC. In its business registration with the Oregon Secretary of State, Lawrence Farm, LLC lists as a member Sarah Lawrence. Exhibit 3. Thus, a common ‘member’ among all three of these LLCs, which means an owner under ORS 63.001(21)(a), is Sarah Lawrence. They have an ownership interest in the subject property as a member of Ashanti Samuels Enterprises LLC and as a member of Lawrence Farm, LLC. The two properties are in the same ownership and are part of the same ‘tract.’ DCC 18.04.030.

Further support for the conclusion that the subject property is part of a tract is found in condition of approval L in file no. 247-21-000268-CU (Exhibit 1 in LandWatch’s July 25, 2023 submittal), which for purposes of that decision’s conditions to ensure that nonfarm uses would remain incidental and subordinate to farm uses, describes “farm products grown and livestock raised by Rainshadow Organics, LLC, or an affiliated entity. Affiliated entities are those in which Sarahlee Lawrence, Ashanti Samuels, Chris Lawrence or David Lawrence are actively involved as members or officers. These affiliated entities are currently Lawrence Farm, LLC and 2T Sustainable Land & Cattle Holdings, LLC (including its member Ashanti Samuels Enterprises, LLC).” (emphasis added by COLW)

The applicant’s website discusses its livestock operation as being ‘vertically integrated’ with Rainshadow Organics, LLC as part of the same farm operation. Exhibit 5 (Pitchfork T website at page 2).

That the subject property is part of a tract with other properties is relevant to two criteria applicable to the current application: whether the tract is high-value farmland under DCC 18.128.360(B)(3), and the “incidental and accessory” element of the definition of a ‘guest ranch’ at DCC 18.16.037(B).”

Applicant responded to the COLW arguments in a number of its open-record submissions (Fancher, August 1, 2023, 2T Sustainable's Post Hearing Evidence, pages 2-5, Fancher, August 8, 2023, 2T Sustainable's Rebuttal Evidence, page 3 [attached copy of *Central Oregon LandWatch v. Deschutes County*, LUBA No. 2019-105 (2020)], Fancher, August 15, 2023, 2T Sustainable's Final Argument and Objection to COLW Rebuttal, pages 7-9). Applicant, in its final argument (Fancher, August 15, 2023, 2T Sustainable's Final Argument and Objection to COLW Rebuttal, pages 7-9) stated the following:

“COLW Argument:

Property owned by Lawrence Farm, LLC and 2T Sustainable are a tract because Sarahlee Lawrence is a member of Lawrence Farm, LLC and a member of an LLC that is a member of 2T Sustainable.

Response: *The Lawrence Farm LLC property and the 2T Sustainable property are not a tract. Each has different owners – Lawrence Farm LLC and 2T Sustainable. While Sarahlee Lawrence is a member of Lawrence Farm, LLC and a member of an LLC that is a member of the 2T Sustainable LLC, she is not an owner of either property. According to ORS 63.239:*

‘A membership interest is personal property. A member is not a co-owner of and has no interest in specific limited liability company property.’

Consequently, it cannot be found that the Lawrence Farm LLC property and the 2T Sustainable properties are in the same ownership and, therefore, they are not a ‘tract.’

The applicable definition of a ‘tract’ is provided by ORS 215.010(2) which defines the terms for purposes of ORS Chapter 215, including ORS 215. 461 and 215. 462, the State’s guest ranch law that has also been adopted by the Deschutes County Code. ORS 215.461(3)(c) and the County code prohibit the siting of guest ranches on high-value farmland as defined by ORS 215.270. [footnote 4: DCC 18.04.030, High-value farmland lists the soil mapping units in Deschutes County that, when they are irrigated and the predominant soil type, meet the ORS 215.710 definition of ‘high-value farmland.’] A ‘tract’ is:

‘One or more contiguous lots or parcels in the same ownership.’

DCC 18.04.030 defines ‘tract’ in the same way.

COLW repeats the same argument it lost in Central Oregon LandWatch v. Deschutes County (Vargas Trust), 81 Or LUBA 75 (2020)(hereinafter ‘Vargas Trust’) [footnote 5 – In Vargas Trust, LUBA held that parcels owned by an individual and controlled by the same person as trustee of a trust are not ‘under the same ownership’ and, therefore, are not a ‘tract’ as defined by ORS 215.010(2) or the County code] – the argument that the term ‘in the same ownership’ used to define a ‘tract’ is defined by DCC 18.04.030, ‘Owner.’ LUBA determined in Vargas Trust, that DCC 18.04.030, ‘Owner’ is ‘not relevant to determining the meaning of the phrase ‘under the same ownership.’ The term, therefore, is not relevant in determining whether the subject property and Lawrence Farms, LLC properties are a ‘tract.’

LUBA made it clear in *Vargas Trust* that the issue whether properties are a tract is determined by whether they are “in the same ownership” and that this means identical ownership. It cited *Friends of Linn County v. Linn County*, 37 Or LUBA 280, 288 (1999) (‘Friends of Linn County’) which holds that adjoining parcels are not under the same ownership where one person owns one parcel individually and owns the other jointly with a former spouse. Thus, even where two adjoining parcels of land are owned by the same person, if one is jointly owned with another person, the two parcels are not in the same ownership for purposes of the tract rule. In the current case, all parcels that COLW argues are a part of a tract are owned by separate LLCs – each separate legal entities and not the same owner.

Furthermore, even if COLW’s argument that a member of an LLC is an owner of land owned by the LLC, which ORS 63.239 say they are not, records of the Corporation Division of the Oregon Secretary of State records show that Lawrence Farm LLC’s members are different than the members of 2T Sustainable. Lawrence Farm LLC’s members are David Lawrence, Christine Lawrence and Sarahlee Lawrence. The members of 2T Sustainable are Ashanti Samuels Enterprises LLC and RH Land Company LLC.

The only fact COLW claims supports its argument that parcels owned by Lawrence Farm LLC and 2T Sustainable are ‘in the same ownership’ is that Sarahlee Lawrence is a member of Ashanti Samuels LLC with her husband, Ashanti Samuels. Under the holding of LUBA’s *Friends of Linn County* case, however, even if the Sarahlee Lawrence as a member of two of the LLCs was a co-owner of each of the two adjoining parcels, the parcels would not be ‘in the same ownership’ and, therefore, would not be a part of a ‘tract.’

COLW Argument:

The County interpreted the meaning of “tract” in file no. 247-18-000381-AD to include entities affiliated with the record owner. COLW letter, July 25, 2023, p. 7.

Response: COLW presented this argument and filed a copy of the decision made in file no. 247- 18-000381-AD (‘Singhouse’) in its July 25, 2023 letter without disclosing that it made and lost the same tract argument at LUBA in *Central Oregon LandWatch v. Deschutes County (Vargas Trust)*, ___ Or LUBA ___ (2020) (hereinafter ‘Vargas Trust’) after the Singhouse decision was issued. Instead, it filed the hearings officer’s Singhouse decision that conflicts with LUBA’s ruling in *Vargas Trust*. LUBA’s resolution of this issue is controlling. LUBA’s determination that land owned by a trust is not a part of a tract with adjoining land owned by its trustees is the controlling law on this topic.

COLW Argument:

LUBA’s decision in ‘Vargas Trust’ means that adjacent properties owned by ‘two business entities with the same member’ create a ‘tract.’ COLW letter, July 31, 2023, p. 3.

Response: LUBA said nothing of the sort. Instead, LUBA said that COLW had argued that a trustee who held legal title to the trust property is the owner of the trust property because a trust is not a ‘business entity’ – a fact that allowed the trust to obtain approval of a lot of record dwelling based on its connection to a prior owner.

COLW argues that the County should use the definition of a 'farm or ranch operation' provided by OAR 660-033-0135(8)(b) to define a 'tract' and 'high-value farmland.' The term 'farm or ranch operation' is not, however, a part of the defined and controlling definition of the terms 'tract' or 'high-value farmland.' The definition of a 'tract' looks only to whether farm or ranch parcels are 'in the same ownership.' It does not consider whether land is a part of a farm or ranch operation when determining whether or not it is a tract. LUBA's Vargas Trust and Friends of Linn County case law, hold that this issue is determined by looking at the actual ownership of the land. If any owner of land is different, adjoining properties are not in the same ownership.

COLW's reliance on OAR 660-033-0135(8)(b) is also legally erroneous. The definition provided by this OAR, by its own terms, is applicable only to uses regulated by OAR Division 660-033. LCDC does not regulate guest ranches under the provisions of OAR Division 660-033. COLW's reliance on the hearings officer's decision for 247-18-000734-A (Singhouse) which held that land held individually by a husband and wife and land held by their trust were part of a tract is clearly wrong given the fact that LUBA address the same argument in Vargas Trust and ruled against COLW.

Finally, COLW's arguments that that certain entities including 2T Sustainable are affiliated with Rainshadow Organics, LLC does not mean that parcels owned by 2T Sustainable and Lawrence Farm, LLC are in the same ownership. Rainshadow Organics, LLC is not the owner of either property and is not a member of either LLC property owner. The only common thread is that Sarahlee Lawrence is a member in all three entities and that, as a matter of law, does not make her an owner of either of the properties that COLW claims is a 'tract.' ORS 63.239.

The only relevance of the 'tract' argument is that the guest ranch law requires that the guest ranch not be located on a tract of land that is "high-value" farmland. All other provisions of the law are keyed to the subject property, a lawfully established unit of land. Contrary to COLW's assertion, it does not apply to a determination of compliance with the "incidental and accessory" test."

The Hearings Officer characterizes COLW's Tract Issue arguments in the following COLW statements:

- *"DCC 18.128.360(B)(3) requires that a guest ranch 'be located on a lawfully established unit of land that' [i]s not classified as high value farmland as defined in DCC 18.04.030."* [COLW July, 24, 2023, page 6]
- *"'High-value farmland' is defined as 'land in a tract composed predominantly of the following soils when they are irrigated' and includes 'Deschutes sandy loam (31A, 31B and 32A)[.]'"* [COLW July, 24, 2023, page 6]
- *"It is unclear what boundaries are being used to identify the 'lawfully established unit of land' for purposes of DCC 18.128.360(B)(3). Further, to determine whether this criterion is met, the decision must determine the bounds of the 'tract' at issue and as used in DCC 18.04.030."* [COLW July, 24, 2023, pages 6 & 7]
- *"The decision errs in not considering the bounds of "tract" at issue to determine whether the subject property is 'high-value farmland' under DCC 18.128.360(B)(3)."* [COLW July, 24, 2023, page 7]

The Hearings Officer agrees with COLW that DCC 18.128.360(B)(3) requires that a guest ranch be located on a lawfully established unit of land that is not classified as high value farmland as defined in DCC 18.04.030. The Hearings Officer agrees with COLW that high-value farmland' is defined as 'land in a tract...' The Hearings Officer agrees with COLW that the DCC 18.04.030 definitions of "tract" and "owner" are relevant to this case. The Hearings Officer agrees with COLW that the boundaries of the relevant "tract" must be determined to assess whether the High Value Farmland Test can be satisfied. Therefore, the remaining question to be answered is: What are the applicable boundaries of the "tract" in this case?

COLW asserts that additional properties must be included in the "tract" in this case because one or more properties adjacent to the Subject Property have persons or entities involved in the ownership entity that overlap with the ownership entity of the Subject Property. For example, COLW argues that the appropriate boundaries of the "tract" should include a property adjacent property to the Subject Property because the adjacent property is owned by a limited liability company that has a member that is also a member of the Subject Property ownership entity.

The Hearings Officer finds COLW's "ownership" arguments made in this case is similar to arguments COLW made in prior land use application cases. COLW was the petitioner in *Central Oregon LandWatch v. Deschutes County* LUBA No. 2019-105 (2020) (hereafter, referred to as the "Vargas Trust Decision"). In the Vargas Trust Decision LUBA stated the following:

"The hearings officer concluded that (1) Tax Lots 1000 and 1100 are not 'under the same ownership' because Tax Lot 1000 is titled in Duncan's individual name, while Tax Lot 1100 is titled in Duncan's name as successor trustee of the Vargas Family Trust, and (2) therefore Tax Lots 1000 and 11 are not a tract. We agree with the hearings officer's conclusion. Tax Lot 1000 and Tax Lot 11 are not 'under the same ownership' when one tax lot is owned by Duncan individually and the other tax lot is owned by the trust, with Duncan serving as trustee. See Friends of Linn County v. Linn County, 37 Or LUBA 280, 288 (1999) (two parcels not 'under the same ownership' where the applicant owned one parcel individually, and jointly owned the second parcel with ex-wife.)"

The Hearings Officer finds that Applicant's following argument is persuasive (Fancher, August 15, 2023, 2T Sustainable's Final Argument and Objection to COLW Rebuttal, page 8):

"The only fact COLW claims supports its argument that parcels owned by Lawrence Farm LLC and 2T Sustainable are 'in the same ownership' is that Sarahlee Lawrence is a member of Ashanti Samuels LLC with her husband, Ashanti Samuels. Under the holding of LUBA's Friends of Linn County case, however, even if the Sarahlee Lawrence as a member of two of the LLCs was a co-owner of each of the two adjoining parcels, the parcels would not be 'in the same ownership' and, therefore, would not be a part of a 'tract.'"

The Hearings Officer finds (based upon Applicant's final argument, Vargas Trust LUBA Decision and, the *Friends of Linn County* Decision) the fact that ownership entities of the Subject Property and adjacent properties may include common "members" is not determinative of the ownership of a "tract." In the current case the ownership entities (I.e., corporation, trust, LLC, etc.) of the Subject Property and adjacent properties are different; not under the same ownership.

The Hearings Officer, in addition to the findings above, finds that the following documents contain credible and substantial evidence and persuasive legal arguments as related to the Tract Issue:

- Fancher, August 1, 2023, 2T Sustainable's Post Hearing Evidence, pages 2-5; and

- Fancher, August 8, 2023, 2T Sustainable’s Rebuttal Evidence, page 3 [attached copy of *Central Oregon LandWatch v. Deschutes County*, LUBA No. 2019-105 (2020)]; and
- Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 7-9.

The Hearings Officer incorporates the above-referenced Fancher documents as additional findings for the Tract Issue.

In conclusion, the Hearings Officer finds that COLW’s Tract Issue argument is essentially the same argument that COLW made in prior decided cases. The Hearings Officer finds that COLW Tract Issue argument was found not be valid by various hearings officers and LUBA. The Hearings Officer found no new arguments were made by COLW, in this case, that were not previously made and rejected in prior authoritative decisions.

The Hearings Officer finds the Subject Property is **the** “tract” and “lawfully established unit of land” for the purpose of determining, in this case, if the requirements of DCC 18.128.360(B)(3) are met/satisfied.

9. High Value Farmland

The Hearings Officer incorporates the Preliminary Findings section II.A.8 (Tract) as additional findings for this section. The primary argument made by COLW related to High Value Farmland is summarized (by COLW) as follows (Isbell, July 24, 2023, pages 6 & 7):

It is unclear what boundaries are being used to identify the ‘lawfully established unit of land’ for purposes of DCC 18.128.360(B)(3).

COLW argued that the boundaries should include more area than that described as the Subject Property (Isbell, July 24, 2023, page 7 and Isbell, July 31, 2023, pages 2-4). In the findings for the Tract Issue the Hearings Officer determined the relevant and appropriate boundaries when considering DCC 18.128.360(B)(3) are the boundaries of the Subject Property.

Applicant provided the following response to COLW’s High Value Farmland Issue (Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, page 10):

“Attachment A of the applicant’s July 24, 2023 response to COLW appeal identifies the boundaries used to identify the lawfully established unit of land. Attachment A outlines the lawfully established unit of land (the subject property for approval of guest ranch) and shows the following about the soils on the lawfully established unit of land as reported by the NRCS WebSoil Survey:

31 B Deschutes sandy loam, 3 to 8 percent slopes 45% of unit

138B Stukel sandy loam, 3 to 8 percent slopes 4.6% of unit

141C Stukel-Deschutes-Rock outcrop complex, 0 to 15 percent slopes 50.4% of unit

Only the 31B soil complex is high-value when irrigated.”

The Hearings Officer also takes note of the Staff Decision (pages 60 & 61), Fancher, July 24, 2023, Applicant’s Initial Response to COLW’s Listed Appeal Issues (page 2) and Fancher, August 8, 2023, 2T Sustainable’s Rebuttal Evidence (page 3). The Hearings Officer finds the Applicant’s submitted soil

information is credible and represents uncontroverted substantial evidence. The Hearings Officer concurs with Staff’s analysis and conclusions set forth in the Staff Decision (pages 60 & 61) that the Subject Property does not constitute high-value farmland and that DCC 18.128.360 (A)(3) is met/satisfied.

10. Adjacent Land Use Approval

COLW argued that food service is currently approved for an adjacent property and that food service somehow prohibits approval in this case. COLW stated (Isbell, July 25, 2023, pages 7 & 8):

In file no. 247-21-000268-CU, the county approved a permit allowing the applicant to serve meals at its adjacent property across the street. Because that property serves meals to people who are not guests of a guest ranch, DCC 18.128.360(E)(2) prohibits the serving of meals on that property to guests of a guest ranch. If the adjacent property will serve meals to guests of a guest ranch, then DCC 18.128.360(E)(2) prohibits that property from serving meals to non-guests of a guest ranch. We again note that the County may not amend the existing permit decision in file no. 247-21-000268-CU without complying with the procedural requirements for permit applications at ORS 215.416.

The Hearings Officer incorporates the findings for the Preliminary Findings section II.A.8 (Tract) and II.A.9 (High Value Farmland) as additional findings for this “Adjacent Land Use Approval” section.

The Hearings Officer rejects COLW’s “Adjacent Land Use Approval” argument on two grounds. First, the Hearings Officer finds there is no credible and persuasive evidence in the record that allows the Hearings Officer to conclude the Applicant in this case is the “applicant” for the application for food service on the adjacent parcel.¹ Second, the Hearings Officer finds that COLW is suggesting that the Hearings Officer should consider and possibly modify an existing land use approval on a property situated adjacent to the Subject Property. The Hearings Officer finds no credible evidence or argument in the record of this case supporting the proposition that the Hearings Officer has any authority to reconsider and/or modify an existing land use approval on a property not included in the description of the Subject Property. Restated, the Hearings Officer does not have the authority to reconsider or modify a prior land use approval that does not include property covered by a current application.

In the alternative, the Hearings Officer finds COLW failed to present, with sufficient specificity, its “Adjacent Land Use Approval” argument.

11. Incidental and Accessory

COLW argued that the Staff Decision erred in concluding that the proposed guest ranch met the “incidental and accessory” requirements of DCC 18.16.037(B). COLW’s argument is summarized below (Isbell, July 25, 2023, page 3):

¹ COLW, in the July 25, 2023 submission (page 7), used the following language “...approved a permit allowing the **applicant** to serve meals at its adjacent property across the street.” (bolding added by the Hearings Officer for emphasis). The Hearings Officer draws the logical inference from this language that COLW’s reference to “applicant” in the July 25, 2023 submission (page 7 and quoted above) is intended to mean the Applicant in this case.

“The decision errs in finding that the guest ranch will be “incidental and accessory” by virtue of the land area it will occupy compared to the subject property as a whole. Decision at 19. These findings are inadequate because they do not analyze the relative “nature, intensity, and economic value” of the farm use and proposed commercial use (guest ranch). Friends of Yamhill County. v. Yamhill County, 301 Or App 726, 735 (2020). In Friends of Yamhill County, the Court of Appeals analyzed the similar language “incidental and subordinate” in the context of another nonfarm use (agritourism) compared to farm use of a property:

‘[T]he phrase ‘incidental and subordinate to’ means more than that the accessory use occurs less frequently than the primary use. Although frequency is one factor in comparing the main and accessory uses, the related concepts of ‘incidental’ and ‘subordinate’ reflect a conclusion about predominant use in light of many relevant factors, including the nature, intensity, and economic value of the respective uses.’ Id.

‘The inquiry involves a consideration of any relevant circumstances, including the nature, intensity, and economic value of the respective uses, that bear on whether the existing commercial farm use remains the predominant use of the tract.’ Id. at 739.

The same analysis must occur here, but the decision does not attempt to compare the nature, intensity, or economic value of the respective uses.”

The Hearings Officer finds that COLW’s above stated “Incidental and Accessory” argument is essentially a substantial evidence argument. Restated, the Hearings Officer finds that COLW’s “Incidental and Accessory” argument is that the Staff Decision did not contain sufficient evidence relating to the “nature, intensity, or economic value of the respective uses” to allow Staff to conclude the “Incidental and Accessory” test had been met.

The Hearings Officer reviewed the Staff Decision (pages 16-20) carefully and finds that Staff did undertake a meaningful review and analysis of the nature, intensity, and economic value of the livestock/hay operation at the Subject Property in relation to the proposed Guest Ranch use. The Applicant supplemented Staff’s incidental and accessory evidence and analysis (Fancher, July 24, 2023, Applicant’s Initial Response to COLW’s Listed Appeal Issues, pages 2-5, Fancher, August 1, 2023, 2T Sustainable’s Post-Hearing Evidence, pages 1 & 2, Fancher, August 8, 2023, 2T Sustainable’s Rebuttal Evidence, pages 1 -3, Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 12-16).

The Hearings Officer agrees with Staff, Applicant and Appellant that DCC 18.16.037(B) requires that to approve a guest ranch application the proposed guest ranch use must be “incidental and accessory to an existing livestock operation that qualifies as a farm use under DCC 18.04.030.” The Hearings Officer finds there is substantial evidence in the record that the Subject Property is currently operated as livestock operation and is a farm use under DCC 18.04.030. The Hearings Officer finds that the application in this case proposes to continue the livestock operation on the Subject Property.

The Hearings Officer finds that DCC 18.16.037(B) incorporates the ORS 215 definition of Guest Ranch and finds that it is appropriate to consider state level land use decisions to interpret the phrase “incidental and accessory.” As noted by Applicant and Appellant the Oregon Court of Appeals decision

in *Friends of Yamhill County v. Yamhill County*, 301 Or App 726 (2020) interpreted the phrase “incidental and subordinate.” The Hearings Officer finds the *Friends of Yamhill County* “incidental and subordinate” analysis is relevant to this decision. The Hearings Officer finds the quoted (Appellant argument above) holding in the *Friends of Yamhill County* is a reasonable and appropriate outline of the analysis needed to be conducted in a DCC 18.16.037(B) “incidental and accessory” inquiry. The Hearings Officer finds that to determine if the DCC 18.16.037(B) “incidental and accessory” test is met the Hearings Officer must consider the nature, intensity, and economic value of the operation of the Subject Property as a farm use (livestock operation) in relation to the proposed guest ranch use.

Applicant provided evidence (Fancher, July 24, 2023, Applicant’s Response to COLW’s Listed Appeal Issues, pages 2 – 4) related to how the Subject Property is currently used, is proposed to be used in relation to the proposed Guest Ranch. In that document the Applicant stated the following:

“The applicant agrees that the ranching and guest uses should be compared but notes that the appealed decision contained comparative findings. While economic value may be considered, it is not controlling. For instance, a home occupation use is a residence used as a dwelling and as a place of employment. In that case, the residence is the primary use and limits are placed on the business to insure it is incidental to the residential use of the property – typically by imposing limits on the size of the area of the home occupied, vehicle trips generated and types of businesses conducted. The business provides a significant financial benefit to the property owner but the residential use imposes living expenses only – no income. Furthermore, if a rancher derives the vast majority of his or her income from day trading stocks, the primary use of the ranch property remains a ranch.

The nature of the cattle ranch is a high-intensity farm use that occupies a large part of the subject property and requires a great deal of labor to assure success and the guest ranch use is significantly less extensive and intensive. The cattle ranching operation occupies the vast majority of the 186.26-acre subject property and the use of the land by cattle and to grow hay is an intensive use of the land. Only a small, non-irrigated corner of the property will be occupied by guest ranch lodging facilities and an existing building will be used as the guest lodge.

The cattle ranch use is far more intensive than the guest ranch use. The ranch runs 200 mother cows and 20 bulls to produce 200 calves per year (420 head of cattle in a calendar year). It keeps cattle until they reach butcher weight at just under 2 years old and sell 100% direct as local beef. It sells approximately 80,000 pounds of beef per year. Income from these sales is currently approximately \$560,000. The ranch stables working horses on the property year-round because it does cattle work on horseback. The impact of guest use of the subject property will be far less than that of ranching operations. The applicant estimates that the lodging facilities will gross approximately \$219,000 to \$292,000 in annual income. This number – necessarily – is speculative because the use has not yet been established.

The entire 2T Sustainable cattle herd is kept on the subject property from October thru April. A part of the herd remains at the ranch year-round either on grass before butchering, for sorted or rotational grazing or whatever other purpose is needed. The bulk of the herd is grazed on public land allotments around Alder Springs and the White River Unit on Mount Hood between April and

October. (footnote 2: Ranch cattle have also grazed on privately-owned range land and this use may occur again in the future.) In *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002), LUBA found that livestock rotation off the guest ranch property is permissible. In fact, it is an accepted farm practice for cattle operations. The number of guest visits will also fluctuate over the course of the year based on seasonal demand.

A hay crop is grown on the subject property during the growing season. The hay fields, once harvested, are used as pasture until a new crop is planted the following year. The hay crop is used to feed ranch cattle during the winter months.

Approximately 133.5 acres of the subject property are irrigated crop and pasture lands. These lands must be irrigated regularly during the growing season. They also must be tilled, fenced and fertilized to grow hay. The irrigation system includes 12 pressurized irrigation wheel lines. The system must be monitored, maintained and repaired to ensure proper operation.

The cattle ranch use occurs outdoors and indoors. Ranch buildings include the ranch house, a hay barn/cover, a sizable equipment shed and a barn with shop and cattle working facilities. The ranch owns and stores numerous large trucks and farm equipment on the property, including trucks used to move cattle to and from off-site grazing allotments and leased rangeland and to market.

Ranch fencing (perimeter and cross) must be maintained. The ranch is currently replacing existing cross fencing with invisible fencing which is more effective and wildlife friendly. This fencing requires that ranch cattle be collared.

Cattle ranching places a heavy demand on the land. Cattle and horses compact the soils and cause erosion unless soils are properly managed. Cattle and horses also generate a high volume of waste that must be managed. Cattle must be provided with periodic veterinary care. All cattle – particularly newborns – require protection from predators.

The ranch currently employs a full-time, year-round ranch manager to operate the ranch. The ranch manager resides on the subject property in a 1910 farm house. The ranch also employs two full-time, year-round ranchers and one full-time seasonal employee. The guest lodge operations staff will be approximately the same size.

Guest ranch guests will not be allowed to bring or keep livestock or other large animals on the subject property. Instead, they will be visiting to learn about and observe ranch life and environmentally-conscious agricultural practices. The existence of the ranch is essential to provide a guest ranch experience for guests.

The cattle operation is financially sustainable and generates net income – a rarity for Deschutes County agricultural operations. Guest ranch lodging, however, is not expected to be profitable in the near term due to the high cost of establishing and operating the use; including but not limited to designing and constructing cabins, remodeling guest facilities, installing a septic system, water system and utilities, establishing a business computer system and obtaining needed governmental approvals. According to Commercial Loan Direct, an on-line lender, commercial loan interest rates range from 5.88% to 18.52%. The applicant believes that a rate of approximately 9% might be

available now to finance construction of the guest ranch but interest rates vary and have been increasing steadily.”

The Hearings Officer finds the above-quoted statements by Applicant constitute credible, uncontradicted and substantial evidence related to the burden of demonstrating the satisfaction of DCC 18.16.037(B). The Hearings Officer also takes note of Applicant’s discussion of nearby/adjacent properties (Fancher, August 1, 2023, 2T Sustainable’s Post Hearing Evidence, page 2). Applicant, in this evidentiary submission, identified three specific properties located nearby the Subject Property. Each of these three properties is a farm or ranch property that includes approved commercial activities. The Hearings Officer interprets these examples as demonstrating that the nearby area has a history of considering specific commercial activities as “incidental and accessory” to the primary farm/ranch related use.

The Hearings Officer finds the primary use of the Subject Property, at all times relevant to this case, is and will be a livestock operation. The livestock operation on the Subject Property consists of raising, breeding, and slaughtering of beef cattle. The Hearings Officer finds that the livestock operation will occupy a large percentage of the Subject Property acreage; the proposed guest ranch will occupy a small percentage of low-value land. The Hearings Officer finds the location and operating characteristics of the proposed guest ranch will not negatively affect or impact the livestock operation. The Hearings Officer finds, based upon representation of the Applicant and not disputed by Appellant with any credible evidence, that the income from the livestock operation will exceed the expected income from the proposed guest ranch. The Hearings Officer finds the livestock operation requires intensive year-round labor efforts.²

The Hearings Officer finds that the Guest Ranch is conceptually tied to the livestock operation. The Hearings Officer finds that but-for the livestock operation the existence of a guest ranch use would not be possible. The Hearings Officer finds that the proposed guest ranch use at the Subject Property will be subordinate and accessory to the livestock operation use. The Hearings Officer finds that the proposed guest ranch use at the Subject Property will be “incidental and accessory” to the primary use (livestock operation) and therefore the evidence in the record supports the Staff Decision that the “incidental and accessory” test in DCC 18.16.037(B) is met.

Appellant (Isbell, July 25, 2023, pages 2 & 3) raised another issue in the context of the DCC 18.16.037(B) “incidental and accessory” test. Appellant described this second DCC 18.16.037 (B) issue as follows:

Additionally, the decision errs in failing to consider how the permit approved in file no. 247-21-000268-CU relates to the current application. In that file, the County approved a conditional use permit for commercial activities in conjunction with farm use on land across the street from the subject property and with affiliated ownership. The decision here errs in not considering whether these properties constitute a tract. See below at section IV(b) discussing DCC 18.128.360(B)(2) and whether the subject property is part of a “tract.” The decision also errs in not considering a

² The livestock operation involves approximately 420 head of cattle in a calendar year, a one full time manager, two full-time ranch hands, one seasonal ranch hand dealing with the physical improvements related to the cattle (I.e., fencing, barns, farm equipment, etc.), the production of hay, and the physical needs of the cattle.

condition of approval from that decision, which specifically refers to the current applicant as an “affiliated entity” and affects the “incidental and accessory” analysis for the current application.

‘L. Income from the sales of meals and any commercial activity beyond processing and selling farm products shall not exceed 40 percent of the gross income from the sales and processing of farm products grown and livestock raised by Rainshadow Organics, LLC, or an affiliated entity. Affiliated entities are those in which Sarahlee Lawrence, Ashanti Samuels, Chris Lawrence or David Lawrence are actively involved as members or officers. These affiliated entities are currently Lawrence Farm, LLC and 2T Sustainable Land & Cattle Holdings, LLC (including its member Ashanti Samuels Enterprises, LLC). Rainshadow Organics, LLC income earned under its assumed business names of Rainshadow Organics Farm Store and Rainshadow Organics is considered income of Rainshadow Organics, LLC.’ (Exhibit 1 at page 48, (Findings & Decision in 247-21- 000268-CU))

The income produced by the applicant here, 2T Sustainable Land & Cattle Holdings, LLC, is already being “used” as farm income that commercial income is balanced against under the commercial activity in conjunction with farm use permit issued in file no. 247-21-000268-CU. Any analysis here of whether the proposed guest ranch is incidental and accessory to the existing farm use of the subject property must subtract income from the applicant used to justify ongoing compliance with condition of approval L in 247-21-000268-CU. We also note that the County may not amend that existing permit decision without complying with the procedural requirements for permit applications at ORS 215.416”

The Hearings Officer adopts as additional findings for this section the Preliminary Findings for sections II.A.9 (Tract) and II.A.10 (Adjacent Land Use Approval). The Hearings Office finds, based upon the findings set forth in the Staff Decision and the incorporated Preliminary Findings that COLW’s second argument (adjacent land use approval) is not persuasive. In the alternative, the Hearings Officer finds that Appellant failed to describe and develop, with clarity and specificity, its argument that the Hearings Officer has authority to modify a final land use approval for a property other than the Subject Property.

12. Number of Guest Lodging Units

Isbell, at the Hearing, suggested the Staff Decision was imprecise as to the number of guest units proposed at the Subject Property. Isbell referenced two possible issues relating to the number of guest units. First, Isbell indicated the Staff Decision did not clearly indicate whether the existing residence would count as a guest unit. Isbell suggested a condition clarifying the use of the existing residence; partially to be used as a “lodge” for the guest ranch and partially to house the ranch manager. Isbell also raised the issue related to the definition of “guest unit” in the context of how many guest units were being proposed by Applicant.

The Hearings Officer incorporates the Preliminary Findings for section II.A.6 (Definition of Guest Lodge Unit) as additional findings for this COLW issue. Applicant (Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 19 & 20) provided the following comments in response to the COLW number of guest lodging units argument:

“DCC 18.128.360(A)(1) and ORS 215.461(4)(a) limit guest lodging units to a maximum of ten for a ranch the size of the 2T Sustainable ranch property. ORS 215.461(1)(a) defines the term ‘guest lodging unit’ as ‘a guest room in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for a permanent residence’ and the County code is substantially the same. There are a total of 10 guest rooms – one in each cabin proposed by the site plan. Guest rooms are the rooms used for overnight lodging – the bedrooms in each cabin.

The guest ranch law specifically allows cabins and recognizes that the lodging unit is a specific room in that building. This is consistent with the well-accepted fact that a bathroom that serves a guest room is not a guest room under any circumstances. Additionally, the term “guest room” has an accepted meaning as a room intended for use by a guest for sleeping. It does not include other rooms in a cabin. Please refer to the response provided to COLW’s food service argument, below, for additional comments regarding the “guest room issue.” In the event the Hearings Officer disagrees, a condition of approval may be imposed that the cabins be built as studio units. If the Hearings Officer agrees, the applicant requests that he impose the following condition:

Areas in ranch cabins that are not guest rooms shall not be used for sleeping by guests. No more than a total of 10 rooms in cabins may be used as guest rooms.”

Based upon the incorporated Preliminary findings and Applicant’s above-quoted comments the Hearings Officer finds with a condition containing language consistent with Applicant’s suggestion, the Hearings Officer finds that no more than ten guest lodging units are proposed in this case.

B. Specific Approval Criteria Findings

1. Oregon Revised Statutes Chapter 92. Subdivisions and Partitions

Adjustment #1: 247-22-000885-LL

Oregon Revised Statute 92.010 provides the following definitions.

(9) “Partitioning land” means dividing land to create not more than three parcels of land within a calendar year, but does not include:

...

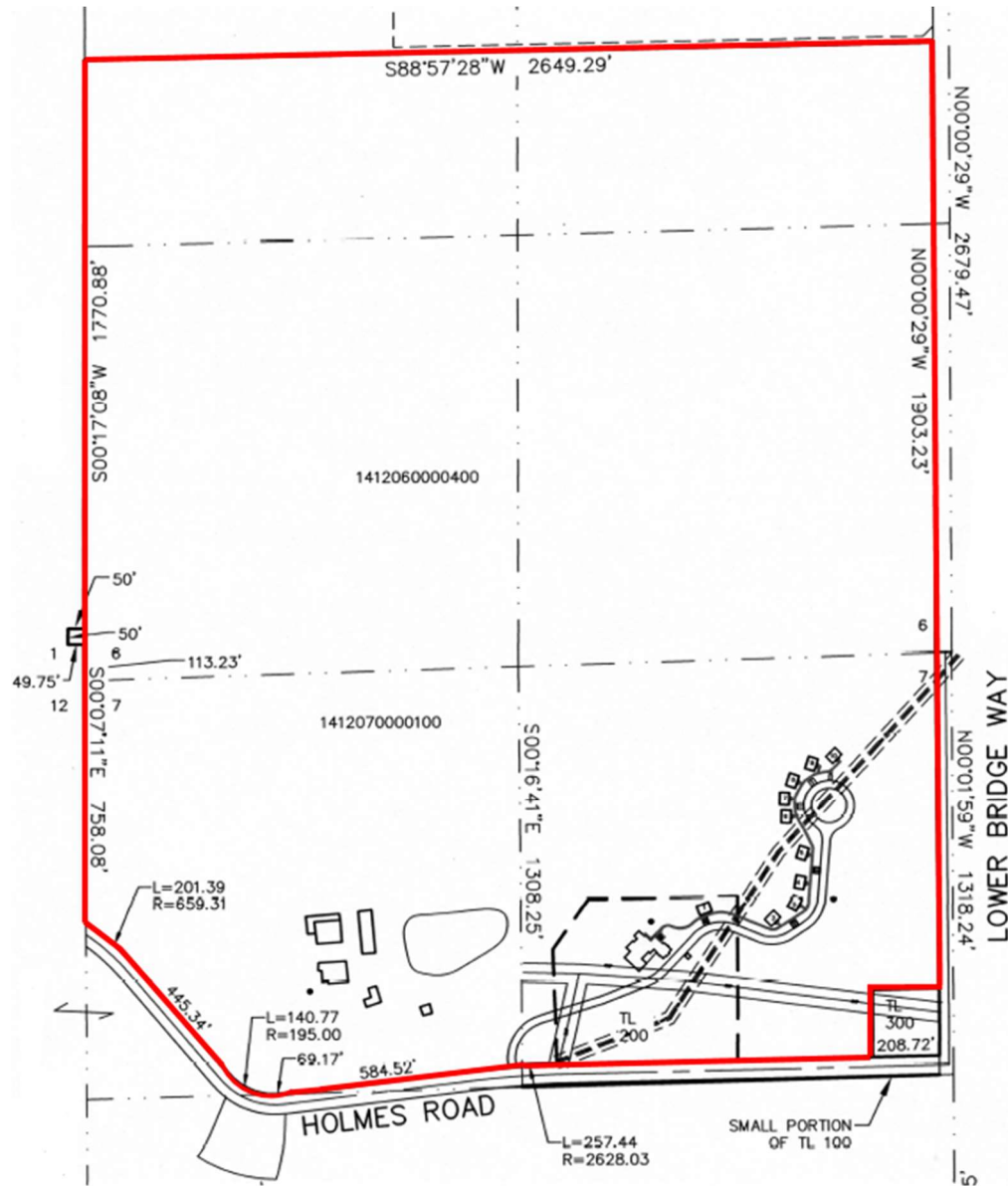
(b) Adjusting a property line as property line adjustment is defined in this section;

...

(12) “Property line adjustment” means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

FINDINGS: COLW did not appeal the validity of the Staff Decision related to Applicant’s adjustment or consolidation requests. The Applicant proposed a lot consolidation to eliminate a common boundary between a lot of record consisting of Tax Lot 100 and Tax Lot 400, and a lot of record consisting of Tax Lot 200, with no additional unit of land created. Staff, in the Staff Decision (page 11), concluded that the proposal meets the definition of property line adjustment under ORS 92.010 and DCC 17.08.030. The Hearings Officer concurs with this Staff statement and finds that these standards are met.

Figure 1: Resulting Lot of Record Consisting of Tax Lots 100, 400, and 200



PROPERTY LINE ADJUSTMENT STANDARDS

FINDINGS: COLW did not appeal the validity of the Staff Decision findings related to property line adjustment standards. Staff, in the Staff Decision (page 12), concluded that ORS 92.192(2 and 3) and DCC 18.132.025(B) are not applicable to property line eliminations. The Hearings Officer concurs.

ORS Section 92.190(4) requires that a property line adjustment deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment. Staff (Staff Decision, page 12) included this requirement, specific to the proposed consolidation, as a condition of approval. The Hearings Officer concurs.

Adjustment #2: 247-22-000886-LL

Oregon Revised Statute 92.010 provides the following definitions.

(9) “Partitioning land” means dividing land to create not more than three parcels of land within a calendar year, but does not include:

...

(b) Adjusting a property line as property line adjustment is defined in this section;

...

(12) “Property line adjustment” means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

FINDINGS: Applicant’s request would adjust a common boundary between Tax Lot 300 and the consolidated parcel created through 247-22-000885-LL, with no additional unit of land created. Staff, in the Staff Decision (page 13), concluded that the proposal met the definition of property line adjustment under ORS 92.010 and Deschutes County Code 17.08.030. In the findings below, the Hearings Officer shall refer to the consolidated lot of record consisting of tax Lots 100, 400, and 200 as ‘Lot of Record #1,’ and refers to Tax Lot 300 as ‘Lot of Record #2.’

Oregon Revised Statute 92.192 provides additional requirements for property line adjustments and states:

(2) Except as provided in this section, a lawfully established unit of land that is reduced in size by a property line adjustment approved by a city or county must comply with applicable zoning ordinances after the adjustment.

FINDINGS: COLW did not appeal the validity of the Staff Decision findings related to property line adjustment standards. The original size of Lot of Record #1 is +/- 190.27 acres, and the original size of Lot of Record #2 is +/- 1.0 acres. After the adjustment Lot of Record #1 will be +/- 186.26 acres, and Lot of Record #2 will be +/- 5.0 acres.

Lot of Record #1 will be reduced in size by the proposed adjustment. Lot of Record #1 is a lot of record because it was created as Parcel 1 and Parcel 2 of Minor Partition MP-07-32, and subsequently consolidated through file 247-22-000885-LL, above.

The Hearings Officer finds that after the adjustment, Lot of Record #1 will be 186.26 acres, including 133.5 acres of irrigated land, and will comply with applicable zoning ordinances, as the minimum lot size in the Exclusive Farm Use Zone- Lower Bridge Subzone is 130 acres of irrigated land. Therefore, the Hearings Officer finds this adjustment is subject to section (3) below.

(3) Subject to subsection (4) of this section, for land located entirely outside the corporate limits of a city, a county may approve a property line adjustment in which:

(a) One or both of the abutting lawfully established units of land are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or

(b) Both abutting lawfully established units of land are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.

FINDINGS: In addition to Lot of Record #1 being a lot of record, Lot of Record #2 is also a lot of record pursuant to file LR-93-50. After the adjustment, Lot of Record #2 will be 5.0 acres and will not comply with minimum lot or parcel size for the Exclusive Farm Use Zone-Lower Bridge Subzone, which is 80 acres for properties that were not created via an irrigated land division. The Hearings Officer finds the proposed adjustment complies with [(3)(a) or (3)(b)].

(4) On land zoned for exclusive farm use, forest use or mixed farm and forest use, a property line adjustment may not be used to:

(a) Decrease the size of a lawfully established unit of land that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling;

FINDINGS: The Subject Property is zoned Exclusive Farm Use. No lawfully established unit of land would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the unit of land for a dwelling.

(b) Decrease the size of a lawfully established unit of land that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lawfully established unit of land for a dwelling;

FINDINGS: No lawfully established unit of land would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the unit of land for a dwelling.

(c) Allow an area of land used to qualify a lawfully established unit of land for a dwelling based on an acreage standard to be used to qualify another lawfully established unit of land for a dwelling if the land use approval would be based on an acreage standard; or

FINDINGS: Applicant's proposed adjustment will not allow an area of land used to qualify a lawfully established unit of land for a dwelling based on an acreage standard to be used to qualify another lawfully established unit of land for a dwelling if the land use approval would be based on an acreage standard.

d) Adjust a property line that resulted from a subdivision or partition authorized by a waiver so that any lawfully established unit of land affected by the property line adjustment is larger than:

(A) Two acres if the lawfully established unit of land is, before the adjustment, two acres in size or smaller and is high-value farmland, high-value forestland or within a ground water restricted area; or

(B) Five acres if the lawfully established unit of land is, before the adjustment, five acres in size or smaller and is not high-value farmland, high-value forestland or within a ground water restricted area.

FINDINGS: This adjustment will not adjust a property line that resulted from a subdivision or partition authorized by a waiver.

2. Title 18 of the Deschutes County Code, County Zoning

Chapter 18.132, Variances

Section 18.132.025, Minor Variances

B. A parcel that is smaller than the minimum lot size at the time of application may not be reduced by more than 10 percent from its current size without a variance.

FINDINGS: Staff, in the Staff Decision (page 15), concluded that this criterion does not apply to the requested property line adjustment 247-22-000886-LL because Lot of Record #1 is not smaller than the minimum lot size at the time of application.

The Hearings Officer finds that the proposed adjustment(s) in size are within the allowable limits for the respective zoning districts. The Hearings Officer finds that this application meets the requirements as established and has been tentatively approved by the Deschutes County Planning Division. This tentative approval only confirms that the proposed adjustment meets the current zoning criteria necessary for property line adjustments. All restrictions for these zones still apply to the subject properties.

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Section 18.16.037. Guest Ranch.

A. A guest ranch may be established in conjunction with an existing and continuing livestock operation, using accepted livestock practices that qualifies as a farm use under DCC 18.04.030, subject to the applicable provisions set forth in DCC 18.16.040(A)(1), (2) and (3), the applicable provisions of DCC 18.128, and the 247-22-000883-CU, 884-SP, 885-LL, 886-LL Page 16 of 69 provisions of the applicable Oregon Revised Statutes. A guest ranch shall not be located within the boundaries of or surrounded by:

- 1. A federally designated wilderness area or a wilderness study area;***
- 2. A federally designated wildlife refuge;***
- 3. A federally designated area of critical environmental concern; or***
- 4. An area established by an Act of Congress for the protection of scenic or ecological resources.***

FINDINGS: The Hearings Officer incorporates the Preliminary Findings for section II.A.3 (Location of Forest Service Leases) as additional findings for this criterion. Staff, in the Staff Decision (page 16) provided the following comments:

“The subject property is not within or surrounded by a federally designated wilderness area, wilderness study area, wildlife refuge, or area of critical environmental concern. The subject

property is also not within or surrounded by an area established by an Act of Congress for the protection of scenic or ecological resources.

The proposed guest ranch will be in conjunction with an existing and continuing livestock operation on the subject property. As described in detail under DCC 18.16.037(B), below, the cattle operation uses accepted livestock practices and qualifies as a farm use under DCC 18.04.030. The applicable provisions of DCC 18.16.040(A) and 18.128 are addressed in this decision.”

The Hearings Officer finds concurs with Staff’s above-quoted statements and conclusions. The Hearings Officer, based upon the findings in Section II.A.3 (Location of Forest Service Leases) and Staff’s above-quoted statements and conclusions finds this approval criteria is met.

B. “Guest ranch” means a facility for overnight guest lodging units, including passive recreational activities and food services, as set forth in ORS 215 that are incidental and accessory to an existing livestock operation that qualifies as a farm use under DCC 18.04.030.

FINDINGS: The COLW appeal addressed specific issues within this approval criterion. COLW argued, among other things, that the Staff Decision erred in concluding that this approval criterion can be met because the application did not include food services. COLW also argued that the Staff Decision was not correct because the proposed guest ranch operation was not incidental and accessory. The Hearings Officer addressed the incidental and accessory issue in Preliminary findings section II.A.11 (Incidental and Accessory) and the findings for DCC 18.16.037(B).

The Hearings Officer incorporates as additional findings for this approval criterion the Preliminary Findings in sections II.A.5 (Food Service) and II.A.9 (Incidental & Accessory).

The Hearings Officer finds that Staff, in the Staff Decision (pages 16-20), provided a thorough analysis of the evidence and relevant law in the context of this approval criterion. The Hearings Officer believes that the Staff Decision findings related to this approval criterion are adequate, on their own, to justify this criterion is met.

In the alternative to reliance upon the Staff Decision findings the Hearings Officer finds that the Applicant has provided credible and persuasive evidence and argument in support that the application in this case meets this approval criteria (Fancher, July 24, 2023, Applicant’s Initial Response to COLW’s Listed Appeal Issues, pages 2-5 & 6 -7, Fancher, August 8, 2023, 2T Sustainable’s Rebuttal Evidence, page 3, Fancher, August 15, 2023, 2T Sustainable’s Final Argument and Objection to COLW Rebuttal, pages 11-16 & 20-21). The Hearings Officer finds the Applicant’s “food service” and “incidental and accessory” evidence and argument justify the Staff Decision conclusion that this criterion is met.

The Hearings Officer finds, based upon the Staff Decision findings, Applicant’s evidence and argument and the Preliminary Findings in sections II.A.5 (Food Service) and II.A.11 (Incidental & Accessory) this criterion is met.

C. A guest lodging unit means a guest room in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for permanent residence accommodations.

FINDINGS: Staff, in the Staff Decision (page 20) provided the following comments:

“The application materials indicate the ten proposed cabins will be used exclusively as part of the guest lodge and will not be used as permanent residences. Under DCC 18.128.360(J), below, a condition of approval has been added limiting occupancies to no more than 30 days. Therefore, staff finds this criterion will be met.”

COLW argued that Staff erred in concluding this approval criterion was met. The Hearings Officer incorporates the Preliminary Findings in sections II.A.6 (Definition of Guest Lodge Unit) and II.A.12 (Number of Guest Lodging Units) as additional findings for this approval criterion.

The Hearings Officer concludes, based upon the incorporated Preliminary Findings for sections II.A.5 (Food Service) and II.A.9 (Incidental & Accessory) that Applicant has proposed ten (10) guest lodging units meeting the definition of DCC 18.16.037 (C).

D. For the purposes of DCC 18.16.037, “livestock” means cattle, sheep, horses, and bison.

FINDINGS: The Hearings Officer finds that the Subject Property’s primary use is as a working cattle ranch. The Hearings Officer finds there is a livestock operation on the Subject Property, as defined above.

E. A proposed division of land in an exclusive farm use zone for a guest ranch or a division of a lot or parcel that separates a guest ranch from the dwelling of the person conducting the livestock operation shall not be allowed.

FINDINGS: No land division is proposed. To ensure future compliance Staff (Staff Decision, page 20) recommended the following condition of approval:

“No land division shall separate the guest ranch from the dwelling of the person conducting the livestock operation.”

The Hearings Officer concurs with Staff that with the listed condition this approval criterion can be met.

F. Notwithstanding DCC 18.16.055, a proposed division of land in an exclusive farm use zone for a guest ranch shall not be allowed.

FINDINGS: No land division is proposed. The Hearings Officer finds this criterion does not apply.

Section 18.16.040. Limitations on Conditional Use.

A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296, 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 use; and***

FINDINGS: The Hearings Officer incorporates the Staff findings (Staff Decision, pages 21 & 22) and the Preliminary Findings for section II.A.7 (Farm Impacts Test) as additional findings for this approval criterion. The Hearings Officer finds no substantial evidence in the record to support a finding that approval of the application would force a significant change on accepted farming practices on surrounding lands devoted to farm uses.

The Hearings Officer finds Applicant's summary of the evidence in the record (Fancher, August 15, 2023, 2T Sustainable's Final Argument and Objection to COLW Rebuttal, pages 16-17 & Attachment C) provides credible and substantial evidence that approval of the guest ranch application will not significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

The Hearings Officer finds, based upon the evidence and argument in the record that this approval criterion is 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.*

FINDINGS: Staff (Staff Decision, page 22) provided the following comments related to this approval criterion:

“There are three NCRS soil units mapped on the subject property: 141C, 31B, and 138B. 31B soils have a land capability classification of 3 when irrigated and 6 when unirrigated. 138B soils have a land capability classification of 6 when unirrigated, and do not have an assigned value when irrigated. 141C soils are a soil complex, with a land capability classification of 6-8 when unirrigated.

The guest ranch will be located in the southeast portion of the subject property, in an area that is mapped as 141C soils. Pursuant to the NCRS land capability classifications, this is rated as the poorest soil on the subject property. Locating the guest ranch on 141C soils will minimize impacts to portions of the property that contain higher-value soils for farm use.

The subject property contains 133.5 acres of irrigated land, and this irrigated land is located to the north and west of the proposed guest ranch. The guest ranch will be located in a portion of the property that is already developed with a nonfarm dwelling and driveway. No irrigated land will be taken out of farm use for the guest ranch and the guest ranch will not prevent farm operations on nearby irrigated land. Staff finds the portion of the subject property that is not irrigated is less suitable for the production of crops or livestock. Therefore, siting the guest ranch in the portion of the property that is not irrigated will preserve the portions of the subject property that are more suitable for farm use.

For these reasons, staff finds the guest ranch will be located on the portion of the subject property which is least suitable for the production of farm crops or livestock.”

The Hearings Officer concurs with the above-quoted Staff comments and adopts them as findings for this criterion. The Hearings Officer finds this criterion is met.

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.***

FINDINGS: The Applicant has proposed structures with a height of 20 feet. Staff recommended (Staff Decision, page 22) a condition of approval stating that no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

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.***

FINDINGS: The proposal is not subject to 100-foot nonfarm dwelling setbacks. The proposed structure(s) comply with the setbacks under (A) to (C) above. Staff recommended (Staff Decision, pages 22 & 23) that these standards could be met with a condition of approval requiring the proposed project to meet structural setbacks from any north lot line and meet the solar setback requirements in DCC 18.116.180. Further, Staff recommended that a condition of approval that 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. The Hearings Officer finds that with the conditions recommended by Staff these standards can be met.

Section 18.16.080. Stream Setbacks.

To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:

- A. ***All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health,***

the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.

- B.** *All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.*

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

Section 18.16.090. Rimrock Setback.

Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.

FINDING: There is no rimrock in the project vicinity.

Chapter 18.88, Wildlife Area Combining Zone (WA)

Section 18.88.040. Uses Permitted Conditionally.

- A.** *Except as provided in DCC 18.88.040(B), in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, DCC 18.128 and other applicable sections of this title. To minimize impacts to wildlife habitat, the County may include conditions of approval limiting the duration, frequency, seasonality, and total number of all outdoor assemblies occurring in the WA Zone, whether or not such outdoor assemblies are public or private, secular or religious.*

FINDINGS: COLW did not appeal the validity of the Staff Decision findings related to this approval criterion. As discussed above, the proposed use is conditionally permitted in the underlying zone. DCC 18.88.040(B) does not place any additional restrictions on a guest ranch. Therefore, the Hearings Officer finds the proposed use is conditionally permitted in the WA Zone.

Section 18.88.060. Siting Standards.

- A.** *Setbacks shall be those described in the underlying zone with which the WA Zone is combined.*
- B.** *The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:*
- 1.** *Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; or,*
 - 2.** *The siting within 300 feet of such roads or easements for vehicular access would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least possible impact on wildlife habitat*

considering browse, forage, cover, access to water and migration corridors, and minimizing length of new access roads and driveways; or,

3. *The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.*

C. For purposes of DCC 18.88.060(B):

1. *A private road, easement for vehicular access or driveway will conclusively be regarded as having existed prior to August 5, 1992 if the applicant submits any of the following:*
 - a. *A copy of an easement recorded with the County Clerk prior to August 5, 1992 establishing a right of ingress and egress for vehicular use;*
 - b. *An aerial photograph with proof that it was taken prior to August 5, 1992 on which the road, easement or driveway allowing vehicular access is visible;*
 - c. *A map published prior to August 5, 1992 or assessor's map from prior to August 5, 1992 showing the road (but not showing a mere trail or footpath).*
2. *An applicant may submit any other evidence thought to establish the existence of a private road, easement for vehicular access or driveway as of August 5, 1992 which evidence need not be regarded as conclusive.*

FINDINGS: Setbacks are those described in the underlying zone with which the WA Zone is combined. No new dwelling is proposed. Therefore, the Hearings Officer finds these criteria in subsection (B) do not apply.

Section 18.88.070. Fencing Standards.

The following fencing provisions shall apply as a condition of approval for any new fences constructed as a part of development of a property in conjunction with a conditional use permit or site plan review.

- A. *New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:*
 1. *The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.*
 2. *The height of the fence shall not exceed 48 inches above ground level.*
 3. *Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.*
- B. *Exemptions:*
 1. *Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.*

2. *Corrals used for working livestock.*

FINDINGS: No new fencing is included in this proposal. Staff recommended (Staff Decision, page 25) a condition of approval. The Hearings Officer concurs with Staff that with a condition of approval requiring all new fences that are in any portion of the Subject Property within the Wildlife Area Combining Zone shall comply with DCC 18.88.070, these standards can be met.

Chapter 18.116, Supplementary Provisions

Section 18.116.020, Clear Vision Areas.

- A. *In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the grade.*

FINDINGS: Staff (Staff Decision, page 25), provided the following comments related to this criterion:

“The subject property has a required clear vision area located at the intersection of the driveway and Holmes Road. As proposed this area will contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height. As a condition of approval, the clear vision area shall be maintained in accordance with DCC 18.116.020(A).

Staff notes the intersection of Holmes Road and Lower Bridge Way is also adjacent to Tax Lot 300. However, while Tax Lot 300 is involved in the proposed property line adjustment, the guest ranch will not be located on this parcel and it is therefore not subject to Site Plan Review.”

The Hearings Officer concurs with the Staff comments above and finds this criterion can be met by imposing the Staff required condition of approval.

- B. *A clear vision area shall consist of a triangular area on the corner of a lot at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines adjoining the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:*
1. *In an agricultural, forestry or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.*
 2. *In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:*

<i>Right of way Width</i>	<i>Clear vision</i>
<i>80 feet or more</i>	<i>20 feet</i>
<i>60 feet</i>	<i>30 feet</i>
<i>50 feet and less</i>	<i>40 feet</i>

FINDINGS: The Hearings Officer finds that the Subject Property has a required clear vision area located at the intersection of the driveway and Holmes Road. Holmes Road has a right-of-way width of 60 feet and therefore requires a clear vision area consisting of a triangle with 30-foot sides.

Section 18.116.030, Off street Parking and Loading.

- A. *Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.***

FINDINGS: As described elsewhere in this decision, the off street parking and loading requirements are met and, as conditioned, the Subject Property is and will be available for exclusive use as off-street parking and loading. Staff (Staff Decision, page 27) recommended a condition of approval related to subsequent use of the Subject Property. The recommended condition requires an application, for any subsequent use of the Subject Property for which the permit is issued, should be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18. The Hearings Officer concurs with Staff conclusion that with Staff’s recommended condition of approval this standard can be met.

- B. *Off-Street Loading. Every use for which a building is erected or structurally altered to the extent of increasing the floor area to equal a minimum floor area required to provide loading space and which will require the receipt or distribution of materials or merchandise by truck or similar vehicle, shall provide off-street loading space on the basis of minimum requirements as follows:***
- 1. *Commercial, industrial and public utility uses which have a gross floor area of 5,000 square feet or more shall provide truck loading or unloading berths subject to the following table:***

<i>Sq. Ft. of Floor Area</i>	<i>No. of Berths Required</i>
<i>Less than 5,000</i>	<i>0</i>
<i>5,000-30,000</i>	<i>1</i>
<i>30,000-100,000</i>	<i>2</i>
<i>100,000 and Over</i>	<i>3</i>

FINDINGS: No loading berth is required.

- 2. *Restaurants, office buildings, hotels, motels, hospitals and institutions, schools and colleges, public buildings, recreation or entertainment facilities and any***

similar use which has a gross floor area of 30,000 square feet or more shall provide off street truck loading or unloading berths subject to the following table:

<i>Sq. Ft. of Floor Area</i>	<i>No. of Berths Required</i>
<i>Less than 30,000</i>	<i>0</i>
<i>30,000-100,000</i>	<i>1</i>
<i>100,000 and Over</i>	<i>2</i>

FINDINGS: No loading berth is required.

3. *A loading berth shall contain space 10 feet wide, 35 feet long and have a height clearance of 14 feet. Where the vehicles generally used for loading exceed these dimensions, the required length of these berths shall be increased.*

FINDINGS: No loading berth is required.

4. *If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use.*

FINDINGS: No elimination of a loading space is proposed.

5. *Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.*

FINDINGS: Staff (Staff Decision, page 28) recommended a condition of approval. Staff’s recommended condition related to off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs. The Hearings Officer finds with Staff’s recommended condition this standard can be met.

- C. *Off-Street Parking. Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts. Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.*

FINDINGS: This criterion requires parking be provided and maintained for all uses. Staff recommended (Staff Decision, page 28) a condition of approval. Staff’s recommended condition states that required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use. The Hearings Officer finds that with Staff’s recommended condition this standard can be met.

- D. *Number of Spaces Required. Off-street parking shall be provided as follows:*

1. Residential.

<i>One, two and three family dwellings</i>	<i>2 spaces per dwelling unit</i>
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- 9. *Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.***

FINDINGS: DCC 18.116.030(D) does not provide a parking standard for a guest ranch. Nonetheless, DCC 18.128.360(L) does provide parking requirements for a guest ranch. DCC 18.128.360(L) requires one parking space for every guest room in addition to parking to serve the residents. The Applicant proposed ten cabins, each of which will contain one guest room. The Applicant proposed ten parking spaces for the cabins and one ADA-accessible space next to the lodge. There are also three spaces available within the lodge garage which will be used by employees and residents of the dwelling. Pursuant to DCC 18.116.030(D)(1), a single-family dwelling requires two off-street parking spaces. Three parking spaces are provided within the garage, which is enough to accommodate the parking for the dwelling as well as an employee of the guest ranch. The Hearings Officer finds adequate parking will be provided for the guest ranch.

E. General Provisions. Off-Street Parking.

- 1. *More Than One Use on One or More Parcels. In the event several uses occupy a single structure or parcel of land, the total requirement for off-street parking shall be the sum of requirements of the several uses computed separately.***

FINDINGS: The total requirement for off-street parking is calculated as the sum of requirements of all on-site uses computed separately.

- 2. *Joint Use of Facilities. The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.***

FINDINGS: The Applicant proposed joint use of parking facilities within the garage of the lodge/nonfarm dwelling. Two parking spaces will be available for residents of the nonfarm dwelling, and at least one parking space will be available for employees of the guest ranch who live off-site. Because parking spaces are provided for the two uses, Staff concluded (Staff Decision, page 29) that the parking needs will not overlap at any point in time. Staff opined that the uses, structures, or parcels are not under separate ownership. The Hearings Officer concurs with Staff's analysis and conclusion. For these reasons, the Hearings Officer finds that this criterion will be met.

- 3. *Location of Parking Facilities. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall***

be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.

FINDINGS: The proposed required parking spaces are to be located on the same parcel.

4. *Use of Parking Facilities. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.*

FINDINGS: Staff (Staff Decision, page 29) stated the following:

“As a condition of approval, required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.”

The Hearings Officer concurs with the above-quoted Staff comments. The Hearings Officer finds that with Staff’s recommended condition, this standard can be met.

5. *Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, Airport Development (AD) Zone, and properties fronting Spring River Road in the Spring River Rural Commercial Zone, but such space may be located within a required side or rear yard.*

FINDINGS: The Applicant proposed a commercial use consisting of a guest ranch. The proposed parking spaces will be located over 400 feet from the front property line along Holmes Road. The Hearings Officer finds no required parking and loading spaces will be located within a required front yard. This criterion will be met.

6. *On-Street Parking Credit. Notwithstanding DCC 18.116.030(G)(2), within commercial zones in the La Pine Planning Area and the Terrebonne and Tumalo unincorporated communities, the amount of required off-street parking can be reduced by one off-street parking space for every allowed on-street parking space adjacent to a property up to 30% of the required off-street parking. On-street parking shall follow the established configurations in the parking design standards under DCC 18.116.030 Table 1. To be considered for the parking credit, the proposed parking surface, along the street frontage under review, must have a defined curb line and improved as*

required under DCC 17.48, with existing pavement, or an engineered gravel surface. For purposes of establishing credit, the following constitutes an on-street parking space:

- a. Parallel parking (0 degree), each 20 feet of uninterrupted curb;*
- b. Diagonal parking (60 degree), each with 11 feet of curb;*
- c. Perpendicular parking (90 degree), each with 10 feet of curb;*
- d. Curb space must be connected to the lot that contains the use;*
- e. Parking spaces that would not obstruct a required clear vision area, nor any other parking that violates any law or street standard; and*
- f. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street spaces are permitted.*

FINDINGS: No on-street parking is proposed.

F. *Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:*

- 1. Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.*

FINDINGS: No parking areas for more than five vehicles are proposed. This criterion does not apply.

- 2. Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.*

FINDINGS: There are no adjoining properties in a residential zone.

- 3. Groups of more than two parking spaces shall be located and designed to prevent the need to back vehicles into a street or right of way other than an alley.*

FINDINGS: Parking spaces are located and designed to prevent the need to back vehicles into a street or right of way other than an alley. The closest parking space will be located over 800 feet from Holmes Road. The Applicant proposed a two-way driveway with a width of 24 feet, which terminates in a circle near the cabins. Staff concluded (Staff Decision, page 31) that Applicant's proposed design would provide vehicles ample room to turn around within the Subject Property. The Hearings Officer concurs with Staff's analysis and conclusion. The Hearings Officer finds that this criterion will be met.

- 4. Areas used for standing and maneuvering of vehicles shall be paved surfaces adequately maintained for all weather use and so drained as to contain any flow*

of water on the site. An exception may be made to the paving requirements by the Planning Director or Hearings Body upon finding that:

FINDINGS: The Applicant proposed a gravel surface for the service drive and parking spaces. One ADA-accessible parking spot is proposed next to the lodge building and this parking spot will be paved to comply with accessibility requirements. However, the parking spaces adjacent to the guest cabins will not be paved.

The Subject Property is 186.26 acres in size, and predominantly consists of irrigated pasture and hay fields. While the Subject Property does contain two dwellings and several agricultural buildings, the majority of the surface area consists of undeveloped land that will contain runoff. Staff (Staff Decision, page 31) concluded that the gravel parking and vehicular maneuvering areas will be permeable surfaces which will allow runoff to be contained onsite. The Applicant proposed a five-foot-wide pedestrian pathway connecting the cabins to the lodge building. This pedestrian pathway will be paved and will therefore generate runoff. However, Staff (Staff Decision, page 31) concluded that even with this proposed impervious surface, the vast majority of the Subject Property will remain undeveloped and allow for water infiltration. The Hearings Officer concurs with Staff's above stated analysis and conclusions.

As described below, the Applicant requested an exception to the paving standards.

- a. *A high water table in the area necessitates a permeable surface to reduce surface water runoff problems; or*
- b. *The subject use is located outside of an unincorporated community and the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties; or*
- c. *The subject use will be in a Rural Industrial Zone or an Industrial District in an unincorporated community and dust control measures will occur on a continuous basis which will mitigate any adverse impacts on surrounding properties.*

FINDINGS: The Applicant requested an exception to the paving standards pursuant to DCC 18.116.030(F)(4)(b). The Subject Property is not located within an unincorporated community and the Applicant indicated that gravel surfaces will be maintained in a manner which will not create dust problems for neighboring properties. To ensure compliance, Staff (Staff Decision, page 32) recommended a condition requiring that all vehicle standing and maneuvering areas for the guest ranch will have a gravel surface that is adequately maintained for all weather use and maintained in a manner that will not create dust problems for neighboring properties. The Hearings Officer finds that with Staff's recommended condition these standards can be met.

5. *Access aisles shall be of sufficient width for all vehicular turning and maneuvering.*

FINDINGS: The Applicant proposed two-way access aisles, which requires a minimum width of 24 feet. As illustrated on the site plan, the access aisles will be 24 feet in width. The proposed access aisles are of sufficient width for all vehicular turning and maneuvering and comply with standards for parking

lot design under sub-section (G), below.

6. ***Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will accommodate and serve the traffic anticipated. Service drives shall be clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers. Service drives to drive in establishments shall be designed to avoid backing movements or other maneuvering within a street other than an alley.***

FINDINGS: Staff (Staff Decision, pages 32 & 33) included the following comments related to this standard:

“For the purposes of this decision, staff finds a “service drive” includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space. The guest ranch will be served by an existing driveway off of Holmes Road, which currently provides access to the nonfarm dwelling. The driveway (service drive) will be extended towards the northeast, where the cabins will be constructed. This service drive will provide direct, convenient access to the lodge and cabins. The proposed service drive will be 24 feet wide and will terminate in a circle at the farthest cabins. This design will allow for a two-way flow of traffic, and will provide for maximum vehicle safety by providing a safe place for vehicles to turn around on the subject property.

The existing farm manager residence and agricultural buildings are served by a separate driveway off of Holmes Road. Staff finds this design will reduce conflicts between guest vehicles and farm vehicles and equipment. The separate driveways will also help reduce any adverse impacts the guest ranch may generate on farm operations.

A pedestrian walkway will connect all of the cabins to the lodge building. No driveway crossings are proposed, so pedestrians will never be within the path of vehicle traffic. This pedestrian path runs approximately parallel to the proposed service drive, and provides direct, convenient access between different portions of the guest ranch.

The proposed service drives are clearly marked through wood posts with copper top. The submitted site plan proposes to space these markers out every 200 feet on both sides of the service drive. Staff finds a smaller distance between markers is required to clearly delineate the service drive, and prevent vehicles from driving or parking on adjacent land. Staff therefore adds the following condition of approval requiring markers spaced no more than 100 feet apart.

Prior to issuance of building or septic permits for the guest ranch, the owner shall submit a revised site plan showing markers or barriers spaced no more than 100 feet apart along the service drive.

No “drive-in” establishment is proposed.”

The Hearings Officer concurs with the above-quoted Staff comments and incorporates them as findings for this standard. The Hearings Officer finds this criterion can be met.

7. ***Service drives shall have a minimum vision clearance area formed by the intersection of the driveway centerline, the street right of way line and a straight line joining said lines through points 30 feet from their intersection.***

FINDINGS: Staff (Staff Decision, page 33) included the following comments related to this standard:

“For the purposes of this decision, staff finds a “service drive” includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space. Staff finds “vision clearance area” became “clear vision area” in 1991 (Ord 91-038) but that this reference was not updated. For the purposes of this decision staff, uses “vision clearance area” and “clear vision area” as the equivalent.

The subject property has a required service drive clear vision area located at the intersection of the service drive and Holmes Road. As proposed, this area will contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height. As a condition of approval, the service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A)”.

The Hearings Officer concurs with the above-quoted Staff comments and incorporates them as findings for this standard. The Hearings Officer finds this standard can be met.

8. ***Parking spaces along the outer boundaries of a parking area shall be contained by a curb or bumper rail placed to prevent a motor vehicle from extending over an adjacent property line or a street right of way.***

FINDINGS: Staff (Staff Decision, page 33) included the following comments related to this standard:

“Staff finds a curb or bumper rail are only needed under this criterion where needed to prevent a motor vehicle from extending over an adjacent property line or a street right of way. No parking area is immediately adjacent to a property line or a street right of way.”

The Hearings Officer concurs with the above-quoted Staff comments and incorporates them as findings for this standard. The Hearings Officer finds this standard can be met.

G. *Off-Street Parking Lot Design. All off-street parking lots shall be designed subject to County standards for stalls and aisles as set forth in the following drawings and table: (SEE TABLE 1 AT END OF CHAPTER 18.116)*

1. ***For one row of stalls use "C" + "D" as minimum bay width.***
2. ***Public alley width may be included as part of dimension "D," but all parking stalls must be on private property, off the public right of way.***
3. ***For estimating available parking area, use 300-325 square feet per vehicle for stall, aisle and access areas.***
4. ***For large parking lots exceeding 20 stalls, alternate rows may be designed for compact cars provided that the compact stalls do not exceed 30 percent of the***

total required stalls. A compact stall shall be eight feet in width and 17 feet in length with appropriate aisle width.

FINDINGS: The proposed parking lot has been designed subject to County standards. The Applicant proposed parking spaces with dimensions of nine feet by 20 feet. The Applicant also proposed a two-way access aisle that is 24 feet wide.

Section 18.116.031, Bicycle Parking.

New development and any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005 shall comply with the provisions of DCC 18.116.031.

A. Number and Type of Bicycle Parking Spaces Required.

1. General Minimum Standard.

- a. All uses that require off-street motor vehicle parking shall, except as specifically noted, provide one bicycle parking space for every five required motor vehicle parking spaces.**
- b. Except as specifically set forth herein, all such parking facilities shall include at least two sheltered parking spaces or, where more than 10 bicycle spaces are required, at least 50 percent of the bicycle parking spaces shall be sheltered.**

FINDINGS: As noted above, the proposed use requires ten vehicular parking spaces. Therefore, two bicycle parking spaces are required, of which two spaces must be sheltered. The submitted proposal includes three sheltered spaces, which the Hearings Officer finds is compliant with this criterion.

- c. When the proposed use is located outside of an unincorporated community, a destination resort, and a rural commercial zone, exceptions to the bicycle parking standards may be authorized by the Planning Director or Hearings Body if the applicant demonstrates one or more of the following:**
 - i. The proposed use is in a location accessed by roads with no bikeways and bicycle use by customers or employees is unlikely.**
 - ii. The proposed use generates less than 50 vehicle trips per day.**
 - iii. No existing buildings on the site will accommodate bicycle parking and no new buildings are proposed.**
 - iv. The size, weight, or dimensions of the goods sold at the site makes transporting them by bicycle impractical or unlikely.**
 - v. The use of the site requires equipment that makes it unlikely that a bicycle would be used to access the site. Representative examples would include, but not be limited to, paintball parks, golf courses, shooting ranges, etc.**

FINDINGS: The Applicant has not requested exceptions to the bicycle parking standards.

2. Special Minimum Standards.

- a. *Multi-Family Residences. Every residential use of four or more dwelling units shall provide at least one bicycle parking space for each unit. In those instances in which the residential complex has no garage, required spaces shall be sheltered.*
- b. *Parking Lots. All public and commercial parking lots and parking structures shall provide a minimum of one bicycle parking space for every 10 motor vehicle parking spaces.*
- c. *Schools. Schools, both public and private, shall provide one bicycle parking space for every 25 students, half of which shall be sheltered.*
- d. *Colleges. One-half of the bicycle parking spaces at colleges, universities and trade schools shall be sheltered facilities.*

FINDINGS: The proposed use is not subject to any of these special minimum standards.

3. Trade Off with Motor Vehicle Parking Spaces.

- a. *One motor vehicle parking space may be deleted from the required number of spaces in exchange for providing required bicycle parking.*
 - i. *Any deleted motor vehicle space beyond the one allowed above shall be replaced with at least one bicycle spaces.*
 - ii. *If such additional parking is to be located in the area of the deleted automobile parking space, it must meet all other bicycle parking standards.*

FINDINGS: No trade off with motor vehicle parking is proposed. This criterion does not apply.

- b. *The Hearings Body or Planning Director may authorize additional bicycle parking in exchange for required motor vehicle parking in areas of demonstrated, anticipated, or desired high bicycle use.*

4. Calculating number of bicycle spaces.

- a. *Fractional spaces shall be rounded up to the next whole space.*
- b. *For facilities with multiple uses (such as a commercial center) bicycle-parking requirements shall be calculated by using the total number of motor vehicle spaces required for the entire development.*

FINDINGS: Bicycle parking has been calculated by the rounding up of fractional spaces and accounting for the total number of motor vehicle spaces required for the entire development.

B. Bicycle Parking Design.

1. General Description.

- a. *Sheltered Parking. Sheltered parking may be provided within a bicycle storage room, bicycle locker, or racks inside a building; in bicycle lockers or racks in an accessory parking structure; underneath an awning, eave, or other overhang; or by other facility as determined by the Hearings Body or Planning Director that protects the bicycle from direct exposure to the elements.*
- b. *Unsheltered parking may be provided by bicycle racks.*

FINDINGS: Required sheltered bicycle parking will be provided under a covered concrete patio, adjacent to the lodge building.

2. Location.

- a. Required bicycle parking that is located outdoors shall be located on-site within 50 feet of main entrances and not farther from the entrance than the closest motor vehicle parking space.**

FINDINGS: As shown on the site plan, bicycle parking facilities are will be located approximately 20 feet from the main entrance of the lodge building. The closest vehicular parking will be approximately 50 feet from the main entrance. This criterion will be met.

- i. Bicycle parking shall be located in areas of greatest use and convenience to bicyclist.**

FINDINGS: Bicycle parking facilities are located in areas of greatest use and convenience to bicyclist. The covered bicycle parking will be provided on a covered patio at the lodge building, which is where visitors will likely come to check in. This is the first building that visitors reach when entering the Subject Property via the driveway off Holmes Road. The covered patio is adjacent to a building entrance and is a logical, convenient location for bicycle parking. The Applicant also noted that one bicycle parking space can be accommodated within each of the cabins. The Hearings Officer finds that visitors will have the option to store their bicycles on the covered patio or within their cabin, depending on which location they find more convenient.

- ii. Such bicycle parking shall have direct access to both the public right of way and to the main entrance of the principal use.**

FINDINGS: The proposed bicycle parking area(s) have direct access to both the public right of way and to the main entrance of the principal use.

- iii. Bicycle parking shall not impede or create a hazard to pedestrians.**

FINDINGS: The proposed bicycle parking area(s) will not impede or create a hazard to pedestrians. The Applicant proposed bicycle parking on an existing covered patio. This bicycle parking is within close proximity to one of the building entrances, but it will not block the building entrance or impede pedestrians. The Hearings Officer finds that this building has multiple entrances that pedestrians can use and none of these entrances will be blocked by the bicycle parking. There is a direct pedestrian route from the paved ADA parking space to a building entrance and this route will not be obstructed by the bicycle parking. For these reasons, the Hearings Officer finds the bicycle parking will not create a hazard for pedestrians.

- iv. Parking areas shall be located so as not to conflict with clear vision areas as prescribed in DCC 18.116.020.**

FINDINGS: The proposed bicycle parking area(s) are located so as not to conflict with clear vision areas as prescribed in DCC 18.116.020.

- b. Bicycle parking facilities shall be separated from motor vehicle parking and drive areas by a barrier or sufficient distance to prevent damage to the parked bicycle.***

FINDINGS: Bicycle parking facilities will be separated from motor vehicle parking and drive areas by an elevated, paved patio. Vehicles will not drive onto the patio and staff finds the bicycle parking is separated from motor vehicle parking by a barrier. This criterion will be met.

- c. Where bicycle parking facilities are not directly visible and obvious from the public right(s) of way, entry and directional signs shall be provided to direct bicyclists for the public right of way to the bicycle parking facility. Directions to sheltered facilities inside a structure may be signed, or supplied by the employer, as appropriate.***

FINDINGS: One driveway will provide access to the guest ranch from Holmes Road, and the lodge building is the first building that visitors reach when they enter the property through this driveway. The bicycle parking is located on the exterior of this lodge building, and is adjacent to the vehicle parking spaces, so it will be readily visible to anyone entering the Subject Property. However, the bicycle parking will not be directly visible and obvious from Holmes Road, and signage is therefore required. Staff (Staff Decision, page 37) recommended adding the following condition to ensure compliance with this criterion:

Prior to the issuance of building or septic permits for the guest ranch, the owner shall submit a revised site plan showing the location of signage for the bicycle parking.

The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

- 3. Dimensional Standards.**
 - a. Each bicycle parking space shall be at least two by six feet with a vertical clearance of seven feet.***
 - b. An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.***
 - c. Each required bicycle parking space shall be accessible without moving another bicycle.***

FINDINGS: The submitted site plan indicates bicycle parking will be provided through two U-shape bicycle racks. However, the submitted application materials do not specify the dimensions of the bicycle parking spaces and access aisles. Staff (Staff Decision, pages 37 & 38) recommended the following condition of approval to ensure compliance with these criteria:

Prior to the issuance of building or septic permits for the guest ranch, the owner shall submit a revised site plan showing that bicycle parking complies with the following:

- Each bicycle parking space shall be at least two by six feet with a vertical clearance of***

- *seven feet.*
- *An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.*

The Hearings Officer finds that with Staff's recommended condition these criteria can be met.

4. ***Surface. The surface of an outdoor parking facility shall be surfaced in the same manner as the motor vehicle parking area or with a minimum of one-inch thickness of aggregate material. This surface will be maintained in a smooth, durable, and well-drained condition.***

FINDINGS: The bicycle parking area will be paved with concrete. Staff recommended, the Staff Decision (page 38) that a condition of approval be included requiring that the bicycle parking surface shall be maintained in a smooth, durable, and well-drained condition. The Hearings Officer finds that this criterion can be met if a condition reflecting Staff's recommendation is included in an approval of the application.

5. ***Security.***
 - a. ***Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (i.e., a "rack") upon which the bicycle can be locked. Structures that require a user-supplied lock shall accommodate both cables and U-shaped locks and shall permit the frame and both wheels to be secured (removing the front wheel may be necessary). All bicycle racks, lockers, or other facilities shall be permanently anchored to the surface of the ground or to a structure.***

FINDINGS: The bicycle parking area offers security in the form of a stationary U-shape rack upon which the bicycle can be locked. The rack will accommodate both cables and U-shaped locks, and will be permanently anchored to the ground.

- b. ***Lighting shall be provided in a bicycle parking area so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or motor vehicle parking.***

FINDINGS: The bicycle parking area will be illuminated by existing exterior lighting on the building.

6. ***Other means that provide the above level of bicycle parking may be approved by the Hearings Body or the Planning Director.***

FINDINGS: No alternative means of providing bicycle parking have been proposed or approved in this decision.

Section 18.116.035, Bicycle Commuter Facilities.

- A. *Each commercial or public building having a work force of at least 25 people shall have bicycle commuter facilities consisting of shower(s) and changing rooms(s). For facilities with more than one building (such as a college), bicycle commuter facilities may be located in a central location.*
- B. *This provision shall apply to (1) new development requiring off-street parking and (2) any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005.*

FINDINGS: No commercial or public building having a work force of at least 25 people exists or is proposed for this site.

Chapter 18.124, Site Plan Review

Section 18.124.030. Approval Required.

- A. *No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.*
- B. *The provisions of DCC 18.124.030 shall apply to the following:*
 - 1. *All conditional use permits where a site plan is a condition of approval;*
 - 2. *Multiple family dwellings with more than three units;*
 - 3. *All commercial uses that require parking facilities;*
 - 4. *All industrial uses;*
 - 5. *All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and*
 - 6. *As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).*
 - 7. *Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.*
- C. *The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.*
- D. *Noncompliance with a final approved site plan shall be a zoning ordinance violation.*
- E. *As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.*

FINDINGS: The proposed use requires actions described in section (A), above, and falls within a use category described in section (B). Site plan review is required.

Section 18.124.060. Approval Criteria.

Approval of a site plan shall be based on the following criteria:

A. The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.

FINDINGS: COLW, in its appeal, did not provide any meaningful evidence or argument that this approval criteria had not been adequately addressed in the Staff Decision. Staff, in the Staff Decision, provided an extensive analysis of this criterion and concluded that the application in this case met this approval criterion. The Hearings Officer includes below, in its entirety, the Staff Decision analysis (Staff Decision, pages 40-42):

“In Father’s House, files 247-18-000061-CU, 247-18-000062-SP, 247-18-000624-A, and 247-18-000643-A, the Board of County Commissioners (Board) made the following finding regarding this standard.

The Board agrees that DCC 18.124.060(A) is subjective and, at times, difficult to apply as the Hearings Officer observed. However, as the Board interprets the provision, DCC 18.124.060(A) does not require a particularly onerous exercise. It requires an applicant to show that its proposed site plan relates “harmoniously” to the natural environment and existing development. Unlike the conditional use standards of DCC 18.128.015(B), this standard does not indicate harmony achieved with “surrounding properties.” However, the Board understands that the standard implies that the proposed development shall relate harmoniously on and off the subject property and generally speaking, in the vicinity, by “minimizing visual impacts and preserving natural features including views and topographical features.”

The code does not define what it means to “relate harmoniously.” The Hearings Officer reported that the online Oxford Living Dictionary defines “harmoniously” to mean arranging something “in a way that forms a pleasing or consistent whole.” Both parties in this case, provided various interpretations of the term “harmonious.” The Board is not adopting one interpretation of the term over another as each contributes equally to this evaluation. The Board concurs with the Hearings Officer that there is no “particularly useful case law defining or applying this term.” In addition, the Board agrees, that the Hearings Officer is correct that a site plan should be approved in light of this meaning of “harmonious,” so long as the proposed site plan does not create “more disharmony than other uses allowed by right or conditionally in the MUA-10 zone.” In this regard, the Board finds that this standard presumes the use is approved and evaluates only whether the site plan for the use “relates harmoniously.” The Board finds that the proposed church site plan meets the standard set forth in DCC 18.124.060(A).

Specifically, the Board interprets DCC 18.124.060(A) to mean that an applicant must demonstrate that the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features. Minimizing visual impact, as with this case, may include introduced landscaping, design layout, and specific design elements such as siding and roofing color and material. In

doing so, this enables the County decision maker to find that the site plan's impacts create no more disharmony than other uses allowed by right or conditionally in the MUA Zone.

The Board agrees, in part, with the Hearings Officer that this standard is considered differently when compared to the term "compatibility" and its associated standard of DCC 18.128.015(B). The chief differences between the two standards is that the DCC 18.128.015(B) compatibility standard evaluates the compatibility of the proposed use on existing and projected uses of surrounding properties and does so in light of specific factors that are not reproduced in DCC 18.124.060(A). The DCC 18.124.060(A) "harmonious" standard evaluates whether a proposed site plan "relates harmoniously to existing development and the natural environment" considering whether the site plan shows that the applicant has reasonably mitigated its impacts and reasonably preserved views. The Board observes that not every use that requires site plan approval also requires a conditional use permit. However, the Board finds that it is possible that a permitted or approved use is arranged so poorly on a site, that a proposed site plan must be denied under this standard. That is not the case here.

Staff understands the Board's findings, cited above, to make clear the use itself is not the subject of review under this criterion. Rather, this criterion only evaluates whether the site plan for the use "relates harmoniously." Staff reads Father's House to require a demonstration, "...the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features."

The general surrounding area contains natural features consisting of scenic views of mountains and buttes. However, due to the gently-sloped topography of the subject property and existing development, staff finds the proposed cabins will not have a significant impact on scenic views. Staff finds minimization of visual impacts requires clustering new structures, minimizing vegetation removal, and selecting building designs that do not have an outward appearance of a commercial use. The submitted burden of proof included the following statement regarding vegetation:

Regarding vegetation, the area of the proposed guest ranch is planned in on unirrigated land, in an area that is populated with Juniper trees and scrub brush. The only vegetation that will be removed for the new use is that which is necessary to accommodate the new buildings, the drive aisle, the parking spaces and the pedestrian path. A buffer of trees will remain on the site and around the perimeter of the guest ranch use area.

Staff concurs with this analysis and notes the area where the cabins will be located currently contains scattered trees. The applicant proposes to retain existing trees which are located between the cabins and Tax Lot 300, and between the cabins and Lower Bridge Way. Tax Lot 300 is the neighboring property closest to the guest ranch, and staff finds retention of the intervening vegetation is necessary to minimize visual impacts on this neighboring property.

The submitted application materials include drawings of the proposed cabin design. These drawings indicate the cabins will have a height of 20 feet and will have the appearance of a typical private residence. Existing buildings on the subject property are 20 feet or greater in height, so the proposed

cabins will not protrude taller than existing structures and block views. The submitted drawings indicate the cabins will have a brown finish and the design will incorporate lots of wood. The proposed earth tone colors will minimize visual impacts by reducing contrast with the surrounding natural environment. Existing development in the surrounding area includes single-family residences on EFU properties. Staff finds the proposed cabin design will blend harmoniously with existing development by matching the general appearance of residential development.

The applicant proposes to convert a portion of an existing dwelling into shared space for cabin guests. Converting a portion of an existing building into lodge space will minimize the amount of new construction required and reduce the amount of disturbance to the subject property. The existing nonfarm dwelling was designed and built as a single-family dwelling, and therefore has the appearance of a typical residence. This existing building is brown with stone and wood accents. Staff finds the design of the proposed cabins will blend harmoniously with the existing nonfarm dwelling.

The ten new cabins will be located adjacent to the new service drive, in the southwest corner of the subject property. The guest ranch buildings will be clustered in one portion of the subject property, near the existing nonfarm dwelling. Siting the cabins near this existing development will retain an undeveloped, agricultural appearance on the remainder of the property. The applicant proposes to utilize an existing driveway and extend it towards the northeast. Taking advantage of an existing driveway minimizes the extent of new construction and reduces the amount of vegetation that will need to be removed.

The subject property has a gentle slope in elevation, and some grading may be required for the cabins, service drive, and pedestrian pathway. However, staff finds any grading required for construction will not significantly impact the overall topography of the property. No topographical features will be impacted by the proposed guest ranch.

For these reasons, staff finds the guest ranch will relate harmoniously to the natural environment and existing development, and is designed to minimize visual impacts.”

The Hearings Officer concurs with the above-quoted Staff analysis and incorporates it as the Hearings Officer’s findings for this criterion. The Hearings Officer finds that this criterion is met.

- B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.***

FINDINGS: Staff (Staff Decision, page 42), provided the following comments related to this criterion:

“Staff finds the landscape and existing topography will be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. No significant changes to topography are proposed. Staff finds all trees and shrubs existing on-site, not removed by necessity of the proposed development, are “preserved trees and shrubs.” As a condition of approval, all trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.”

The Hearings Officer finds Staff's above-quoted comments to be credible. The Hearings Officer concurs with the above-quoted Staff analysis and incorporates it as the Hearings Officer's findings for this criterion. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

C. *The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.*

FINDINGS: Staff (Staff Decision, pages 42 & 43), provided the following comments related to this criterion:

“Staff finds this criterion requires demonstration the site is designed to address common safety hazards, including fire safety, and to address any site-specific natural hazards. Staff finds pedestrian, bicycle, and vehicle safety is addressed under sub-sections (E) and (K) of this section. With regard to fire safety, comments provided by the Office of the State Fire Marshal identified access and water supply requirements for the subject property. In addition, the cabins will be reviewed by the Deschutes County Building Division to ensure fire safety is addressed through building design. Comments submitted May 5, 2023, by Deschutes County Building Division indicate a residential structural permit will be required to make required accessibility improvements to the nonfarm dwelling, in order to convert a portion of it to a lodge. Staff finds the required accessibility upgrades will provide a safe environment by, allowing safe access if a fire were to occur. To ensure all Building Division requirements are met for this conversion, staff adds a condition of approval requiring documentation that all necessary permits have been received for the lodge space within the dwelling.

Staff notes the ten new cabins may increase the amount of available fuels on the property if a fire were to occur. However, the subject property primarily consists of irrigated fields and does not have a significant amount of tree cover. In addition, the guest ranch will be located near an existing irrigation pond, which will provide a water source if a fire were to occur. The applicant proposes to widen and extend an existing driveway, which will improve emergency access to the site if a fire were to occur. With regard to other natural hazards, none have been identified on the site.

The applicant proposes a public use consisting of a guest ranch, and a transition is therefore required from this public use to nearby private spaces. The applicant does not propose any designated outdoor recreation area for guests. However, guests will likely walk between cabins, and use outdoor space near the cabins for games and to sit outside. The cabins and pedestrian path are all located on the north side of the service drive, so guests will likely stay in that general area for any outdoor recreation. Staff finds the service drive provides a buffer between the cabins and the neighboring property to the southeast. A portion of the existing nonfarm dwelling will be converted into indoor gathering space for cabin guests. This building will continue to house a private residence, so these public and private uses will be in very close proximity to each other. The applicant submitted a floor plan designating which areas in the building will be used for the guest ranch, and this floor plan indicates the majority of the structure will remain as a private residence. Staff notes the property owner has requested both uses be within the same building, and any impacts to the existing dwelling are therefore anticipated. For these reasons, staff finds the site plan is

designed to provide opportunities for privacy, and a transition from the guest ranch to private spaces.

The Hearings Officer finds Staff's above-quoted comments to be credible and persuasive. The Hearings Officer concurs with the above-quoted Staff analysis and incorporates the comments as the Hearings Officer's findings for this criterion. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

D. When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.

FINDINGS: The Deschutes County Building Division was sent a request for comment on this application. In the State of Oregon, ORS 455.720 and 447.210 through 447.992 are administered by the Deschutes County Building Safety Division. Deschutes County Building Safety Division is required to determine if a structure is an Affected Building and if so, apply the appropriate sections of Chapter 11 and the American National Standards Institute code A117.1-2009. Consequently, the structures will comply with state and federal ADA requirements. If an Affected Building is approved, inspected and finalized by the Deschutes County Building Safety Division, it meets all code requirements as an accessible structure. Staff finds that such a review is required prior to the issuance of building permits.

E. The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.

FINDINGS: Staff (Staff Decision, page 44), provided the following comments related to this criterion:

“Staff finds this criterion is met where the described facilities provide for a safe and efficient flow of vehicular, bicycle, and pedestrian traffic. In addition, such facilities must be “harmonious with proposed and neighboring buildings and structures”. Staff finds this means that such facilities must not significantly adversely impact on-site and/or neighboring proposed and existing buildings and structures.

Neighboring buildings and structures include single-family dwellings and farm buildings on the subject property and neighboring properties. The subject property is bordered to the east by Lower Bridge Way and to the south by Holmes Road. Available records do not indicate there are any additional buildings and structures proposed on neighboring parcels.

A two-way driveway off Holmes Road will provide for interior vehicle circulation. This driveway terminates in a circle, so vehicles do not have to back out onto Holmes Road or turn around on neighboring properties. The flow of traffic will provide convenient access to the guest ranch while minimizing impacts to nearby farming. This interior circulation will be harmonious with neighboring buildings and structures because visitors will park directly in front of their cabins and stay in one portion of the subject property. The applicant proposes to utilize an existing driveway access point for the guest ranch. The farm manager dwelling and farm buildings are accessed by a different driveway access point off of Holmes Road. Staff finds the separated driveway will provide separation

between existing farm uses and the proposed guest ranch. Therefore, staff finds the number and location of access points will be harmonious with existing development on the subject property.

The applicant proposes a separate, paved path for pedestrians. This walkway will allow pedestrians to move between the cabins and the lodge building without crossing through the path of vehicle traffic. Staff finds this separation between pedestrians and moving and parked vehicles will provide for an efficient flow of vehicles and pedestrians within the subject property.”

The Hearings Officer finds Staff’s above-quoted comments to be credible and persuasive. The Hearings Officer concurs with the above-quoted Staff analysis and incorporates it as the Hearings Officer’s findings for this criterion. The Hearings Officer finds this criterion can be met.

F. Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.

FINDINGS: The Applicant proposed to utilize a portion of an existing dwelling for lodge space and to construct ten 1,200-square-foot cabins. The Subject Property is 186.26 acres in size and predominantly consists of pasture, irrigated hay fields. Existing development on the Subject Property consists of two dwellings, several farm buildings, and associated driveways, but the vast majority of the property is undeveloped. The topography of the Subject Property has gentle slopes, but there are large flat areas where runoff will be contained. The agricultural fields also provide large areas where infiltration can occur. Due to the size and amount of undeveloped, pervious surface on the Subject Property, the Hearings Officer finds approval of the application in this case will not create adverse impacts on neighboring surface drainage or water quality. This Hearings Officer finds that this criterion will be met.

G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.

FINDINGS: Staff (Staff Decision, page 45), provided the following comments related to this criterion:

“Staff finds the trash enclosure and parking areas are subject to this criterion. The trash enclosure has been designed to minimize adverse impacts on the site and neighboring properties by providing a wood fence for visual screening. The trash enclosure will have dimensions of eight feet by twelve feet, and staff finds the relatively small size will also minimize any adverse impacts to the site and neighboring properties. The parking areas have been designed to minimize adverse impacts on the site and neighboring properties because they will consist of a gravel surface, which will generate minimal visual impacts.

These facilities have been located to minimize adverse impacts on the site and neighboring properties by siting the trash enclosure adjacent to the service drive, across from the lodge building. No trees will need to be removed to place the trash enclosure in this location, which will preserve available screening. The trash is conveniently located next to the main lodge building in an area of existing development. The parking areas have been located next to each of the cabins, which will minimize noise and visual impacts generated as guests move from their vehicles to their cabin.

These facilities have been buffered or screened to minimize adverse impacts on the site and neighboring properties by preserving existing vegetation on the subject property. The application materials indicate trees and shrubs will be preserved to the extent possible, besides those required to remove to construct the cabins and service drive. Staff finds the scattered juniper trees in this portion of the subject property will provide screening from neighboring properties and Lower Bridge Way.”

The Hearings Officer finds Staff’s above-quoted comments to be credible and persuasive. The Hearings Officer concurs with the above-quoted Staff analysis and incorporates it as the Hearings Officer’s findings for this criterion. The Hearings Officer finds this criterion can be met.

H. All above ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.

FINDINGS: The Applicant has not proposed above ground utility installations as a part of this project.

I. Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).

FINDINGS: Specific criteria for each zone mapped on the Subject Property have been addressed above.

J. All exterior lighting shall be shielded so that direct light does not project off site.

FINDINGS: The Applicant has proposed exterior lighting as a part of this project. Staff (Staff Decision, page recommended a condition of approval requiring all exterior lighting shall be shielded so that direct light does not project off site. The Hearings Officer finds that with Staff’s recommended condition (Staff Decision, page 45) this criterion can be met.

K. Transportation access to the site shall be adequate for the use.

- 1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.***
- 2. Mitigation for transportation-related impacts shall be required.***
- 3. Mitigation shall meet applicable County standards in DCC 18.116.310, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.***

FINDINGS: The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application. No infrastructure concerns and no required improvements are identified in the record.

Section 18.124.070. Required Minimum Standards.

A. Private or shared outdoor recreation areas in residential developments.

1. ***Private Areas. Other than a development in the Sunriver UUC Town Center District, each ground level living unit in a residential development subject to site plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.***

FINDINGS: No residential development subject to site plan approval is proposed.

2. ***Shared Areas. Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:***
 - a. ***Units with one or two bedrooms: 200 square feet per unit.***
 - b. ***Units with three or more bedrooms: 300 square feet per unit.***

FINDINGS: No apartment residential development is proposed.

3. ***Usable outdoor recreation space shall be provided in the Sunriver UUC Town Center District on a district-wide basis as follows:***
 - a. ***A minimum of one hundred square feet of outdoor recreation space per Multi-family Dwelling unit or Townhome that is accessible to residents or guests staying in Multi-family Dwelling or Townhome units.***
 - b. ***Outdoor recreation spaces may include bicycle paths, plazas, play areas, water features, ice rinks, pools and similar amenities that are located outdoors.***
 - c. ***Outdoor recreation space must include recreation for children who are district residents, such as a maintained playground area with approved equipment such as swings or slides.***

FINDINGS: The proposal is not located in the Sunriver UUC Town Center District.

4. ***Storage. In residential developments, convenient areas shall be provided for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.***

FINDINGS: No residential development is proposed.

B. Required Landscaped Areas.

1. ***The following landscape requirements are established for multi family, commercial and industrial developments, subject to site plan approval:***
 - a. ***A minimum of 15 percent of the lot area shall be landscaped.***

FINDINGS: As described below, the lot area subject to site plan review is 326,700 square feet. 15 percent of this area is 49,005 square feet. The submitted landscaping plan illustrates 15 percent of the lot area as landscaped. Staff (Staff Decision, page 47) noted this 15 percent landscaped area does not include landscaping required under (B)(2) to meet this area requirement. The Hearings Officer concurs.

- b. All areas subject to the final site plan and not otherwise improved shall be landscaped.**

FINDINGS: The area subject to the final site plan is the southeast portion of the Subject Property, where the guest ranch will be located. This portion of the property is approximately 7.5 acres in size. The portions of the Subject Property in farm use are not subject to Site Plan Review. The submitted landscaping plan shows all areas subject to the final site plan and not otherwise improved as landscaped. The Hearings Officer notes such areas are “required landscaping” for the purposes of the DCC.

- 2. In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas:**
 - a. A parking or loading area shall be required to be improved with defined landscaped areas totaling no less than 25 square feet per parking space.**

FINDINGS: Staff (Staff Decision, page 47) included the following comments related to this criterion:

“Staff finds that, unlike section (B)(1), this criterion requires “defined landscaping”. Staff finds that “defined landscaping” does not have a definition in the code. Merriam–Webster’s dictionary definition of “defined” [footnote: <https://www.merriam-webster.com/dictionary/defined>] is “to show the shape, outline, or edge of (something) very clearly “. Thus this criterion cannot be met by un-differentiated natural landscaping.

In addition to the 15 percent standard of DCC 18.124.070(B)(1)(a), the submitted application materials include landscaping area(s) of 450 square feet as required for the 11 proposed parking spaces.”

The Hearings Officer finds Staff’s above-quoted comments to be credible and persuasive. The Hearings Officer concurs with the above-quoted Staff analysis and incorporates it as the Hearings Officer’s findings for this criterion. The Hearings Officer finds this criterion can be met.

- b. In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscaped strip at least five feet in width.**

FINDINGS: The submitted application materials include landscaping strip(s) separating parking/loading area(s) from the common property line with Tax Lot 300. The landscaped strip(s) adjacent to the southeast property line will be at least 5 feet in width. The Hearings Officer finds this criterion will be met.

- c. A landscaped strip separating a parking or loading area from a street shall contain:**
 - 1) Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.**
 - 2) Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.**

3) *Vegetative ground cover.*

FINDINGS: The submitted application materials do not include a parking or loading area adjacent to a street. The Hearings Officer finds these criteria do not apply.

- d. Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.*

FINDINGS: The submitted plan shows landscaping in a parking/loading area(s) in defined landscaped areas which are uniformly distributed throughout the parking/loading area(s).

- e. The landscaping in a parking area shall have a width of not less than five feet.*

FINDINGS: The landscaping in the parking area will have a width of not less than five feet.

- f. Provision shall be made for watering planting areas where such care is required.*

FINDINGS: Staff (Staff Decision, page 48) recommended a condition of approval requiring the provide for watering planting areas where such care is required. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

- g. Required landscaping shall be continuously maintained and kept alive and attractive.*

FINDINGS: Staff (Staff Decision, page 48) recommended a condition of approval requiring that landscaping must be continuously maintained and kept alive and attractive. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

- h. Maximum height of tree species shall be considered when planting under overhead utility lines.*

FINDINGS: No overhead utility lines exist on-site.

C. *Non-motorized Access.*

- 1. Bicycle Parking. The development shall provide the number and type of bicycle parking facilities as required in DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities shall be indicated on the site plan.*

FINDINGS: To the extent bicycle parking is required under this approval, the number and type of bicycle parking facilities are described above, under findings for DCC 18.116.031 and 18.116.035. The location and design of bicycle parking facilities are indicated on the site plan submitted with this application.

2. ***Pedestrian Access and Circulation:***

- a. ***Internal pedestrian circulation shall be provided in new commercial, office and multi family residential developments through the clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.***

FINDINGS: The Applicant proposed a commercial use consisting of a guest ranch. Staff (Staff Decision, page 29), concluded that paved walkways are required to connect building entrances. The Applicant proposed a paved walkway that will connect the entrances of the ten new cabins to the entrance of the lodge building. The Hearings Office finds this criterion will be met.

- b. ***Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.***

FINDINGS: Staff (Staff Decision, page 49) included the following comments related to this criterion:

“In Shepherd (file nos. 247-17-000573-AD and 574-SP, 247-18-000179-A and 182-A) the Board of County Commissioners found, “Subsections (b) through (e) apply to any use subject to site plan review.” Specifically, this means that uses not listed in section (2)(A) are also subject to these criteria.

As shown on the site plan, the applicant proposes paved walkways connecting buildings and other walkways to each other. Staff notes there are no walkways, sidewalks, bikeway or other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi-family, public or park use.”

The Hearings Officer finds Staff’s above-quoted comments to be credible and persuasive. The Hearings Officer concurs with the above-quoted Staff analysis and incorporates it as the Hearings Officer’s findings for this criterion. The Hearings Officer finds this criterion can be met.

- c. ***Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.***

FINDINGS: The Applicant proposed five-foot-wide paved walkways throughout. The proposed walkway is not adjacent to parking spaces. Therefore, the Hearings Officer finds concrete bumpers are not required. Per the site plan, the Hearings Officer finds the walkways provide a direct route to buildings .

- d. *Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.*

FINDINGS: No driveway crossings by walkways are proposed.

- e. *To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings.*

FINDINGS: Compliance with ADA standards for walkways will be addressed during building permit review. Staff (Staff Decision, page 50), recommended a condition of approval to ensure compliance. The Hearings Officer finds that with Staff's recommended condition this criterion can be met.

D. Commercial Development Standards:

- 1. *New commercial buildings shall be sited at the front yard setback line for lots with one frontage, and at both front yard setback lines for corner lots, and oriented to at least one of these streets, except in the Sunriver UUC Business Park (BP) District and Town Center (TC) District and properties fronting Spring River Road in the Spring River Rural Commercial Zone. The building(s) and any eaves, overhangs or awnings shall not interfere with the required clear vision area at corners or driveways.*

FINDINGS: The Applicant proposed ten cabins, which are new commercial buildings. As described below, the property qualified for an increased front yard setback pursuant to DCC 18.124.070(3)(a).

- 2. *To meet the standard in paragraph (1) of this subsection, buildings developed as part of a shopping complex, as defined by this title, and planned for the interior, rear or non-street side of the complex may be located and oriented toward private interior streets within the development if consistent with all other standards of paragraph (1) above and this paragraph. Interior streets used to satisfy this standard may have on-street parking and shall have sidewalks along the street in front of the building. Such sidewalks shall connect to existing or future sidewalks on public streets accessing the site. The master plan for the shopping complex shall demonstrate that at least one half of the exterior perimeter of the site that abuts each public street, will be developed with buildings meeting the standards of paragraphs (D)(1) or (D)(3) of this subsection.*

FINDINGS: No shopping complex is proposed.

3. *An increase in the front yard setback may be allowed where the applicant can demonstrate that one or more of the following factors makes it desirable to site the new building beyond the minimum street setback:*
 - a. *Existing development on the site;*
 - b. *Lot configuration;*
 - c. *Topography of the lot;*
 - d. *Significant trees or other vegetative features that could be retained by allowing a greater setback;*
 - e. *Location of driveway access. Such an increase in the front yard shall be the minimum necessary to accommodate the reason for the increase.*
 - f. *Architectural features, driveways, landscaping areas equal to or greater than the depth of the structure, and outdoor commercial areas, when at least one half of the structure meets the minimum street setback.*

FINDINGS: The Applicant proposed to utilize an existing nonfarm dwelling for the lodge of the guest ranch. This existing building is set back approximately 300 feet from the front property line along Holmes Road. The Applicant proposed to cluster the new cabins near this existing building to take advantage of an existing driveway. The Hearings Officer finds the Subject Property qualifies for an increased front yard setback based on existing development on the Subject Property.

4. *Off street motor vehicle parking for new commercial developments in excess of 10,000 square feet shall be located at the side or behind the building(s), except in the Sunriver UUC Business Park (BP) District and Town Center (TC) District. Off-street parking proposed with a shopping complex, as defined by this title, and intended to serve buildings located in the interior or rear of the complex may have parking in front of the building provided the overall master plan for the site satisfies paragraph (2) of this subsection.*

FINDINGS: No off street motor vehicle parking for new commercial developments in excess of 10,000 square feet is proposed.

Section 18.124.080, Other Conditions.

The Planning Director or Hearings Body may require the following in addition to the minimum standards of DCC Title 18 as a condition for site plan approval.

- A. *An increase in the required yards.*
- B. *Additional off street parking.*
- C. *Screening of the proposed use by a fence or landscaping or combination thereof.*
- D. *Limitations on the size, type, location, orientation and number of lights.*
- E. *Limitations on the number and location of curb cuts.*
- F. *Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.*

- G.** *Improvement, including but not limited to paving, curbing, installation of traffic signals and constructing sidewalks or the street system that serves the proposed use where the existing street system will be burdened by the proposed use.*
- H.** *Improvement or enlargement of utilities serving the proposed use where the existing utilities system will be burdened by the proposed use. Improvements may include, but shall not be limited to, extension of utility facilities to serve the proposed use and installation of fire hydrants.*
- I.** *Landscaping of the site.*
- J.** *Traffic Impact Study as identified in Title 18.116.310.*
- K.** *Any other limitations or conditions that are considered necessary to achieve the purposes of DCC Title 18.*

FINDINGS: To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, the Hearings Officer finds such conditions are authorized by this section.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

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

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

Section 18.128.015, General Standards Governing Conditional Uses.

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

FINDINGS: The use subject to conditional use review is subject to this chapter.

- A.** *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:*
 - 1.** *Site, design and operating characteristics of the use;*

FINDINGS: Staff (Staff Decision, pages 53 & 54) provided the comments related to this criterion. This criterion was not the subject of the COLW appeal. The Hearings Officer finds the Staff comments below are credible represent substantial evidence and persuasive argument. Staff stated the following:

“Site

The site is 186.26 acres in size and contains an active cattle ranch. The subject property has 133.5 acres of irrigated land, which are located to the north and west of the proposed guest ranch. Due to the size and existing development of the subject property, there is room to accommodate the guest ranch without impacting the irrigated portion of the property. The property is developed with two dwellings and a number of farm buildings. The four largest farm buildings are all clustered with the farm manager residence and these structures are located approximately 780 feet west of the nonfarm dwelling. The farm manager residence and agricultural buildings are accessed by a separate driveway off of Holmes Road. The access point for this driveway is located 450 feet west of the driveway access point that serves the nonfarm dwelling, which will provide separation between the guest ranch and the farm operations on the property. The site is suitable for the use because there is an existing nonfarm dwelling that can be partially converted into lodge space, which will minimize the amount of construction required. Staff finds there is nothing about the site which would preclude locating the project in this area. For this reason, staff finds the site is suitable.

Design

The design of the use takes advantage of existing transportation access, while providing an appropriate buffer between the guest ranch and the farm use of the property. An existing nonfarm dwelling will operate as a lodge building and contain shared space for guests to use. This building will continue to also contain the nonfarm dwelling and staff finds consolidating the two uses into one existing building will minimize disturbance to the rest of the property. The design provides maximum separation between the guest ranch and the working cattle farm, which will minimize impacts on continuing farm operations. The existing nonfarm dwelling is located approximately 780 feet from the closest agricultural building, and is separated by an irrigation pond and internal driveway.

The guest ranch will be accessed by an existing gravel driveway that currently serves the nonfarm dwelling. The applicant proposes to extend this driveway to the northeast to provide direct access to each of the new cabins. This driveway will also be widened to 24 feet to accommodate two-way traffic. A paved pedestrian path will be constructed to the north of the service drive. This path will run parallel to the driveway and will connect the cabins with each other and to the lodge building. The design will provide for safe vehicle and pedestrian access to the guest ranch, while keeping guest traffic separated from farm operations. For these reasons, staff finds the design of the proposal is suitable to the site.

Operating Characteristics

The guest ranch will provide lodging in ten cabins and a portion of the nonfarm dwelling will be converted into common space for guests of the cabins. The guest ranch will take advantage of an existing driveway and a parking space will be provided in close proximity to each cabin. A maximum of ten rooms will be provided for guest lodging, which will effectively limit the amount of visitors to the site. Each of the proposed cabins will be 1,200 square feet in size. In addition, no developed outdoor areas are proposed. Guests will utilize outdoor space for passive recreation, which will generate minimal impacts on neighboring properties and the remainder of the site.

The applicant does not propose food service or special events, therefore visitors to the property will likely be limited to cabin guests. In addition, the application materials do not indicate that any paid recreation activities or other paid services will be offered to guests. The applicant proposes to use a portion of the nonfarm dwelling as lodge space. A floor plan dated May 1, 2023, identified the area within the dwelling that will be designated as a lodge and accessible to guests. Two covered patios, a dining area, and the great room will be used as common space for guest ranch clients, and the majority of the building will remain a private residence. The limited size of the common indoor area dedicated to the guest ranch means its use will likely generate minimal impacts on the rest of the subject property. As noted above, the applicant does not propose to rent space for private events within the shared lodge and does not propose to host events for members of the public not staying at the on-site cabins.

The site is suitable for the use because of its size, existing development, transportation access, and proposed buffering between the guest ranch and farm operations.”

The Hearings Officer adopts the above-quoted Staff comments as the findings for this criterion. The Hearings Officer finds that site is suitable for the proposed use.

2. Adequacy of transportation access to the site; and

FINDINGS: Transportation access is provided to the Subject Property by Holmes Road, which is classified as a County-maintained Rural Collector. Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. The Hearings Officer finds, as conditioned, the site and Subject Property is suitable for the proposed use based on adequacy of transportation access to the Subject Property.

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

FINDINGS: The Subject Property has a gentle slope in grade and presents no topographical constraints on the proposed use. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use.

Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. The Subject Property contains wetlands mapped on statewide and national inventories, and these mapped wetlands appear to overlap with irrigation ditches and an irrigation pond. The mapped wetland closest to the proposed guest ranch is an irrigation pond located approximately 400 feet west of the nonfarm dwelling. This pond is adjacent to existing development, including the farm manager residence and an agricultural building. Due to existing surrounding development and the intervening distance between this pond and the new cabins, the proposed guest ranch will likely have minimal impacts on this mapped wetland.

As described above, the Subject Property is in active farm use and therefore contains natural resource values consisting of agricultural soils. The Subject Property contains 133.5 acres of irrigated land, which is used for cattle grazing and hay production. The guest ranch buildings, service drives, and parking areas will all be located outside of the irrigated portion of the Subject Property. No land will be removed from agricultural use in order to construct the guest ranch, which demonstrates that an effort has been made to preserve agricultural soils. The guest ranch approval is contingent on there being a continued livestock operation on the Subject Property, therefore, the Hearings Officer finds it unlikely the guest ranch will be developed in a way that negatively impacts agricultural soils on-site. Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. The Hearings Officer finds criterion is met.

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

FINDINGS: The Hearings Officer incorporates the Preliminary Findings for section II.A.7 (Farm Impacts Test) as additional findings for this criterion. Further, the Hearings Officer finds that the following Staff comments (Staff Decision, page 55) are credible and based upon substantial evidence in the record.

“Staff finds this this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. Staff finds “surrounding properties” are those that might be significantly adversely impacted by their proximity to the proposed use. Surrounding properties are all zoned EFU and neighboring properties range in size from 6.5 to 834 acres. The surrounding area includes a mix of medium-to-large scale farms with large, irrigated fields. The general surrounding area includes nonfarm dwellings, farm dwellings, and EFU dwellings that predate County zoning. The surrounding area includes several commercial activities operating alongside farm uses, such as Long Hollow Guest Ranch and Rainshadow Organics, which hosts farm-to-table dinners. The neighboring property to the southwest does not appear to be in farm use and is developed with a church and wedding venue. The adjacent property to the southeast is under common ownership and is currently undeveloped with native vegetation. After the proposed property line adjustment, Tax Lot 300 will be five acres in size.

Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the areas. These projected uses include farm use, residential and agricultural accessory structures, and replacement dwellings. Staff finds existing uses are a reasonable representation of uses allowed in the underlying zones of surrounding properties. For this reason, staff finds projected uses are likely to be similar to existing uses.”

Based upon the incorporated findings and the above-quoted Staff comments the Hearings Officer finds this criterion is met.

(A)(1). Site, design and operating characteristics of the use;

The Hearings Officer incorporates the Preliminary Findings for section II.A.7 (Farm Impacts Test) as additional findings for this criterion. Further, the Hearings Officer finds that the following Staff comments (Staff Decision, page 56) are credible and based upon substantial evidence in the record.

“Staff finds the proposed use would be unsuitable if the siting, design and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts could include visual, noise, dust, and odor impacts. Adverse impacts generated by the guest ranch will include, noise, traffic, and visual impacts. The ten new cabins will require construction and will generate visual impacts because buildings will be placed in an area that is currently undeveloped with scattered vegetation.

Traffic is likely to be the primary impact generated by the guest ranch. Additionally, vehicles will create noise and dust as they utilize the gravel driveway to enter and exit the subject property. Each of the ten cabins will contain one bedroom and a second floor loft. The application materials indicate anywhere from one to four occupants can be expected within each cabin and staff finds this a reasonable estimate based on the proposed floor plan. Due to the lack of sidewalks and rural character of the surrounding area, guests will likely use vehicles to visit nearby attractions during their stay at the guest ranch. However, staff notes there are several approved commercial uses in the surrounding area, such as a farm stand and a wedding venue. These existing uses likely generate more vehicle traffic than the guest ranch will generate. Staff also notes the applicant does not propose special events as part of the subject guest ranch application. The noise generated by weddings and events on surrounding properties will therefore likely be greater than noise generated by cabin guests.

The proposed guest ranch will be located closest to the neighboring property to the southeast, which is identified as Tax Lot 300. This property is currently undeveloped, but future uses may include farm use or a dwelling pursuant to DCC 18.16.050. Because of the relatively close proximity, this neighboring property is most likely to be negatively impacted by noise, traffic, and visual impacts generated by the guest ranch. The applicant proposes to retain existing vegetation, including a number of juniper trees, between the guest ranch and this property. The proposed cabins are also oriented so that outdoor recreation will likely occur to the northwest of the cabins, in the opposite direction of this neighboring property.

The guest ranch will operate on a property with an active farm use, consisting of a cattle ranch. Staff finds the coexistence of the guest ranch and cattle operation on the subject property indicates the guest ranch will not prevent neighboring farm uses. The livestock operation on the subject property utilizes heavy equipment, and cattle generate dust and odor. Therefore, impacts generated by vehicle traffic to the guest ranch will be largely indistinguishable from impacts generated by the farm use of the property.”

Based upon the incorporated findings and the above-quoted Staff comments the Hearings Officer finds this criterion is met.

(A)(2). Adequacy of transportation access to the site; and

The Hearings Officer incorporates the Preliminary Findings for section II.A.7 (Farm Impacts Test) as additional findings for this criterion. Further, the Hearings Officer finds that the following Staff comments (Staff Decision, pages 56 & 57) are credible and based upon substantial evidence in the record.

“Staff finds the proposed use would be unsuitable if access to the site would significantly adversely impact existing and projected uses on surrounding properties. Comments from the County Transportation Planner did not identify any concerns regarding the capacity of the surrounding roadway system. Comments submitted by the County Transportation Planner indicate the guest ranch is anticipated to generate less than 50 new weekday vehicle trips. The subject property has frontage on two roads, Holmes Road and NW Lower Bridge Road. Holmes Road is classified as a Rural Collector and NW Lower Bridge Way is classified as a Local Access road. The applicant proposes to utilize an existing driveway, which currently serves the nonfarm dwelling. The neighboring property to the south operates a farm stand and farm-to-table dinners, and the driveway access point to this property is located approximately 420 feet from the driveway access point for the guest ranch. Despite the relative proximity and the additional traffic the guest ranch will generate, staff does not anticipate it will negatively impact vehicle access to this neighboring property.”

Based upon the incorporated findings and the Staff comments quoted above the Hearings Officer finds this criterion is met.

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

The Hearings Officer incorporates the Preliminary Findings for section II.A.7 (Farm Impacts Test) as additional findings for this criterion. Further, the Hearings Officer finds that the following Staff comments (Staff Decision, pages 57 & 58) are credible and based upon substantial evidence in the record.

“Staff finds the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. Natural hazards on surrounding properties include wildfire risk. The applicant proposes to construct ten new cabins, which will draw visitors to the property and may increase wildfire risk. However, the subject property has frontage on Holmes Road, which is a County-maintained Rural Collector and provides access for fire trucks, if needed. The subject property also contains an irrigation pond and 133.5 acres of irrigated land, which may slow the speed that a wildfire would spread to neighboring properties. Due to the limited impacts of the guest ranch on fire risk, as well as the available transportation access and water sources, staff finds the guest ranch will not significantly contribute to the wildfire risk of surrounding properties.

Natural resource values on surrounding properties include wildlife habitat, mapped wetlands, and agricultural soils. Due to the amount of farming in the surrounding area, staff finds natural resource values consisting of agricultural soils are of particular concern. The proposed guest ranch will not prevent farming on neighboring properties. There is an established pattern of farm use in the general area, which includes pasture, hay fields, and various other crops. These farm uses have continued despite the approval of nearby dwellings and commercial uses, which indicate they can continue to operate once the guest ranch is established.

Mapped wetlands on surrounding properties appear to be collocated with irrigation facilities, such as ditches, canals, and ponds. In some instances, it appears the irrigation channels mapped as wetlands have since been piped, because they are no longer visible in aerial images. Staff notes there do not appear to be any naturally-occurring streams or rivers in the general surrounding area.

The surrounding area is defined by a rural character and developed at relatively low density. A significant amount of land area is devoted to farm use, and but a large amount of area also remains undeveloped with native vegetation. The extensive amount of undeveloped land provides habitat for wildlife and is therefore considered a natural resource value. The guests and vehicles on the subject property may generate noise and scare off wildlife, but this will likely only impact wildlife habitat immediately adjacent to the guest ranch. Based on the amount of existing farm use and commercial uses on neighboring properties, the noise generated by the guest ranch will be consistent with existing surrounding uses.

There are two federally-owned properties nearby which are undeveloped and provide wildlife habitat. One is located approximately 0.6 miles east of the guest ranch and is over 800 acres in size, and the other is located approximately 0.65 miles to the southwest of the guest ranch and is over 4,000 acres in size. Due to the size of these properties, the intervening distance, and the intervening development, staff finds the proposed guest ranch is not likely to impact wildlife habitat on this nearby public land.”

Based upon the incorporated findings and the above-quoted Staff comments the Hearings Officer finds this criterion is met.

- C. *These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.***

FINDINGS: To the extent this decision is conditioned under DCC 18.128 criterion, the Hearings Officer finds that such conditions are authorized by this criterion.

Section 18.128.020, Conditions.

In addition to the standards and conditions set forth in a specific zone or in DCC 18.124, the Planning Director or the Hearings Body may impose the following conditions upon a finding that additional restrictions are warranted.

- A. *Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. *Require a special yard or other open space or a change in lot area or lot dimension.***
- C. *Require a limitation on the height, size or location of a structure.***
- D. *Specify the size, number, location and nature of vehicle access points.***
- E. *Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. *Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. *Limit or specify the number, size, location, height and lighting of signs.***
- H. *Limit the location and intensity of outdoor lighting and require shielding.***
- I. *Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.***
- J. *Specify the size, height and location of any materials to be used for fencing.***

- K. Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.**
- L. Require that a site plan be prepared in conformance with DCC 18.124.**

FINDINGS: To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, the Hearings Officer finds such conditions are authorized by this section.

Section 18.128.040, Specific Use Standards.

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

FINDINGS: As described herein, the proposed conditional use complies with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370, as applicable.

Section 18.128.360, Guest Ranch.

A guest ranch established under DCC 18.16.037 shall meet the following conditions:

- A. Except as provided in DCC 18.128.360(C), the guest lodging units cumulatively shall:**
 - 1. Include not less than four nor more than 10 overnight guest lodging units, and;**

FINDINGS: The Hearings Office incorporates the Preliminary findings for sections II.A.6 (Definition of Guest Lodge Unit) and II.A.12 (Number of Guest Lodging Units) as additional findings for this criterion. The Applicant proposed ten overnight guest lodging units, consisting of one-bedroom cabins. Based upon the incorporated findings the Hearings Officer finds the number of guest lodging units will be more than four and not more than ten. Therefore, this criterion will be met.

- 2. Not exceed a total of 12,000 square feet in floor area, not counting the floor area of the lodge that is dedicated to kitchen area, rest rooms, storage or other shared or common indoor space.**

FINDINGS: The Hearings Office incorporates the Preliminary findings for sections II.A.6 (Definition of Guest Lodge Unit) and II.A.12 (Number of Guest Lodging Units) as additional findings for this criterion. Each of the ten proposed cabins will have 1,200 square feet of floor area, which is a total of 12,000 square feet in floor area dedicated to the guest cabins. Space within an existing nonfarm dwelling will be converted into a lodge for the guest ranch. The application materials indicate this structure will continue to contain no more than one kitchen, and will function as both a lodge and a nonfarm dwelling. Space within the lodge may be dedicated to kitchen area, rest rooms, storage or other shared or common indoor space. Staff (Staff Decision, page 59) noted that the guest ranch would exceed the allowed 12,000 square feet of floor area if space in the lodge is used for private guest rooms. Therefore, Staff recommended the following condition:

No space within the lodge building shall be rented out to visitors for overnight occupancy as part of the guest ranch. This does not preclude employees of the guest ranch from residing in the

nonfarm dwelling within the same structure.

As noted above, the Applicant proposed ten cabins with a total floor area of 12,000 square feet. Utilizing the nonfarm dwelling as overnight accommodations would exceed the permitted number of guest lodging units, and permitted floor area of guest lodging units. The Applicant has not proposed to rent space within this nonfarm dwelling in conjunction with the guest ranch. Therefore, after the conversion of a portion of this building to lodge space, the remainder of the building must continue to operate as a private, nonfarm dwelling. Pursuant to a recent Court of Appeals decision (*1000 Friends of Oregon v. Clackamas County*), it does not appear that using an existing dwelling as a short term rental is a use that is permitted outright in resource zones. Staff (Staff Decision, page 59) recommended adding the following condition:

The nonfarm dwelling shall not be used as a short term rental or vacation rental without first obtaining any required land use permits.

The Hearings Officer, based upon the incorporated findings set forth above and inclusion of Staff's recommended condition, this criterion can be met.

- B. *The guest ranch shall be located on a lawfully established unit of land that:***
1. *Is at least 160 acres in size;*

FINDINGS: The Applicant proposed two property line adjustments as part of the application in this case. After these adjustments, the Subject Property where the guest ranch is located will be 186.26 acres in size.

- 2. *Contains the dwelling of the person conducting the livestock operation; and***

FINDINGS: The Hearings Officer incorporates the Preliminary findings for section II.A.4 (Person Conducting Farm Operation) as additional findings for this criterion. The submitted site plan indicates the existing dwelling for the farm/ranch manager is located to the southwest of the proposed guest ranch. The application materials indicate this existing 1,440-square-foot dwelling will continue to be occupied by the farm/ranch manager. Staff (Staff Decision, page 60) recommended the following condition:

Approval of the guest ranch is contingent on the subject property continuing to contain the dwelling of the person conducting the livestock operation.

The Hearings Officer, based upon the incorporated findings, the findings set forth above and Staff's recommended condition, this criterion can be met.

- 3. *Is not classified as high value farmland as defined in DCC 18.04.030.***

FINDINGS: The Hearings Officer incorporates the Preliminary Findings sections II.A.8 (Tract) and II.A.9 (High Value Farmland) as additional findings for this criterion. The Hearings Officer also finds credible and based upon substantial evidence the Staff findings (Staff Decision, pages 60-61) and incorporates those findings as additional Hearings Officer findings for this criterion. The Hearings Officer finds, based upon the incorporated findings, that the Subject Property is not high-value farmland

as defined in DCC 18.04.030.

- C. For every increment of 160 acres that the lawfully established unit of land on which the guest ranch is located exceeds the minimum 160-acre requirement described under DCC 18.128.360(B), up to five additional overnight guest lodging units not exceeding a total of 6,000 square feet of floor area may be included in the guest ranch for a total of not more than 25 guest lodging units and 30,000 square feet of floor area.**

FINDINGS: The Applicant has not requested additional lodging units based on the size of the Subject Property. The Hearings Officer finds this criterion does not apply.

- D. A guest ranch may provide recreational activities in conjunction with the livestock operation's natural setting, including but not limited to hunting, fishing, hiking, biking, horseback riding and swimming. Intensively developed recreational facilities including golf courses or campgrounds identified in DCC 18.16.030 through 18.16.033, shall not be allowed in conjunction with a guest ranch, and a guest ranch shall not be allowed in conjunction with an existing golf course or with an existing campground.**

FINDINGS: The Applicant proposed low-intensity outdoor recreation, such as yard games. The submitted site plan does not indicate any formal recreation areas will be developed in conjunction with the guest ranch. The application materials also do not indicate that any fee-based recreation will be offered to guests. No intensively developed recreational facilities, such as golf courses or campgrounds, are proposed. The Hearings Officer finds this criterion will be met.

- E. Food services shall be incidental to the operation of the guest ranch and shall be provided only for the guests of the guest ranch, individuals accompanying the guests, and individuals attending a special event at the guest ranch.**
- 1. The cost of meals, if any, may be included in the fee to visit or stay at the guest ranch.**
 - 2. The sale of individual meals to persons who are not guests of the guest ranch, an individual accompanying a guest, or an individual attending a special event at the guest ranch shall not be allowed.**

FINDINGS: The Hearings Officer incorporates the Preliminary Findings for section (Food Service) as additional findings for these criteria. In a letter dated March 28, 2023, the Applicant stated:

“Food service is not proposed with this application / project.”

Based upon the incorporated findings and because no food service is proposed as part of the guest ranch, the Hearings Officer finds that the criteria regarding cost and operating characteristics of food service do not apply.

- F. The exterior of the buildings shall maintain a residential appearance.**

FINDINGS: The submitted application materials include drawings of the proposed cabins. These

drawings indicate the buildings have the appearance of a small single-family dwelling with attached porch. There is nothing about the building design that gives the appearance of a commercial use or guest lodging unit. The Hearings Officer finds the proposed buildings will maintain a residential appearance and this criterion will be met.

G. To promote privacy and preserve the integrity of the natural setting, guest ranches shall retain existing vegetation around the guest lodging structure.

FINDINGS: The application materials indicate vegetation will be retained around the guest ranch. The southeast portion of the Subject Property contains dispersed juniper trees and ground vegetation. The project will require the removal some trees to construct the new cabins, parking spaces, and service drive. However, trees that are not required to be removed for construction will be preserved. To ensure compliance, Staff (Staff Decision, page 62) recommended the following condition of approval:

Existing vegetation around the guest lodging structures shall be retained.

The Hearings Officer finds with Staff’s recommended condition of approval this criterion can be met.

H. All lighting shall be shielded and directed downward in accordance with DCC 15.10, Outdoor Lighting Control.

FINDINGS: Staff recommended that this criterion be added as a condition of approval. The Hearings Officer concurs and finds that with such condition this criterion can be met.

I. Signage shall be restricted to one sign no greater than 20 square feet, nonilluminated and posted at the entrance to the property.

FINDINGS: The application materials do not indicate whether any signage is proposed for the guest ranch. Instead, the Applicant requested a condition of approval be added to ensure future compliance with this criterion if a sign is added. Due to the limited impacts of adding a sign, as described above, the Hearings Officer finds a modification of approval is not required if the Applicant chooses to add a sign to the property in the future. Staff (Staff Decision, page 62) recommended the following condition of approval to ensure any future signage complies with this criterion:

If signage is added to the guest ranch in the future, it shall be limited to one sign no greater than 20 square feet, nonilluminated and posted at the entrance to the property.

The Hearings Officer finds with Staff’s recommended condition of approval this criterion can be met.

J. Occupancies shall be limited to not more than 30 days.

FINDINGS: The Hearings Officer incorporates the Preliminary Findings for section II.A.2 (Shor-term Rental Use Alleged Violation) as additional findings for this criterion. Staff recommended that this criterion be added as a condition of approval. The Hearings Officer concurs and finds that with such condition this criterion can be met.

- K. *The guest ranch shall be operated in a way that will protect neighbors from unreasonable disturbance from noise, dust, traffic or trespass.***

FINDINGS: The Hearings Officer incorporates the Preliminary Findings for section II.A.7 (Farm Impact Test) as additional findings for this criterion. The submitted Burden of Proof included the following response to this criterion:

“Given the distance of the use from property boundaries and neighbors, it is highly unlikely that the ranch will create an unreasonable disturbance from noise, dust, traffic or trespass.”

The Hearings Officer agrees with that the proposed guest ranch facilities will be located a significant distance from neighboring properties. The Hearings Officer finds that the guest ranch will be served by internal pedestrian pathways and service drives, which will encourage guests to stay within the portion of the property designated as the guest ranch. A buffer of undeveloped land and vegetation will separate the guest ranch from the closest neighboring property, which is located to the southeast. The site plan is also designed so that cabins and pedestrian paths are all located to the northwest of the service drive, which will likely keep any outdoor activities on that side of the service drive. This design orients outdoor activities and pedestrian paths away from the neighboring, privately-owned property to the southeast. For these reasons, the Hearings Officer finds the guest ranch will be operated in a way that will protect neighbors from unreasonable disturbance from noise, dust, traffic or trespass.

- L. *One off-street parking space shall be provided for each guestroom in addition to parking to serve the residents.***

FINDINGS: The submitted site plan indicates one parking space will be provided for each of the one-bedroom cabins. One ADA-accessible parking space will also be provided at the lodge building, which contains shared indoor space for the guest ranch. The lodge building also contains a nonfarm dwelling, which has its own garage and separate vehicle parking. The Hearings Officer finds one off-street parking space is provided for each guestroom, in addition to parking associated with the two dwellings on the Subject Property. This criterion will be met.

- M. *Any conversion or alterations to properties designated as historic landmarks shall be approved by the Deschutes County Historical Landmarks Commission.***

FINDINGS: The Subject Property is not designated as a historic landmark. The Hearings Officer finds this criterion does not apply.

- A. *A guest ranch that is authorized under this section shall submit an annual report, that shall be made available to the public upon request, to the Community Development Department by the real property owner or licensee, if different, each February 1 documenting the following:***
- 1. *The size of the guest ranch's livestock operation;***
 - 2. *The income that the guest ranch obtained from:***
 - a. *Livestock operations; and***
 - b. *Guest ranch activities; and***
 - 3. *Other information to ensure ongoing compliance with this section or any condition of approval.***

FINDINGS: Staff (Staff Decision, pages 63 & 64) provided the following comments:

“Staff adds this as a condition of approval. Because no food service, special events or fee-based services are proposed, staff finds the income generated by the guest ranch activities will consist entirely of income generated by cabin rentals. Therefore, staff does not require the annual report to include any additional information in order to ensure ongoing compliance with this section or any condition of approval.

Staff adds the following condition of approval regarding annual reporting:

The owner shall submit an annual report to the Community Development Department by February 1st of each year. The annual report shall document the size of the guest ranch’s livestock operation, the income that the guest ranch obtained from livestock operations, and the income that the guest ranch obtained from guest ranch activities. “

The Hearings Officer finds the above-quoted Staff comments to be credible and based upon substantial evidence. The Hearings Officer, based upon the Staff comments finds this criterion can be met.

SYSTEM DEVELOPMENT CHARGE

The Hearings Officer finds Staff’s comments related to the County System Development Charge (Staff Decision, page 64) are relevant.

IV. CONCLUSIONS

Staff approved, with conditions, Applicant’s proposed guest ranch proposal located on the Subject Property. COLW appealed the Staff approval on numerous grounds. The Hearings Officer addressed directly each of COLW’s appeal issues in the Preliminary Findings and in findings for relevant approval criteria. The Hearings Officer denied COLW’s appeal claims. The Hearings Officer found that all relevant approval criteria had or could be satisfied by Applicant’s guest ranch proposal. Specifically, the Hearings Officer concluded the following:

Conditional Use Permit and Site Plan Review

Based on the foregoing findings, the Hearings Officer 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. The Hearings Officer found that COLW’s appeal issues were not supported by substantial evidence and/or persuasive legal argument.

The Hearings Officer notes that 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.

Property Line Adjustments

The proposed adjustment(s) in size are within the allowable limits for the respective zoning districts. This application meets the requirements as established and has been **tentatively** approved by the Deschutes County Planning Division. This tentative approval only confirms that the proposed adjustment meets the current zoning criteria necessary for property line adjustments. All restrictions for these zones still apply to the subject properties.

Pursuant to *Bowerman v Lane County*, 287 Or App 383, 403 P3d 512, the Court of Appeals (“Court”) ruled a local government has, “...the discretion to approve a series of requested property line adjustments, including to property lines not yet reflected in recorded deeds, contingent upon an applicant recording each approved adjustment in proper sequence.”

The Court goes on to state,

"A county's approval of sequential property line adjustments could accommodate the deed information requirements by conditioning approval on the requirement that each deed comply with ORS 92.190(4)."

For these reasons, the Hearings Officer includes conditions of approval **G. (3-4)** to ensure compliance with *Bowerman*.

A property line adjustment may have an effect on any completed septic site evaluations for the properties involved. Applicant, or any successor applicant, may wish to check with the Environmental Soils Division regarding this matter. A property line adjustment may also affect any water rights appurtenant to your property. If there is an affected water right, the Applicant, or successor applicant, should contact the relevant irrigation district before the property line adjustment is surveyed.

V. DECISION

APPROVAL, subject to the following conditions of approval.

CONDITIONS OF APPROVAL

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the Applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The property owner shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.
- C.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040
- D.** Structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180.

- E.** In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- F.** In order to obtain **final** approval of property line adjustment 247-22-000885-LL:
1. A new deed, reflecting the consolidated property, shall be recorded with the Deschutes County Clerk, and a copy of the recorded deed shall be submitted to the Planning Division. The consolidation deed shall contain the names of the parties, the description of the eliminated line, references to original recorded documents and signatures of all parties with proper acknowledgment.
- G.** In order to obtain **final** approval of the property line adjustment 247-22-000886-LL:
1. Except as provided in ORS 92.060(7-9), the adjusted property lines shall be surveyed and monumented by a registered professional land surveyor and a survey complying with ORS 209.250, shall be filed with the County Surveyor. A copy of the filed survey shall be submitted to the Planning Division. Property line adjustments of properties each over 10 acres in size are not required to file a survey according to ORS 92.060(8).
 2. New deeds, reflecting the new adjusted properties, shall be recorded with the Deschutes County Clerk, and a copy of the recorded deeds shall be submitted to the Planning Division. The adjustment deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment.
 3. Each deed for each requested adjustment shall be recorded in the order detailed in this decision.
 4. Each deed shall comply with ORS 92.190(4).
- H.** No land division shall separate the guest ranch from the dwelling of the person conducting the livestock operation.
- I.** All new fences within the portion of the Subject Property within the Wildlife Area Combining Zone shall comply with DCC 18.88.070.
- J.** The service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A).
- K.** All lighting shall be shielded and directed downward in accordance with DCC 15.10, Outdoor Lighting Control.
- L.** The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

- M.** Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
- N.** Required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use.
- O.** Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
- P.** All vehicle standing and maneuvering areas for the guest ranch will be a gravel surface that is adequately maintained for all weather use and maintained in a manner that will not create dust problems for neighboring properties
- Q.** Prior to issuance of building or septic permits for the guest ranch, the owner shall submit a revised site plan showing markers or barriers spaced no more than 100 feet apart along the service drive.
- R.** Prior to the issuance of building or septic permits for the guest ranch, the owner shall submit a revised site plan showing that bicycle parking complies with the following:
 - 1. Each bicycle parking space shall be at least two by six feet with a vertical clearance of seven feet.
 - 2. An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.
- S.** The bicycle parking surface shall be maintained in a smooth, durable, and well-drained condition.
- T.** All trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.
- U.** All exterior lighting shall be shielded so that direct light does not project off site.
- V.** The Applicant shall provide for watering planting areas where such care is required.
- W.** Required landscaping shall be continuously maintained and kept alive and attractive.
- X.** The nonfarm dwelling shall not be used as a short term rental or vacation rental without first obtaining any required land use permits.
- Y.** No space within the lodge building shall be rented out to visitors for overnight occupancy as part of the guest ranch. This does not preclude employees of the guest ranch from residing in the nonfarm dwelling within the same structure.

- Z.** Existing vegetation around the guest lodging structures shall be retained.
- AA.** The owner shall submit an annual report to the Community Development Department by February 1st of each year. The annual report shall document the size of the guest ranch's livestock operation, the income that the guest ranch obtained from livestock operations, and the income that the guest ranch obtained from guest ranch activities.
- BB.** Occupancies of the guest ranch cabins shall be limited to not more than 30 days.
- CC.** Prior to the issuance of building or septic permits for the guest ranch, the owner shall submit a revised site plan showing the location of signage for the bicycle parking.
- DD.** If signage is added to the guest ranch in the future, it shall be limited to one sign no greater than 20 square feet, nonilluminated and posted at the entrance to the property.
- EE.** Prior to issuance of building or septic permits for the guest ranch cabins, the owner shall submit documentation that they have applied for a structural permit to convert a portion of the nonfarm dwelling to lodge space, and that an approved AMM form (Request for Alternate Design, Materials and Methods of Construction) has been reviewed by Deschutes County Building Division.
- FF.** Approval of the guest ranch is contingent on the Subject Property continuing to contain the dwelling of the person conducting the livestock operation.
- GG.** Areas in ranch cabins that are not guest rooms shall not be used for sleeping by guests. No more than a total of 10 rooms in cabins may be used as guest rooms.

DURATION OF APPROVAL, NOTICE, AND APPEALS

The applicant shall initiate the use for the proposed development within two (2) 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.

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 Hearings Officer

Gregory J. Frank

Date: _____

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100(1) AND 5.100(2)

I hereby certify that I complied with UTCR 5.100(1) with respect to the (Proposed) General Judgment to which this certificate is attached by doing the following:

On October 17, 2023, I served opposing counsel with the (Proposed) General Judgment to which this certificate is attached. Opposing counsel consented to the form of Judgment.

This proposed order or judgment is ready for judicial signature because:

1. Each opposing party affected by this order or judgment has stipulated to the order or judgment as shown by each opposing party's signature on the document being submitted.
2. Each opposing party affected by this order or judgment has approved the order or judgment as shown by signature on the document being submitted or by written confirmation of approval sent to me.
3. I have served a copy of this order or judgment on all parties entitled to service and:
 - a. No objection has been served on me.
 - b. I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved
 - c. After conferring about objections, ____, attorney for the plaintiff, agreed to independently file any remaining objection.
4. The relief sought is against an opposing party who has been found in default.
5. An order of default is being requested with this proposed judgment.
6. Service is not required pursuant to subsection (3) of this rule, or by statute, rule or otherwise.
7. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

DATED this 17th day of October 2023.

HATHAWAY LARSON LLP

By: s/ Christopher P. Koback
Christopher P. Koback, OSB No. 913408
Of Attorneys for Relator

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2023, I served the foregoing **STIPULATED PEREMPTORY WRIT OF MANDAMUS AND GENERAL JUDGMENT OF DISMISSAL** on the party listed below in the manner indicated:

David Doyle, OSB No. 901477
Deschutes County Legal Counsel
1300 NW Wall Street, Suite 205
Bend, OR 97703
david.doyle@deschutes.org
Of Attorneys for Defendant

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email
- Via Odyssey File & Serve

DATED this 17th day of October 2023.

HATHAWAY LARSON LLP

By: s/ Christopher P. Koback
Christopher P. Koback, OSB No. 913408
Of Attorneys for Relator