



Mailing Date:  
Friday, October 3, 2025

## COMMUNITY DEVELOPMENT

### FINDINGS AND DECISION

**FILE NUMBER(S):** 247-25-000121-A (appeal of file no. 247-25-000025-CU)

**SUBJECT PROPERTY/  
OWNER:** Mailing Name: ANCHOR HEART RANCH LLC  
Map and Taxlot: 1612350001701  
Account: 171961  
Situation Address: 64530 FINDLAY LN, BEND, OR 97701

**APPLICANT:** Schwabe, Williamson, & Wyatt<sup>1</sup>

**APPELLANT:** Central Oregon LandWatch

**REQUEST:** Conditional Use Review to establish a Nonfarm Dwelling within the Exclusive Farm Use (EFU) Zone. The administrative decision issued by staff was appealed.

**REVIEW PERIOD:** The subject application was submitted on January 9, 2025, and deemed complete on February 8, 2025. Staff issued a land use approval on February 13, 2025. A timely appeal was filed on February 24, 2025. The applicant requested several clock extensions for a total of 214 days. The 150<sup>th</sup> day on which the County must take final action on this application is February 7, 2026.

**HEARING DATE:** October 14, 2025

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

**RECORD:** Record items can be viewed and downloaded from:  
<https://www.deschutes.org/cd/page/247-25-000025-cu-findlay-lane-nonfarm-dwelling>

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<sup>1</sup> Reference the 9/10/2025 email correspondence that confirms both ownership and representation change since the time of application.

**STAFF COMMENT:** This memorandum does not replace previous staff findings in the Findings and Decision for the above-mentioned application, but supplements those previous findings in consideration of the appellant's objections listed in the Notice of Appeal.

## **I. APPLICABLE CRITERIA**

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Title 22, Deschutes County Development Procedures Ordinance

## **III. FINDINGS & CONCLUSIONS**

### **Oregon Administrative Rules (OAR), Chapter 660, Division 33, Agricultural Land**

OAR Section 660-033-0130. Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses.

- (5) ***Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:***
- (a) ***Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and***
  - (b) ***Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.***
  - (c) ***For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:***
    - (A) ***Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;***
    - (B) ***An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices; and***
    - (C) ***An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.***
    - (D) ***For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water***

- availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.*
- (E) *For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsections (a) and (b).*
- (F) *In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).*

**APPELLANT'S OBJECTION:** The appellant states:

The decision errs in failing to consider the "new" farm impacts test found in OAR 660-033-0130(5). The requirements of OAR 660-033-0130(5) were amended and became effective on 1/1/2025.

**STAFF COMMENT:** It is staff's understanding that the "new" (expanded) farm impacts test of OAR 660-033-0130(5) does not apply to nonfarm dwellings. ORS 215.296 – referenced at the outset of OAR 660-033-0130(5) – states in subsection 9(a)(A) that the standards in ORS 215.296(1) do not apply to farm or forest uses conducted within lots or parcels with a single-family residential dwelling approved under ORS 215.284. Nonfarm dwellings are subject to those standards found in ORS 215.284(2) and OAR 660-033-0130(4) which are incorporated into DCC 18.16; therefore, these criteria do not apply.

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

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

#### Section 18.16.040. Limitations on Conditional Uses.

- A. Conditional uses permitted by DCC 18.16.030 may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:**
- 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and**
  - 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and**
  - 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.**

**APPELLANT'S OBJECTION:** The appellant states:

The staff decision errs in failing to describe with adequate specificity the farm uses occurring on surrounding lands, including the farm use on the subject property.

The staff decision errs in finding that the proposed conditional use will not force a significant change in farm practices on surrounding lands.

**STAFF COMMENT:** Staff defers to the analysis, findings, and conclusions of the Findings and Decision.

Section 18.16.050. Standards for Dwellings in the EFU Zones.

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

**G. Nonfarm Dwelling.**

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

**a. The Planning Director or Hearings Body shall make findings that:**

...

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

**APPELLANT'S OBJECTION:** The appellant states:

The decision errs in finding that approval of the subject application will not materially alter the stability of the overall land use pattern of the area.

**STAFF COMMENT:** The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property. Of the 45 privately owned EFU lots in the study

area, 33 have been developed with residences (73.3 percent). The Findings and Decision conclude that the addition of one nonfarm dwelling would not materially alter the overall land use pattern of the area.

Staff defers to the analysis, findings, and conclusions of the Findings and Decision.

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

**APPELLANT'S OBJECTION:** The appellant states:

The staff decision errs in finding that the portion of the lot or parcel is unsuitable for the production of livestock considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. Based on its past history for grazing use, the portion of the parcel has value for dry land grazing by itself and in conjunction with adjacent lands.

The staff decision further errs in focusing only on the portion of the lot's value for dryland grazing. The proposed building envelope is suitable for other uses involved in livestock production.

**STAFF COMMENT:** The staff decision makes findings relative to the terrain, adverse soil or land conditions, drainage and flooding, vegetation, productivity of farm crops, livestock production, productivity of merchantable tree species, and the configuration of the building envelope in its relation to *Wetherell v. Douglas County* (pages 18 – 22). The appellant has not submitted any materials or evidence into the record to rebut staff findings, nor in support of the appellant's objections.

Staff defers to the analysis, findings, and conclusions of the Findings and Decision.

- 2. *For the purposes of DCC 18.16.050(G) only, "unsuitability" shall be determined with reference to the following:***

...

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

**APPELLANT'S OBJECTION:** The appellant states:

The staff decision errs in determining there is "no evidence in the record that the building envelope can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch." Staff Report p. 24.

The decision errs in focusing the analysis on the building envelope and not the "lot or parcel".

**STAFF COMMENT:** Staff understands that it is optional to focus on the suitability of the building envelope or the entire property, as described on page 18 of the staff decision:

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

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

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

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

Based on the above case law, it is optional to focus on the suitability of the *building envelope* or the *entire property* with respect to crops, livestock or merchantable trees only. For this review, staff focuses on the suitability of the building envelope.

The appellant has not submitted any materials or evidence into the record to rebut staff findings, nor in support of the appellant's objections.

Staff defers to the analysis, findings, and conclusions of the Findings and Decision.

#### **IV. CONCLUSION**

The Findings & Decision for this application identifies all applicable zoning ordinances and evaluates compliance with the criteria and standards of those ordinances. This memorandum only supplements the findings of compliance with the identified ordinances in relation to the issues

raised in the Notice of Appeal. Based on the foregoing Findings and Decision, staff finds that the proposed nonfarm dwelling can comply with the applicable standards and criteria of the Deschutes County zoning ordinance if the conditions of approval are met.



Mailing Date:  
Thursday, February 13, 2025

## COMMUNITY DEVELOPMENT

### FINDINGS AND DECISION

**FILE NUMBER(S):** 247-25-000025-CU

**SUBJECT PROPERTY/**

**OWNER:**

Mailing Name: CREAGER,CLAYTON S ETAL

Map and Taxlot: 1612350001701

Account: 171961

Situs Address: 64530 FINDLAY LN, BEND, OR 97701

**APPLICANT:** Blackmore Planning

**REQUEST:** Review of a Conditional Use Permit to establish a Nonfarm Dwelling (single-family) within the Exclusive Farm Use (EFU) Zone.

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

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

#### I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 18, Deschutes County Zoning Ordinance:

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Title 22, Deschutes County Development Procedures Ordinance

#### II. BASIC FINDINGS

**LOT OF RECORD:** The subject property is recognized as one (1) legal lot of record because it was created as Parcel 1-B under Minor Land Partition No. MP-86-18.

**SITE DESCRIPTION:** The subject ± 24.09-acre property is undeveloped. The property contains ± 20 acres of mapped Central Oregon Irrigation District (COID) irrigated land, which is dedicated to irrigated pasture. The remaining acres of dry land are located in the property's northwest region



which is sparsely covered by juniper trees and low-lying native vegetation. The grade of the property is relatively even throughout, apart from sporadic rock outcroppings within the property's northwestern region. The property fronts Findlay Lane to the west.

**REVIEW PERIOD:** The subject application was submitted on January 9, 2025, and deemed complete on February 8, 2025. The 150th day on which the County must take final action on this application is July 8, 2025.

**PROPOSAL:** The applicant proposes to establish a nonfarm dwelling in the northwestern portion of the ± 24.09-acre property. Sewage disposal will be via an onsite septic system and water will be supplied by an existing shared private well. Access to the dwelling is proposed from Findlay Lane.

**SURROUNDING LAND USES:** Immediately surrounding properties to the north, west, and south are EFU-zoned parcels in a variety of shapes, but similar sizes ranging from ± 19.86 acres to ± 23.17 acres; the properties to the east are zoned Multiple Use Agricultural (MUA10), and are within the Boones Borough 2 subdivision. All of the EFU-zoned properties within the surrounding area appear to be residentially developed and are engaged in varying degrees of small-scale agricultural and hobby farm uses, such as the keeping of livestock, horses, and pasture. The City of Bend's Urban Growth Boundary (UGB) is located ± 1.7 miles southwest of the subject property.

The attributes of the adjoining and adjacent (across Findlay Lane) EFU-zoned properties are summarized in the following table.

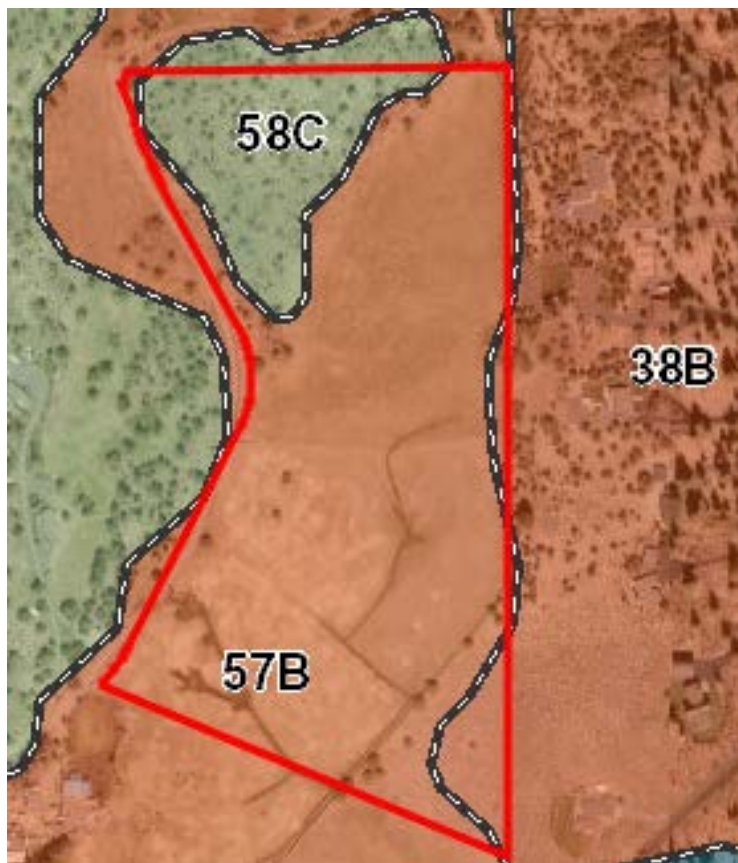
Owner	Map & Tax Lot	Total Ac. / Irrigated Ac.	Farm Tax	Dwelling Unit	Soil Mapping Units
Anchor Heart Ranch LLC <i>North</i>	16-12-35-1500	21.68 / 15	Yes	Yes	57B, 58C
Brown <i>West</i>	16-12-35-1600	19.86 / 0	Yes	Yes	57B, 58C
Holmberg Rev Trust <i>South</i>	16-12-35-1700	23.17 / 14	Yes	Yes	57B, 58C, 36A, 59C

#### LAND USE HISTORY:

- MP-86-18: Minor Land Partition which created the subject parcel.
- 247-24-000416-CU: Nonfarm Dwelling Deposit Packet

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

Figure 1 – NRCS Soil Map



58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15 percent slopes: This soil type is comprised of 50 percent Gosney soil and similar inclusions, 25 percent rock outcrop, 20 percent Deskamp soil and similar inclusions, and 5 percent contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. Major use for this soil type is livestock grazing. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. The rock outcrop has a rating of 8, with or without irrigation. The Deskamp soils have ratings of 6e when unirrigated, and 4e when irrigated. Approximately 16 percent of the subject parcel is made up of this soil type.

57B, Gosney Stony Loamy Sand, 3 to 8 percent slopes: This soil is composed of 85 percent Gosney soil and similar inclusions, and 15 percent of contrasting inclusions. The Gosney soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 1 inch. The contrasting inclusions contain Deskamp soils in swales and rock outcrops. The major use of this soil is for livestock grazing. The soil type has a farm use capability rating of 4e when irrigated, and 7e when unirrigated. Approximately 80 percent of the subject parcel is made up of this soil type.

38B, Deskamp-Gosney complex, 0 to 8 percent slopes: This soil is composed of 50 percent Deskamp soil and similar inclusions, 35 percent Gosney soil and similar inclusions, and 15 percent contrasting inclusions. The Deskamp soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 3 inches. The Gosney soils are somewhat excessively drained with rapid permeability, and an available water capacity of about 1 inch. The contrasting inclusions

contain Clovkamp soils in swales, soils that are very shallow to bedrock, and are on ridges with occasional rock outcrops. The major use of this soil is for livestock grazing. The Deskamp soils have ratings of 6e when unirrigated, and 3e when irrigated. The Gosney soils have ratings of 7e when unirrigated, and 7e when irrigated. This soil type is not considered high-value soil. Approximately 4 percent of the subject parcel is made up of this soil type.

#### Soil Study:

The applicant submitted a soil study prepared by Brian T. Rabe, a certified professional soil scientist and soil classifier with Elkhorn Consulting, LLC. The soil study, dated December 2, 2024, identifies a predominance of Land Capability Classification (LCC) Class 7 and 8 soils within a  $\pm$  4.67-acre study area (building envelope) on the subject property – outlined in blue within Figure 2, below. The soil study provides the County with a precise determination of the location of the soils units and types of soils found on the subject property within the study area.

*Figure 2 – Soil Study Building Envelope*



**PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice on January 14, 2025, to several public agencies and received the following comments:

Deschutes County Onsite Wastewater, Todd Cleveland

A complete approved site evaluation consistent with the land use approval is required in order to obtain permits for an onsite wastewater treatment system to serve the proposed dwelling.

Deschutes County Building Division, Randy Scheid

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

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

Deschutes County Senior Transportation Planner, Tarik Rawlings

I have reviewed the transmittal materials for 247-25-000[025]-CU for a nonfarm, single-family dwelling on a 24.09-acre parcel in the Exclusive Farm Use (EFUTRB) Zone located at 64530 Findlay Ln, Bend, OR 97701 recognized on County Assessor's Map 16-12-35 as Tax Lot 1701.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family residence (Land Use 210) generates an average of approximately 9.43 daily weekday trips. Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. The proposed land use will not meet the minimum threshold for additional traffic analysis.

The property accesses Findlay Ln to the west, a public road right of way not maintained by Deschutes County, otherwise known as a Local Access Road (LAR) and functionally classified as a Rural Local road. The property records include an approved Deschutes County driveway access permit (file no. 247-SW3416), which complies with the access permit requirements of DCC 12.28.050 and DCC 17.48.210.

Board Resolution 2024-038 sets a transportation system development charge (SDC) rate of \$5,691 per p.m. peak hour trip. County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$4,610 (\$5,691 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

**THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2025 PENDING ANY AMENDMENTS TO THE COUNTY'S CURRENT SDC RESOLUTION 2024-038. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.**

Central Oregon Irrigation District (COID), Spencer Stauffer

Please be advised that Central Oregon Irrigation District (COID) has reviewed the application received on January 14<sup>th</sup>, 2025, for the above referenced project located at 64530 FINDLAY LN, BEND, OR 97701/TAX LOT: 1612350001701. The applicant requests Review of a Conditional Use Permit to establish a Nonfarm Dwelling (single-family) within the Exclusive Farm Use (EFU) Zone.

There are 18.00 acres of mapped COID irrigation water rights appurtenant to tax lot 1612350001701.

COID's A-10 sub-lateral resides in the southeast section of the subject property. The A-10 sub-lateral has a 20-foot right of way easement.

Listed below are COID's initial comments to the provided application. All development affecting irrigation facilities shall be in accordance with COID's Development Handbook and/or as otherwise approved by the District.

*Pursuant to ORS 92.090(6) Central Oregon Irrigation District (COID) certifies that the Tentative Plan lies within the boundary of COID and is subject to the fees and policies of COID.*

- Tax map 1612350001701 has 18.00 acres of COID irrigation water rights mapped to a specific place of use.
  - Permanent structures, driveways and other impermeable surfaces on mapped water rights are not allowed due to the inability to obtain beneficial use. The proposed application may impact COID mapped water rights. There are existing mapped water rights in the proposed building envelope in poor beneficial use standing. All impacted mapped water rights must be brought into good standing prior to construction of the proposed building. Should any mapped water rights be impacted, the applicant must remove all impacted water rights through a quitclaim agreement. For more information, please contact COID.
- Tax map 1612350001701 is supplied with COID irrigation water through a private irrigation conveyance system. All private irrigation deliveries and conveyance systems must remain whole. Downstream irrigation users cannot be harmed in any way due to the approval of this application.
- COID holds an easement adjacent and within the subject property and has the right to install, pipe, maintain and operate its irrigation system above and below ground. COID has the right to operate and maintain all other related facilities within the

canal irrigation easement. This includes the right of access to such facilities and the right to require the removal of any obstructions that may be placed within the canal easement at the lot owner's expense. At no time may permanent structures be placed within the canal easement or COID's property, nor may any other obstruction be placed within the easement which interferes with the use of the canal easement without prior written approval from COID.

- Irrigation infrastructure and rights-of-way are required to be identified on all maps.
- Any irrigation conveyance, District or private, which passes through the subject property shall not be encroached upon without written permission from this office.
- No structures of any kind, including fence, are permitted within COID property/easement/right of way without written permission from this office.
- Policies, standards and requirements set forth in the COID Developer Handbook must be complied with.
- Comply with Requirements of COID Developer Handbook including restriction on drilling / blasting and excavation within and adjacent to the existing canal embankment. No blasting is permitted within 100-feet of any open ditch or canal.

Our comments are based on the information provided, which we understand to be preliminary nature at this time. Our comments are subject to change and additional requirements may be made as site planning progresses and additional information becomes available. Please provide updated documents to COID for review as they become available.

The following agencies did not respond directly to the notice: Bend Fire Department, Deschutes County Assessor.

**PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on January 14, 2025. One public comment was received:

Central Oregon LandWatch (COLW), Robin Hayakawa

Would you please enter the following comments on behalf of Central Oregon LandWatch into the record:

While we are still reviewing the application materials, Central Oregon LandWatch is concerned that application file no. 247-24-0000025-CU seeking approval of a nonfarm dwelling in the County's EFU-zone does not meet the applicable criteria. More specifically, it appears that the building envelope can be put to farm use in conjunction with surrounding land.

DCC 18.16.050(G)(2)(b) provides that a lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because on its own, it is too small to be farmed profitably. Instead, a lot or parcel or portion of a lot or parcel is not "generally unsuitable" if it can be "sold, leased, rented or otherwise managed as part of a commercial farm or ranch..."

The subject property, including the building envelope, has a long history of grazing. The former owner used the land to graze cattle for 20 years before the land was purchased by the current owner. Moreover, the property was once part of a larger ranch. As a result, the area within the building envelope can be farmed in conjunction with surrounding lands and it is not “generally unsuitable” for farm use as required by State and County law.

Please also notify us of any further decisions or hearings about this application. Our address is 2843 NW Lolo Dr. Ste 200, Bend, OR 97703

**STAFF COMMENT:** The applicable criteria of DCC 18.16.050(G)(2)(b) are addressed herein.

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 January 15, 2024.

### **III. FINDINGS & CONCLUSIONS**

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

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

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

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

#### **A. *Nonfarm dwelling***

**FINDING:** The applicant proposes to establish a nonfarm dwelling. The proposed dwelling may be allowed as a conditional use if the applicant satisfies the applicable criteria in Title 18 of the County Code. The applicant does not propose to establish a use other than a dwelling under this application.

Section 18.16.040. Limitations on Conditional Uses.

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

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



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

### ***Forest Practices***

The closest properties zoned for forest use are approximately 6.1 miles to the west. The predominant tree species in the surrounding area is juniper, which is not a commercial species. Given the distance to forested lands and the lack of commercially viable tree species in the surrounding area, staff finds that the proposed nonfarm dwelling will not force a significant change in, or significantly increase the cost of, accepted forest practices on surrounding lands devoted to forest use.

### ***Farm Practices***

The USDA 2017 Census of Agriculture<sup>1</sup> shows agricultural production in Deschutes County roughly split between crop and livestock production in economic value. Predominant crop species include forage-land used for all hay and haylage, wheat for grain; and nursery production. Livestock production is predominated by cattle and calves, equestrian species, dairy and eggs/poultry. In the study area, ± 543.47 acres are receiving farm tax deferral and of those, ± 300.52 acres are irrigated. Farm practices on the surrounding properties are described in the Surrounding Land Use Section, above.

### ***Potential Impacts***

Staff finds that the proposed nonfarm dwelling could change accepted farm or forest practices or increase the cost of accepted farm or forest practices on surrounding lands if it caused a reduction in available productive farmland, reduced the availability of irrigation water, or introduced conflicting uses. As described below, the proposed building envelope is generally unsuitable for farm use. In addition, Staff finds that no farmer has expressed interest in the proposed building envelope for farm use and no water rights would be impacted by this proposal.

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

Pursuant to DCC 18.16.050 the owner will be required to sign and record in the County Clerk's office a document binding the landowner, and the landowner's successors in interest, prohibiting them

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



from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.396 or 30.397. The recordation of this document with the County Clerk helps ensure that the proposed nonfarm dwelling will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm use, nor will it significantly increase the cost of accepted farm practices.

Nearby farm use appears to be occurring on the surrounding properties to the north, west, and south, Tax Lots 1500, 1600, and 1700. In response to this criterion, the applicant has provided the following:

...

Small scale farm uses may be occurring on nearby tax lots 1500, 1600, and 1700 on Assessor map 16-12-35. As proposed, residential building(s) within the envelope will be located well over 100 feet from these farm uses. This distance meets the minimum 100-foot setback required from nonfarm dwellings to adjacent properties currently employed in farm use and receiving farm tax deferral. Consistent with past decisions, it is expected that this distance will provide a sufficient buffer to mitigate potential use conflicts, although none are expected.

The study area is comprised of 47 privately owned EFU-zoned properties<sup>2</sup> (including the subject property) and 15 publicly owned (USA, Deschutes County, City of Bend) EFU zoned properties located entirely or partially within the study area. The largest privately owned tax lot is 80 acres in size. Of the 47 privately owned EFU zoned tax lots, 33 tax lots have been developed with dwellings.

The study area includes farm uses that appear to be pasture, with some livestock, as well as grass and/or alfalfa hay. Of the 47 privately owned EFU zoned tax lots, 25 tax lots are receiving farm tax deferral and 22 of the deferred properties appear to have irrigation rights.

Based on the information above, the proposed nonfarm dwelling will not be subject to adverse impacts from adjacent farm uses, nor will it cause a significant change in or significantly increase the cost of accepted farming practices occurring on nearby lands.

Additionally, the applicant believes that there will be no response from adjacent or nearby property owners engaged in farm use stating an interest in incorporating the subject property into an existing farm operation, since it has no water rights and is not in farm use.

Staff finds that, although the property is surrounded by EFU-zoned parcels, all three (TLs 1500, 1600, and 1700) are residentially developed, and the associated farm uses are generally small-scale residential, or hobby farm practices. The proposed nonfarm dwelling will be sited a minimum of 100 feet from the adjacent properties, in an area of the property that has sporadic rock outcroppings, is nonirrigated, and, as described herein, is generally unsuitable for farming. Staff finds the location of the proposed building envelope will preclude the need to disturb any existing

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<sup>2</sup> Including 2 properties that are owned by the Central Oregon Irrigation District (COID)

farmland onsite and will provide a sufficient buffer to mitigate potential use conflicts, although no significant impacts are expected by the proposed nonfarm dwelling.

Within the study area, 33 of the 45 privately owned EFU tax lots (73.3 percent) are developed with dwellings. Given the establishment of a significant number of residential uses and the continuing farm uses in parts of the study area, staff finds the existing residential uses likely have not had a negative impact on those farm uses.

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

These criteria will be met.

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

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

Section 18.16.050. Standards for Dwellings in the EFU Zones.

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

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

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

**G. *Nonfarm Dwelling.***

1. ***One single-family dwelling, including a manufactured home in accordance with DCC 18.116.070, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:***
  - a. ***The Planning Director or Hearings Body shall make findings that:***
    - i. ***The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.***

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

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

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

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

***analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;***

**FINDINGS:** The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property's boundaries and including approximately 2,000 acres (hereafter called "study area"). Staff finds this study radius is suitable to provide a comprehensive analysis of the character of the area surrounding the subject property because of its significant size and the number of parcels located within it.

There are 62 EFU-zoned tax lots in the study area, including the subject property. Forty-five (45) of these tax lots are in private ownership and range in size from approximately 0.15 acres to 80 acres, partially or wholly within the study area. Of the privately owned tax lots in the study area, 32 ( $\pm$  71 percent) of the tax lots in the study area are 20 acres or less in size, 11 ( $\pm$  25 percent) of the tax lots are more than 20 and less than or equal to 40 acres in size, and 2 ( $\pm$  4 percent) of the tax lots are larger than 40 acres in size.

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

## **FINDINGS:**

### **Farm Uses**

The EFU-zoned lands in the study area that are engaged in farm use mainly consist of farming in the form of irrigated pasture, hay and alfalfa production, and keeping horses and/or cattle. Twenty-five (25) of the privately-owned tax lots in the study area are receiving farm tax deferral. Of those privately-owned tax lots receiving farm tax deferral, 22 also have water rights. The total amount of water rights on these farm tax-deferred properties appears to be  $\pm$  300.52 acres. Based on the amount of irrigation and the size of the parcels in the study area, an estimated  $\pm$  300.52 (acreage that is possibly being irrigated) are engaged in irrigated farm use. According to Deschutes County GIS, most of the study area is in the Central Oregon Irrigation District.

### **Existing Dwellings**

The record indicates that 33 of the 45 private EFU-zoned tax lots in the study area have dwellings. These dwellings were built in the following years: 4 dwellings prior to 1979; 14 dwellings from 1979 through 1992; and 15 dwellings from 1993 to present.

The 4 dwellings developed prior to 1979 predated the County's EFU Zone and therefore were not subject to EFU zoning requirements. The 14 dwellings developed from 1979 through 1992 included 3 replacement dwellings and 11 dwellings of an unknown type. Staff notes that dwellings constructed up until the late 1980s in this time period were not necessarily reviewed as either farm or nonfarm dwellings.

Of the 15 dwellings constructed in 1993 or after, 8 were nonfarm dwellings, 4 were replacement dwellings, one (1) was a lot of record dwelling, one (1) was a lot of record dwelling, and one (1) was constructed on that portion of a property that is MUA10-zoned, within which a dwelling is an outright permitted use.

### **Dwelling Development Trends Since 1993**

As discussed above, those 15 dwellings constructed in or after 1993 were primarily nonfarm (53 percent). For this reason, staff finds the most current dwelling development trend in the study area is the construction of nonfarm dwellings.

### **Potential Nonfarm Dwellings**

To address this criterion, staff reviewed the study area to determine how many properties are "similarly situated to the subject property". Staff finds that properties in the EFU Zone that are not presently developed with a dwelling are similarly situated, in that they may be eligible for a nonfarm dwelling. Based on staff's review, 12 properties meet these characteristics including one (1) property that has already been approved for a nonfarm dwelling but has not been fully constructed yet. Therefore, 12 possible new nonfarm dwellings could be developed on similarly situated properties.

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

### **Potential Nonfarm Parcels**

In the EFU Zone, two types of land divisions creating new nonfarm parcels are possible: those where the parent parcel is irrigated (DCC 18.16.055(B)) and those where the parent parcel is not irrigated (DCC 18.16.055(C)). OAR 660-033-130(4)(c)(C) sets the rules for the stability analysis of properties outside of the Willamette Valley:

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

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

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

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

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

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

- There are zero nonirrigated parcels between 85 and 90 acres in the study area capable of being partitioned under a nonirrigated land division to create a single nonfarm parcel. There are zero nonirrigated parcels over 90 acres in the study area capable of being partitioned under a nonirrigated land division to create two nonfarm parcels.
- There are zero parcels equal to or greater than 40 acres and less than or equal to 80 acres in the study area that may be capable of being partitioned under a nonirrigated land division to create a single nonfarm parcel.
- There are 3 parcels that are less than 80 acres in the study area and meet the minimum irrigated acres for the subzone that may be capable of being partitioned under an irrigated land division based on size to create a single nonfarm parcel.
- There is one (1) parcel that is equal to or greater than 80 acres in the study area and meets the minimum irrigated acres for the subzone that may be capable of being partitioned under an irrigated land division to create two nonfarm parcels.

The potentially divisible parcels are composed of class 4 to 8 soils that are rated both high-value and non-high value farmland, so it is unknown if they would meet the “generally unsuitable” criteria of 18.16.055(B)(2)(a)(v) and 18.16.050(G)(2)(b). To be eligible for division the parent parcel must have been lawfully created prior to July 1, 2001. In addition, new parcels must meet certain access and frontage requirements. Staff notes that the eligibility of other properties for land use approvals or land divisions cannot be formally determined as part of this process. This assumed eligibility or ineligibility of these properties for land use approvals or land divisions is based on publicly available information and is not binding or final on these other properties.

Therefore, this analysis shows that up to 5 new nonfarm dwelling parcels could potentially be created from land divisions.

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

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

The Planning Division has previously determined that lot of record dwellings can be difficult to obtain, given the requirement for ownership prior to 1985 and the land cannot be suitable for farming based on the above factors. Some parcels may qualify for a lot of record dwelling, but without a specific analysis of each and every parcel, this determination cannot be concluded. One (1) dwelling approved within the Study Area were approved as a lot of record dwelling.

### **Result From Approval of the Possible Nonfarm Dwellings**

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

Including the subject application, a total of 17 new nonfarm dwellings could be established in the study area on existing and potential future nonfarm parcels. Given the large number of existing dwellings in the study area and the relatively limited number of potential nonfarm dwellings, staff finds the proposed development of a nonfarm dwelling on an unproductive portion of the property will not cause a substantial change in the land use pattern of the area.

Although there have been 15 dwellings constructed in the study area since 1993, staff finds that the land use pattern is generally stable. The majority of those dwellings were nonfarm dwellings.

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

There are both irrigated and nonirrigated lands in the area, and most of the nonirrigated parcels are already developed with dwellings. Staff notes that zero farm dwellings have been approved in the area since 1993, and zero farm dwellings have been approved since 1995 when the farm dwelling standards included significant changes. The proposed dwelling will be consistent with the land use pattern of the area by allowing a nonfarm dwelling on an unproductive portion of the property.

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

**FINDING:** The cumulative effect of existing and potential nonfarm dwellings will increase the number of dwellings in the study area from 33 to 50. Staff finds such approvals will not “materially alter the stability of the land use pattern in the area” by making it more difficult for the existing farms to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or by diminishing the number of tracts or acreage in farm use. This is because any such nonfarm dwelling approval would be limited to lands generally unsuitable for farm use and, as such, would not reduce available farmland or the number of tracts or acreage in farm use, individually or cumulatively. No impact on the ability of farmers to acquire water rights is anticipated. Additionally, staff finds that the approval of the nonfarm dwelling would not impact the existing farm uses that occur in the study area.

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

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

It is unlikely that adding this dwelling would tip the balance from resource to non-resource use. Given the 5 nonfarm dwellings approved since 2000, it does not appear to staff that the approval of



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

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

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

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

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

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

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

Based on the above case law, it is optional to focus on the suitability of the *building envelope* or the *entire property* with respect to crops, livestock or merchantable trees only. For this review, staff focuses on the suitability of the building envelope.

### ***Adverse Soil or Land Conditions***

The applicant submitted a soil study dated December 2, 2024, which was prepared by Brian Rabe, of Elkhorn Consulting, LLC, a certified professional soil scientist and soil classifier. The soil study provides the County with a precise determination of the location of the soil units and types of soils found on the subject property. The submitted soils report shows that the subject property contains the following soil types:

- 36A: Deskamp Loamy Sand (0-3 percent slopes)
- 36B: Deskamp Loamy Sand (3-8 percent slopes)
- 57B: Gosney Stony Loamy Sand (3 – 8 percent slopes)
- 58C: Gosney-Rock Outcrop-Deskamp Complex (0 – 15 percent slopes)

DCC 18.16.050(G)(2)(b) above specifies that a parcel is presumed suitable for the production of farm crops and livestock if it is predominately composed of LCC 1-6 soils. The soil study map shows the unsuitable soils are located in the areas designated as 57B “Gosney Stony Loamy Sand”, and 109 “Rock Outcrop” which contain class 7 and 8 soils within the 4.67-acre study area or building envelope. Figure 3 below illustrates the location of the 4.67-acre soil study area within the property and its soil types.

*Figure 3 – Soil Study Map*



The soils report concludes, in part:

## SUMMARY AND CONCLUSIONS

The purpose of this report is to present the results of an assessment to verify and, where necessary, refine the soils, map units, and boundaries mapped on the Site and to determine whether soils on the Site meet the land capability classification criteria for siting a non-farm dwelling. The published soil survey information was reviewed and direct observations of soil conditions were made at representative locations across the Site. EHC has determined that the information from the published soil survey required refinement to delineate soils often contained within or associated with the map units delineated by the NRCS. EHC was able to determine the presence and extent of Class VII and VIII soils in various areas within the Site. EHC has determined that the entire 4.67-acre area evaluated consists of soils generally unsuitable for farming and the production of merchantable tree species.

If you have any questions or comments, please do not hesitate to contact me directly at (503) 881-1604.

Sincerely,  
**ELKHORN CONSULTING LLC**



Brian T. Rabe, CPSS, WWS  
Principal Soil Scientist

BTR/ddr  
Enc: Table 1-3, Figures 1-4, Appendix A-B



Certified Professional  
Soil Scientist  
BRIAN T. RABE  
15239 Exp. 31DEC24  
Registered Wastewater Specialist  
No. EH-W-448430 Exp. 30SEP25

### ***Farm Crops***

The soil study in the record indicates the soils within the building envelope consist of the following four soil units: 36A "Deskamp Loamy Sand", 36B "Deskamp Loamy Sand", 57B "Gosney Stony Loamy Sand", and 109 "Rock Outcrop", which contain class 7 and 8 soils. No portion of the study area contains irrigation. As noted above, the approval criterion presumes LCC 1 through 6 soils are suitable for farm use. The soil study states, in part:

...

EHC was able to determine the presence and extent of Class VII and VIII soils in various areas within the Site. EHC has determined that the entire 4.67-acre area evaluated consists of soils generally unsuitable for farming and the production of merchantable tree species.

Staff finds the study area or building envelope is predominantly composed of LCC 7 and 8 soils; consequently, staff finds the building envelope is not suitable for the production of farm crops.

### ***Livestock Production***

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

- One AUM<sup>3</sup> is the equivalent to the forage required for a 1000 lb. Cow and calf to graze for 30 days (900 pounds forage).
- On good quality forage, an animal unit will gain 2 pounds per day.
- Two animal units will eat as much in one month as one animal unit will eat in two months.
- Forage production on dry land is not continuous: Once the forage is eaten, it generally will not grow back until the following spring.
- An average market price for beef is \$1.15 per pound.

The NRCS Rangeland and Forest Understory Productivity and Plant Composition table (September 18, 2015) provides forage capability for soil types, expressed in annual dry-weight production. The building envelope is comprised of four soil types: 36A "Deskamp Loamy Sand", 36B "Deskamp Loamy Sand", 57B "Gosney Stony Loamy Sand", and 109 "Rock Outcrop"<sup>4</sup>.

The 36A and 36B soils have a forage capability of 900 lbs. per acre for a "normal year". The 57B soil has a forage capability of 700 lbs. per acre for a "normal year". There is no forage capability for "Rock Outcrop".

Since 900 pounds of forage equals 1.0 AUM, and 36A and 36B soils have a forage capability of 900 lbs. per acre, the subject building envelope provides the equivalent of 1.00 AUM per acre. Based on the OSU and NRCS assumptions, the value of beef production on the property can be calculated using the following formula

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

$$1.00 \text{ AUM per acre}$$

The building envelope is 4.67 acres in size.

$$(60 \text{ lbs. beef per acre})(4.67 \text{ acres})(1.0 \text{ AUM per acre})(\$1.15 \text{ per lbs.}) = \$322.23$$

Thus, the total gross beef production potential for the building envelope would be approximately \$322.23 annually. This figure represents gross income and does not take into account any fencing costs, land preparation, purchase costs of livestock, veterinary costs, or any other costs of production. This calculation is also based on a simplified scenario where the building envelope is entirely comprised of NRCS-rated soils which produce forage for livestock, which as the soil study shows is not necessarily the case. The area has little forage for livestock and may support only

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<sup>3</sup> Animal Unit Month

<sup>4</sup> The soil study did not include forage capabilities. Staff relies on the NRCS data for these calculations.

minimal dry land grazing. For these reasons, staff finds the soils within the building envelope are generally unsuitable for the production of livestock.

### ***Merchantable Trees***

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

Based on the information and case law cited above, staff finds the subject property is not generally suitable for production of farm crops and livestock, or merchantable tree species.

### ***Building Envelope***

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

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

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

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

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

### **FINDINGS:**

Electricity. The record includes a letter from Central Electric Cooperative indicating the subject property is within their service area and they are prepared to serve this location.

Road access. The applicant proposes driveway access to the nonfarm dwelling from Findlay Lane.

Internet/telephone. The applicant states that they will utilize cellular phone service for the dwelling.

Domestic water. Domestic water will be provided via an existing private shared well. The record includes a shared well easement.

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

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

Fire protection. The property is within the Rural Fire Protection District #2. The record includes an email from Jason Bole, Deputy Chief – Fire Marshall for Bend Fire & Rescue District #2

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

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

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

**FINDING:** The subject property is recognized as one (1) legal lot of record because it was created as Parcel 1-B under Minor Land Partition No. MP-86-18.

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

**FINDING:** The subject property is not under forest assessment. LUBA determined the issue of whether nonfarm parcels can be put to farm use in conjunction with other properties “is triggered under DCC 18.16.050(G)(2)(a) if the parcels are found to be unsuitable solely because of size or

location." *Williams v. Jackson County*, 55 Or LUBA 223, 230 (2007). In this case, and as articulated below, staff finds the building envelope is not suitable due to adverse soil and land conditions, which demonstrates that the building envelope proposed for the nonfarm dwelling is generally unsuitable for farm use. Because the applicant does not claim unsuitability due to size or location, this criterion does not apply.

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

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

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

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

- 3. Loss of tax deferral. Pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued the applicant must produce evidence from the County Assessor's office that the parcel upon which the dwelling is proposed has been disqualified under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or***

**321.805 to 321.855 and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.**

**FINDING:** Staff includes this requirement as a condition of approval.

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

Section 18.16.060. Dimensional Standards.

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

**FINDING:** No height information was provided for the structure. As a condition of approval, no building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.

Section 18.16.070. Yards.

- A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.**
- B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with side yards adjacent to property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.**
- C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property with a rear yard adjacent to property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in Section 18.116.180.**
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

**FINDING:** The proposal is subject to 100-foot nonfarm dwelling setbacks. The proposed structure(s) will comply with the setbacks under (A) to (C) above. As a condition of approval, structural setbacks from any north lot line shall meet the solar setback requirements in DCC 18.116.180. As a condition of approval, 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.



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.

## **SYSTEM DEVELOPMENT CHARGE**

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,603 per p.m. peak hour trip. County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is \$4,538 (\$5,603 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

**THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2024. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS PULLED.**

#### IV. CONCLUSION

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

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

#### V. DECISION

**APPROVAL**, subject to the following conditions of approval.

#### VI. 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 Onsite Wastewater 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. Farm & Forest Management Easement: ***Prior to the issuance of any building permit for a nonfarm dwelling***, the property owner shall sign and record in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The applicant shall submit a copy of the recorded Farm and Forest Management Easement to the Planning Division.
- G. Dwelling and essential or accessory components: As a condition of approval, the dwelling, detached residential-associated buildings (including garages), well, septic system, drainfield,

and the septic reserve area, shall be located in the identified "generally unsuitable" building envelope.

- H. Farm Tax Deferral Disqualification: ***Prior to the issuance of building permits***, the applicant shall produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.
- I. Septic: The applicant shall secure any necessary septic permit approval for the nonfarm dwelling.

## VII. DURATION OF APPROVAL

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

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. Pursuant to Ordinance 2021-014 and Deschutes County Code Section 22.32.015(B), appeals must be received by 4:00 pm.

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

## DESCHUTES COUNTY PLANNING DIVISION



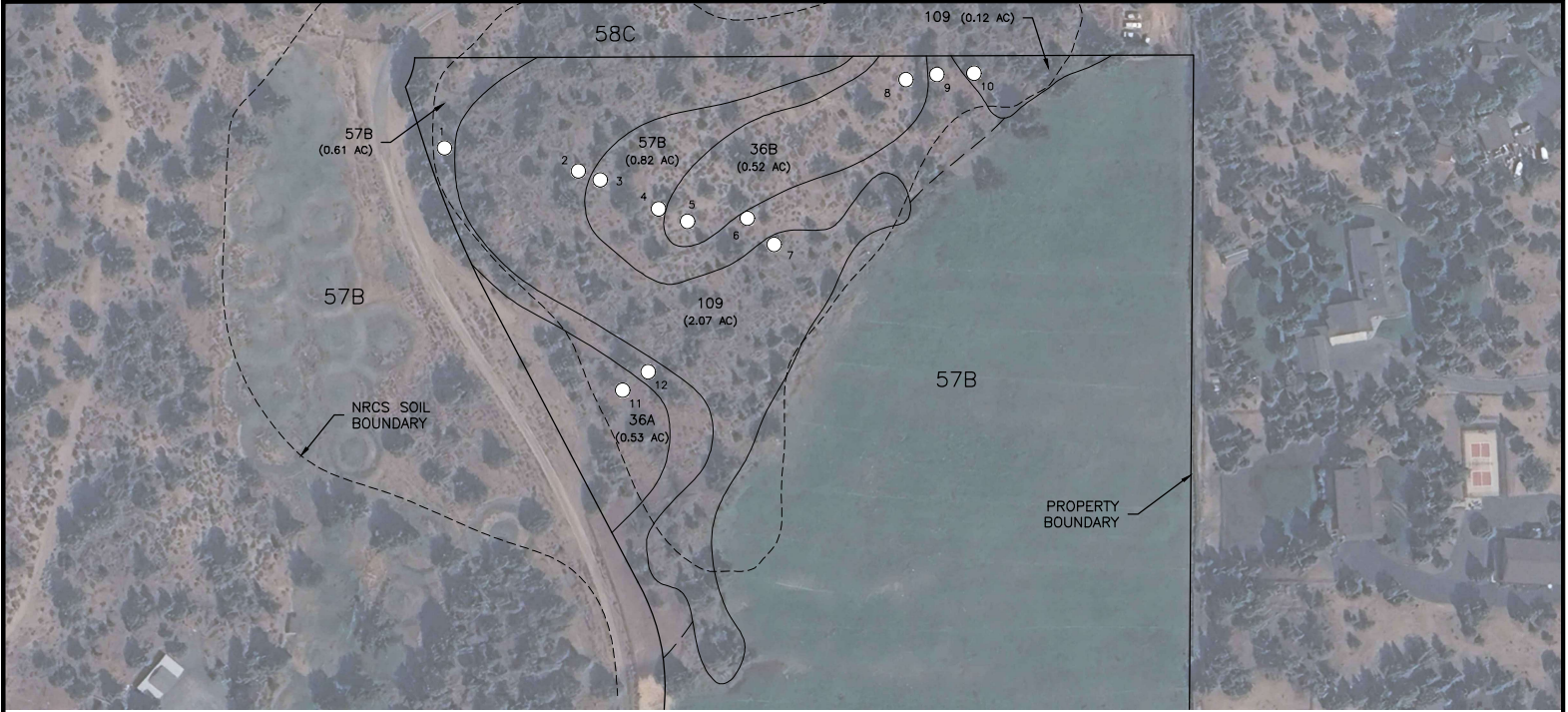
Written by: Dan DiMarzo, Assistant Planner



Reviewed by: Jacob Ripper, Principal Planner

Attachment(s):

- Site Plan
- Farm and Forest Management Easement

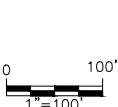


NRCS SOIL LEGEND:

SYMBOL	NAME
38B	DESKAMP-GOSNEY COMPLEX, 0 TO 8 PERCENT SLOPES
57B	GOSNEY STONY LOAMY SAND, 3 TO 8 PERCENT SLOPES
59C	GOSNEY-ROCK OUTCROP-DESKAMP COMPLEX. DRY. 0 TO 15 PERCENT SLOPES


SITE SOIL LEGEND:

SYMBOL	NAME
36B	DESKAMP LOAMY SAND, 3 TO 8 PERCENT SLOPES (CLASS VI)
57B	GOSNEY STONY LOAMY SAND, 3 TO 8 PERCENT SLOPES (CLASS VII)
109	ROCK OUTCROP-BAKEOVEN COMPLEX (CLASS VIII/CLASS VII)
11	TEST PITS/OBSERVATION POINTS



(LOCATIONS AND SCALE ARE APPROXIMATE)  
(SOURCE: Google Earth Pro Image May 2023, ©2024 Google™)

Figure 4. Site Specific Soils Map

PROJECT: 2024041	Land Use Soils Report
DATE: 11/18/2024	T16S, R12E, Section 35, Tax Lot 1701
DWG NO: 2024041 F1-4.DWG	Clayton S Creager et al
DWG BY: PROJECT MANAGER	64530 Findlay Lane
CDJR BRIAN RABE	Bend, OR 97701
REVISED:	
	 ELKHORN CONSULTING LLC

## Building Envelope



Return to:  
Dan DiMarzo, Assistant Planner  
Community Development Department  
117 NW Lafayette, P.O. Box 6005  
Bend, Oregon 97708-6005

*Space Reserved for Recorder's Use*

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

Clayton S. Creager, Martha F. McCoy, Charles Davis, Nancy G. Stevens, Charles E. Stephens, and Rebecca J. Liebman, herein called Grantors, are the owners of real property described as set forth in that certain Warranty Deed dated February 27, 1990, as recorded in the Official Records of Deschutes County as Volume 254, Page 668 of the Deschutes County Book of Records and by this reference incorporated herein, and further identified or depicted on Deschutes County Assessor's Map 16-12-35 as tax lot 1701. In accordance with the conditions set forth in the decision of the Deschutes County Planning Division approving land use permit 247-25-000025-CU, Grantors hereby grant to the owner(s) of all property adjacent to the above described property (Grantees), a perpetual non-exclusive farm and forest practices management easement as follows:

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

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

***Signature Page to Follow***

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR

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Clayton S. Creager

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR

---

Martha F. McCoy

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR

---

Charles Davis

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR

---

Nancy G. Stevens

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR

---

Charles E. Stephens

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

GRANTOR

---

Rebecca J. Liebman

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for said County and State, personally appeared Clayton S. Creager, Martha F. McCoy, Charles Davis, Nancy G. Stevens, Charles E. Stephens, and Rebecca J. Liebman, who are known to me to be the identical individual(s) described in the above document, and who acknowledged to me that he executed the same freely and voluntarily.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_