



Mailing Date:
Tuesday, August 20, 2024

COMMUNITY DEVELOPMENT

STAFF REPORT

FILE NUMBER: 247-24-000209-CU

SUBJECT PROPERTY/

OWNER:

Mailing Name: SCHUTTE, JEFFREY A & CINDI R
Map and Taxlot: 141102B000300
Account: 124740
Situs Address: 71510 FOREST SERVICE RD NO 6360, SISTERS, OR 97759

APPLICANT: Jeff & Cindi Schutte

APPLICANT'S ATTORNEY: Lisa Andrach – Fitch & Neary P.C.

REQUEST: The Applicant requests conditional use approval for a nonfarm dwelling in the Exclusive Farm Use Zone and Wildlife Area (WA) Combining Zone.

STAFF CONTACT: Anthony Raguine, Principal Planner
Phone: (541) 617-4739
Email: Anthony.Raguine@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-24-000209-cu-schutte-nonfarm-dwelling>

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)

Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS

LOT OF RECORD: The subject property is one (1) legal lot of record as it is platted Parcel 1 of Partition Plat 2015-04 (ref. file no. MP-09-17).

SITE DESCRIPTION: The subject property is +/-42.34 acres in size and square in shape. Forest Service Road 6360¹ bisects the subject property and continues across the north property line into Jefferson County. There are no structures on the subject property and vegetation consists of juniper trees and other native vegetation. There is a small, cleared area on the northwestern portion of the subject property. The Applicant states this area was formerly used for their son's wedding. The abutting properties to the west, south, and east are accessed via driveways extending from Forest Service Road 6360 across the subject property. The subject property does not have any water rights and is not receiving special assessment for farm use.

LAND USE HISTORY:

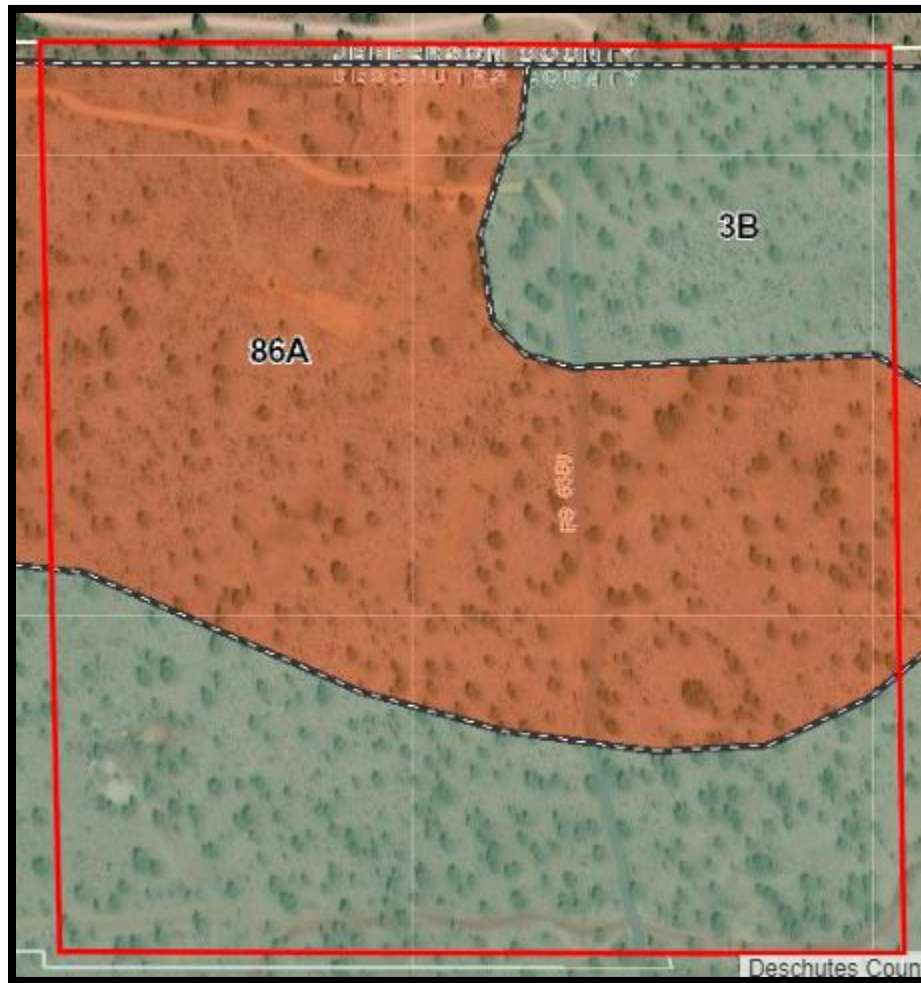
- **LR-05-22:** A lot of record verification for properties currently identified on Deschutes County Assessor's Map 14-11-02B, as tax lots 100, 200, 300, and 14-11-02AB, as tax lot 100. The Planning Division found the four tax lots were comprised of two legal lots of record and the subject property (tax lot 300) and the property identified as tax lot 100, on map 14-11-02BA were together one legal lot of record.
- **CU-06-31:** The Planning Division approved a conditional use permit for a nonfarm dwelling on the lot of record described above, which included the subject property (tax lot 300) and the property identified as tax lot 100, on map 14-11-02AB. The approved nonfarm dwelling use was entirely located on the subject property.
- **CU-09-48/MP-09-17:** The County approved a two-parcel nonirrigated nonfarm partition. This approval created the subject property (Parcel 1) and authorized a nonfarm dwelling on Parcel 2.
- **E-10-17:** The Planning Division approved an extension of file no. CU-06-31. However, this approval was never acted upon and became void.
- **TU-11-45:** The Planning Division approved a Temporary Use Permit for storing a manufactured home for up to a year on the subject property.
- **E-12-16:** The Planning Division approved an extension of file nos. CU-09-48/MP-09-17.
- **CU-14-5:** The Planning Division again approved a conditional use permit for a nonfarm dwelling on the lot of record described above, which included the subject property (tax lot 300) and the property identified as tax lot 100, on map 14-11-02AB. The approved nonfarm dwelling use was entirely located on the subject property. This conditional use permit was never acted upon and became void.
- **E-14-7:** The Planning Division approved an extension of file nos. CU-09-48²/MP-09-17.
- **247-15-000136-FPA:** The County approved the final plat associated with file no. MP-09-17, which resulted in the current configuration of the subject property.

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

¹ There is a BLM Grant of Easement (No. OR 66718) for use of this road.

² Staff notes this Conditional Use permit for a nonfarm dwelling on Parcel 2 was granted an additional extension (ref. file no. 247-16-000096-E) and the use was initiated under building permit no. 247-17-005919-DWL.

Figure 1 - NRCS Map for Subject Property



3B, Agency-Madras complex, 0 to 8 percent slopes: This soil is rated 4e for unirrigated and 3e when irrigated. This soil is considered high-value farmland when irrigated. This soil comprises approximately 45 percent of the subject property.

86A, Madras sandy loam, 0 to 3 percent slopes: This soil is rated 4c for unirrigated and 3c when irrigated. This soil is considered high-value farmland when irrigated. This soil comprises approximately 55 percent of the subject property.

Soil Study:

The Applicant submitted an Order 1 Soil Study (“Soil Study”) prepared by Soil & Wetland Consultant, Roger Borine, a Certified Professional Soil Scientist and Soil Classifier. The Soil Study, dated September 29, 2009, includes the subject property and three adjacent parcels currently identified on Deschutes County Assessor’s Map 14-11-02B, as tax lots 100 and 200, and 14-11-02AB, as tax lot 100. The Soil Study included the following findings:

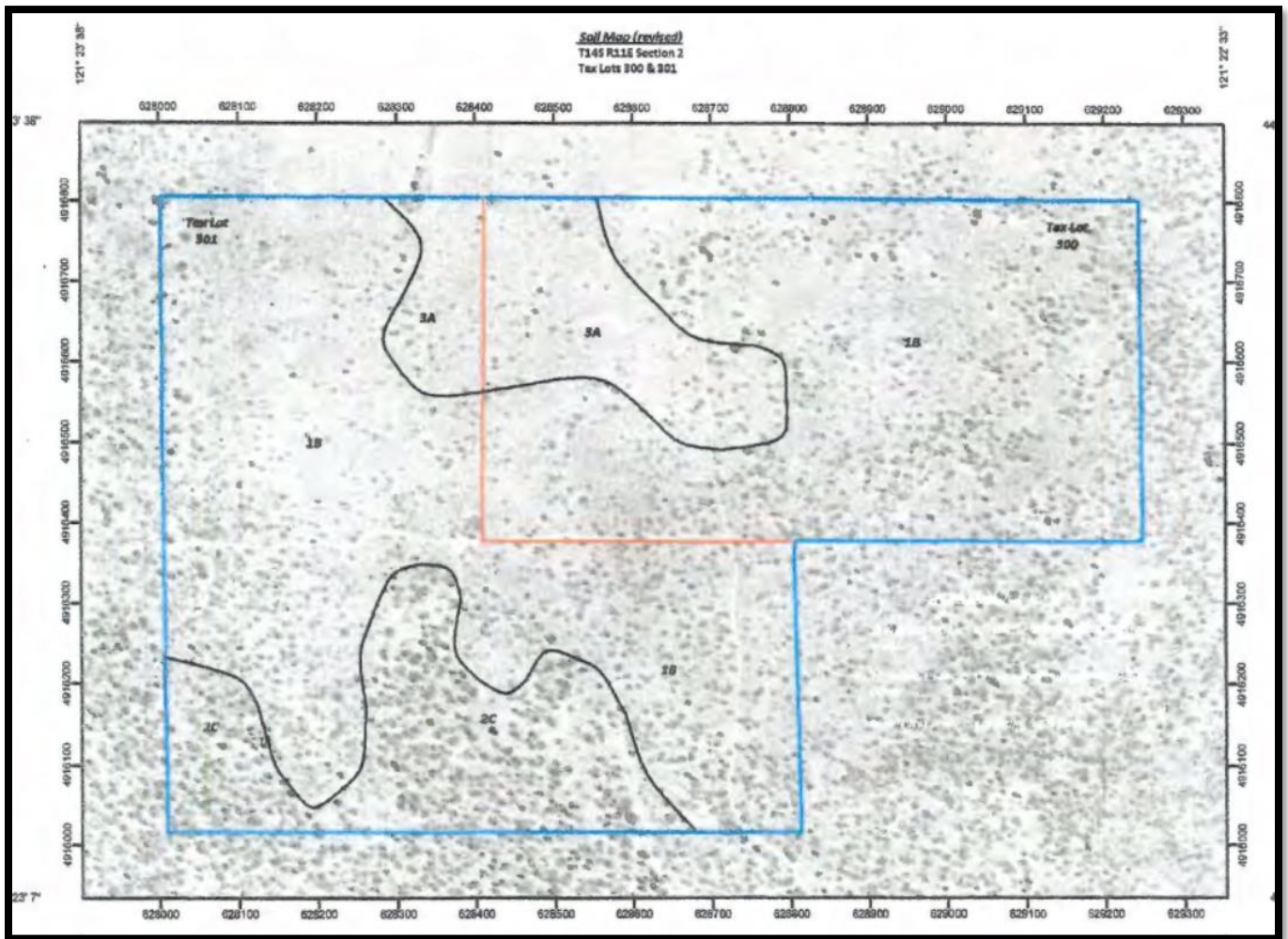
This Order I level survey with revised soil mapping units (Table 2) and boundary lines more accurately delineate soils than the Order 3 level survey of the NRCS mapping. Appendix A contains maps that include the location of newly established soil boundary lines and

mapping unit descriptions conducted at an Order 1 level of accuracy. For comparison Appendix B contains NRCS maps and descriptions completed at an Order 2 and 3 level of accuracy.

Soil mapping for this area was refined using remote sensing (aerial photo and satellite imagery), transects, data points and field analysis. Thirteen (13) transects and one hundred forty three (143) data points were used to identify soils and determine boundary line placement at the Order 1 level of accuracy (Appendix A). One hundred one (101) of the one hundred forty three (143) data points (71%) were extremely stony and LCC 7. Seventeen (17) of the twenty four (24) data points (71%) of the soils sampled had and an available water capacity (AWC) less than two (2) inches.

Figure 2 below shows the Revised Soil Map from the Study. At the time of the Soil Study, the properties included in the Soil Study were identified as tax lots 300 and 301 on Deschutes County Assessor's Map 14-11-00.

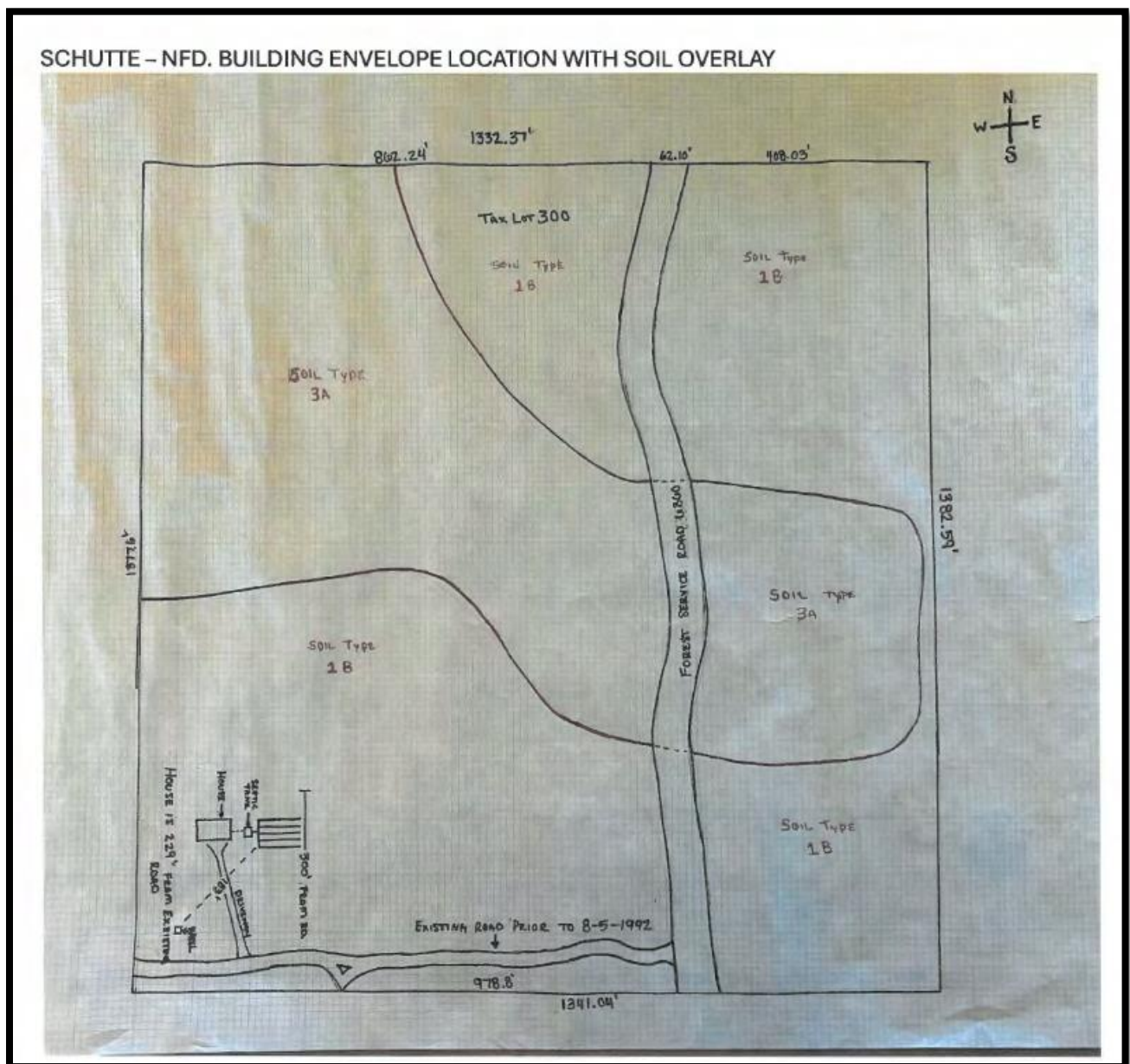
Figure 2 - Applicant's Soil Study Soil Map (Revised)



PROPOSAL: The Applicant proposes to establish a nonfarm dwelling on the southwestern portion of the subject property as shown in Exhibit B of the Applicant's Second Supplemental Burden of Proof (see Figure 3 below). The Applicant provided the following description of the proposed nonfarm dwelling location:

The building envelope is located entirely outside of the Class IV soils and entirely within Class VII soils. The building envelope is also within the 300' of the 1992 road as required by the WAZ [Wildlife Area Combining Zone]. The Soil Report, and the prior decisions, have found that the Class VII soils on the subject property are generally unsuitable to produce crops, sustain livestock or merchantable trees. The applicant is seeking approval to site a dwelling on the unproductive portion of the property consistent with state law.

Figure 3 – Applicant's Exhibit B - "NFD Building Envelope Location with Soil Overlay"



SURROUNDING LAND USES: The surrounding properties located in Deschutes County are zoned EFU and the surrounding properties located in Jefferson County are zoned EFU-Range Land (RL). The three abutting properties to the west³, south, and east are developed with nonfarm dwellings and are located in Deschutes County. The two abutting properties to the north are located in Jefferson County and are vacant. There is a +/-20,000-acre EFU zoned tract of land owned by the Bureau of Land Management (BLM) to the south-southeast and to the north in Jefferson County⁴. The U.S. Forest Service database for the Crooked River National Grassland shows the Holmes-Williams grazing allotment abuts the north property line of the subject property and the Upper Deschutes Resource Management Plan shows there are grazing allotments to the south of the subject property on the BLM tract. The Deschutes Land Trust owns a large undeveloped EFU, Flood Plain (FP) and RL zoned tract of land along Whychus Creek for at least 4 miles to the west-southwest. To the east-southeast of the BLM tract are several large farm tracts that are engaged in farm use including the Long Hollow Ranch and Rainshadow Organics. The nearby privately owned RL-zoned parcels to the north range in size from 80-180 acres and only one of these properties appears to be developed residentially.

Owner	Tax Lots (TL)	Total Ac./ Irrigated Ac.	Farm Tax	Dwelling Unit	Soil Mapping Units
Schutte <i>West</i>	Deschutes County 14-11-02B, TL 100	42.75 / 0	No	Yes	3B / 86A
Barnatan <i>South</i>	Deschutes County 14-11-02B, TL 200	81.17 / 0	No	Yes	3B / 63C
Stupfel <i>East</i>	Deschutes County 14-11-02AB, TL 100	42.07 / 0	No	Yes	3B / 86A
Western Rim Land & Cattle Co <i>North</i>	Jefferson County 13-11-00, TL 4500	179.93 / 0	Yes	No	3B / 86A / 118D / 119D
Equity Trust Company ⁵ <i>North</i>	Jefferson County 13-11-00, TL 4501	85.01 / 0	Yes	No	3B / 86A / 118D / 119D

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on April 11, 2024, to several public agencies and received the following comments in response to the notice:

Deschutes County Addressing Coordinator, Tracy Griffin

The address for this parcel will need to be reviewed and may need to be changed based on the proposed access point from right-of-way Forest Service Road 6360 shown on the submitted site plan for development.

³ The property owner of the subject property owns the abutting property to the west.

⁴ Reference Deschutes County Assessor's Map 14-11-00, tax lot 200 and Jefferson County Assessor's Map 13-11-00, tax lot 1700 and 13-12-00, tax lot 400.

⁵ Staff notes this parcel is part of a larger tract under the same ownership.

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 247-24-000209-CU for a nonfarm, single-family dwelling on a 42.34-acre parcel in the Exclusive Farm Use (EFUSC) Zone and the Wildlife Area (WA) Combining Zone located at 71510 Forest Service Road No 6360, Sisters, OR 97759 recognized on County Assessor's Map 14-11-02B as Tax Lot 300.

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 Forest Service Road No. 6360, a roadway managed and administered by the Bureau of Land Management (BLM). The applicant's application materials include a "Right-of-Way Assignment" issued on behalf of the BLM, dated March 24, 2016. This BLM documentation appears to grant right-of-way access to the applicant, though no expiration date appears to be included with this documentation. This documentation appears to demonstrate legal access as granted to the applicant by BLM representatives. If there are any questions as to the validity of this BLM right-of-way assignment (BLM case file number OR 66718), those will need to be directed to a BLM representative. Based on the BLM's jurisdiction over Forest Service Road No. 6360, the access permit requirements of DCC 17.48.210(A) do not apply.

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.

The following agencies did not respond to the notice: BLM Prineville District – Deschutes Field Manager, Deputy State Fire Marshal, Deschutes County Assessor, Deschutes County Onsite Wastewater Division, Oregon Department of Fish and Wildlife, and Watermaster – District 11.

PUBLIC COMMENTS: The Planning Division mailed notice of the conditional use application to all property owners within 750 feet of the subject property on April 11, 2024. The Applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The Applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on April 10, 2024. Three public comments were received – two in support and one in opposition. The comments in support were from the abutting property owners to the east and west and key points made in their comments include:

- The proposed dwelling location has minimal impact on wildlife considering the dwelling uses on the abutting properties and the location of Forest Service Road 6360.
- The Applicant's request should be approved based on their commitment to stewardship of the land including the Applicant's actions related to:
 - Enforcement of access via Forest Service gates;
 - Prevention of illegal dumping;
 - Maintenance of Forest Service Road 6360; and
 - Prevention of poaching in the area.
- Confirmation there is available water, power, and septic for the proposed dwelling.

Central Oregon Landwatch submitted the following comments in opposition:

Central Oregon LandWatch is concerned whether application file no. 247-24-000209-CU meets the applicable criteria. Although we are still reviewing the application, we are initially concerned that the subject property is suitable for farm use, county records show an existing dwelling on the tract, approval would alter the stability of the agricultural land use pattern in the area, the impacts to area farm operations are unknown because there is inadequate information in the application about those farm operations, it is not clear whether the proposed dwelling will comply with the Wildlife Area combining zone standards.

In the next section, staff includes responses, where necessary, to the public comments in the record to the extent there are applicable criteria.

REVIEW PERIOD: The subject application was submitted on April 5, 2024. The Planning Division mailed an incomplete letter on May 3, 2024, requesting additional information to complete the review. The Applicant provided responses to the incomplete letter on May 28, 2024, June 17, 2024, and July 24, 2024, and stated the application should be deemed completed on June 24, 2024. Therefore, the 150th day on which the County must take final action on this application is December 21, 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 historically has applied an area of analysis that covers all properties within a one-mile radius of the subject property to determine the impact of a nonfarm dwelling on surrounding lands. In almost all nonfarm dwelling reviews in Deschutes County, this 1-mile radius or 2,000-acre study area ("Study Area"), has been determined to be acceptable as it generally includes a significant number of lots or parcels zoned for farm or forest use. For this reason, the County has been able to easily identify farm and forest use trends to determine land use patterns in the surrounding area and the stability of the land use pattern. However, in this case, the Study Area only includes 21 tax lots and some of the properties, while listed as multiple tax lots, are likely not separate lawfully established units of land.

Related to this issue, the Land Use Board of Appeals ("LUBA") found in *Wetherell v. Douglas County*, Or LUBA 699 (2006):

We have held that for purposes of establishing compliance with ORS 215.284(2)(d)⁶, a county must explain what justifies the scope and contours of the study area required under the Sweeten analysis. *DLCD v. Crook County*, 34 Or LUBA 243, 251 (1998) (citing *Bruck v. Clackamas County*, 15 Or LUBA 540, 543 (1987)). That holding did not apply only in circumstances where the study area was smaller than a certain size. Accordingly, although the local code may not specifically require a finding justifying the scope of the study area in order to demonstrate compliance with the local code's stability test, it is incumbent upon the local government to explain what justifies the scope and contours of the chosen study area.

Given the limited number of properties in the Study Area, staff asks the Hearings Officer to make clear findings on the justification of the Study Area size for the subject application. Staff believes the proposed Study Area size may be sufficient if the Hearings Officer finds the predominate development pattern of the surrounding farm and forest lands is generally large vacant tracts used as open space and/or livestock grazing as, per acre, this appears to be the predominant development pattern within the 2,000-acre Study Area.

Related to the Study Area issue above, the County does not have access to the relevant development data for the +/-1,000 acres of the Study Area located in Jefferson County and the Applicant did not supplement the record with this information⁷. For example, the Applicant states on page 4 of their Burden of Proof:

Some or all of 22 EFU-zoned tax lots are located within a one-mile radius of the subject property. Twelve (12) of these 22 tax lots are receiving farm tax deferral and three of the deferred properties appear to have irrigation and are engaged in some form of farm use. Three (3) of the EFU-zoned parcels are in public ownership (USA).

However, staff did not find any evidence in Applicant's materials⁸ showing only 12 of the tax lots in the Study Area are receiving special farm assessment and there is no evidence to support only three of the tax lots are "engaged in some form of farm use". It appears the Applicant may have relied on irrigated lands to determine whether a tax lot is engaged in farm use. However, Jefferson County's Zoning Ordinance, Chapter 3, Section 301 establishes the following:

Section 301 - Exclusive Farm Use Zones (EFU A-1, EFU A-2 and RL)

301.1 Purpose

This Section sets forth regulations for land use and development within the County's three exclusive farm use zones: Exclusive Farm Use A-1 (EFU A-1), Exclusive Farm Use A-2 (EFU A-2) and Range Land (RL).

...

⁶ ORS 215.284(2)(d) states "The dwelling will not materially alter the stability of the overall land use pattern of the area; and"

⁷ Staff notes this issue was communicated to the Applicant in the Nonfarm Dwelling Information Packet (ref. file no. 247-23-000591-CU).

⁸ The Applicant frequently references materials submitted as part of prior land use applications. However, some of these materials are more than 10 years old and may not be representative of the current surrounding land use patterns.

C. The RL zone has been established to recognize and preserve areas containing predominantly non-irrigated agricultural soils which are being used, or have the capability of being used, for livestock grazing.

Staff believes this code section establishes irrigated agricultural soils are not necessary for a property to be engaged in farm use in the RL Zone. The subject Study Area in Jefferson County includes areas identified in the U.S. Forest Service database for the Crooked River National Grassland as the Holmes-Williams grazing allotment. Additionally, the Jefferson County Assessor records show Western Rim Land & Cattle Co. is an abutting property owner to the north. Considering this information, staff believes the abutting and surrounding properties in Jefferson County are or could be engaged in farm use despite what is presented in the Applicant's materials.

Given this conflicting and potentially out-of-date characterization of the land use pattern by the Applicant, it is unclear to staff how the County can find the Applicant has demonstrated compliance with the criteria in this section. In addition, Central Oregon LandWatch raised concerns about impacts on surrounding farm uses and whether the Applicant has provided sufficient information on the surrounding farm uses. For these reasons, staff asks the Hearings Officer to make findings on whether the applicant has met their burden of proof.

Lastly, staff notes the Applicant, at times, appears to argue that the County is required to approve the subject application, because the County previously approved a conditional use permit for a nonfarm dwelling on the subject property or a prior configuration of the subject property. Staff disagrees and notes LUBA has consistently found:

There is no requirement local government actions must be consistent with past decisions, but only that a decision must be correct when made. Indeed, to require consistency for that sake alone would run the risk of perpetuating error. (*Okeson v. Union County*, 10 Or LUBA 1, 5 (1983))

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 if the general unsuitability criterion of 18.16.050(G)(1)(a)(iii) are 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 staff report.

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.

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)(D) states:

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;**
- (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;**
- (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;**

FINDINGS: The first step under OAR 660-033-0130(4)(a)(D) is to determine a study area. As detailed above, the County has historically 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. This study area has historically been found to be suitable to provide a comprehensive analysis of the character of the area surrounding because of its significant size and generally the large number of tax lots located within the +/-2,000 acres.

In this case, it is unclear if the subject Study Area is adequate to conduct the analysis required by this standard due to the limited number of properties. Staff believes the Study Area could be found to be adequate if the Hearings Officer believes the land use pattern of the surrounding area is primarily comprised of large tracts of vacant land used as open space and/or livestock grazing operations as, per acre, these appear to be the primary uses. However, this characterization of the Study Area does not match the Applicant's characterization. Staff asks the Hearings Officer to make findings on whether the Study Area is adequate to conduct the analysis required by this standard.

The second step under OAR 660-033-0130(4)(a)(D) is to identify the broad types of farm uses, the number, location and type of existing dwellings, and the dwelling development trends since 1993. It is the County's position that it is the Applicant's responsibility to submit evidence on the type of land uses occurring in the County identified Study Area. As noted above, the Applicant did not meaningfully supplement the record with information on the land use pattern for the +/-1,000 acres located Jefferson County. Staff finds this evidence is necessary for the County to complete the analysis under the second step under OAR 660-033-0130(4)(a)(D). Staff asks the Hearings Officer to make findings on whether the Applicant has met their burden of proof for the County to make adequate findings under OAR 660-033-0130(4)(a)(D)(ii).

The third and final step under OAR 660-033-0130(4)(a)(D) is to determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. Staff finds this step cannot be completed until the Hearings Officer determines the appropriate study area and the Applicant supplements the record with information on the uses occurring on the surrounding properties located in Jefferson County.

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.

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, an Applicant can request approval for a nonfarm dwelling based on the suitability of the *building envelope* or the *entire property* for the production crops, livestock or merchantable trees.

The Applicant submitted several proposals for the nonfarm dwelling location. For the purposes of this Staff Report, the findings below rely on the proposed location included in the Applicant's Second Supplemental Burden of Proof Statement. The Applicant provided the following description of the proposed building envelope:

Here, the applicant has had an Order 1 Soil Study done for the entire parcel. The study shows that the soils consist of a Class IV area, with the balance of the property Class VII. (Exhibit C). Taking the findings of that Report and the "Soil Map" set forth therein, the applicant has created the attached Exhibit B, which shows the location of the proposed building envelope in relation to the Class IV soils. The building envelope is located entirely outside of the Class IV soils and entirely within Class VII soils. The building envelope is also within the 300' of the 1992 road as required by the WAZ. The Soil Report, and the prior decisions, have found that the Class VII soils on the subject property are generally unsuitable to produce crops, sustain livestock or merchantable trees. The applicant is seeking approval to site a dwelling on the unproductive portion of the property consistent with state law.

Figure 3 on page 4 of this Staff Report shows the submitted drawing identified as Exhibit B in the Applicant's response above. Typically, a proposed building envelope includes a box for the "envelope" with dimensions that clearly identifies the area to be included. However, there is no envelope/box shown on the Applicant's Exhibit B and there are no dimensions for the proposed area. Additionally, the Applicant's response quoted above concludes with "[t]he applicant is seeking approval to site a dwelling on the unproductive portion of the property consistent with state law." This statement is confusing to staff as it appears the Applicant may be requesting approval to establish the nonfarm dwelling use on any portion of the property with Class VII soils and within 300 feet of a road or vehicular easement established prior to August 5, 1992.

Staff finds the Applicant needs to clearly identify what area(s) of the property the proposed nonfarm dwelling use will be located and this area(s) needs to be measurable by County staff and other interested parties. Staff does not recommend approval of the subject request until this information has been provided because the analysis required under this section cannot be completed until the precise location is identified.

Terrain, Adverse Soil, and Land Conditions

The Applicant submitted a Soil Study dated September 29, 2009, which was prepared by Roger Borine of Cascade Mountain View Properties, LLC, a Certified Professional Soil Scientist and Soil Classifier. The Soil Study provides the County with detailed findings on the terrain, land conditions, and a precise determination of the location of the soil units and types of soils found on the subject

property and the three abutting properties located in Deschutes County⁹. The Soil Study shows that the subject property and adjacent properties contain the following soil types:

Mapping Unit Descriptions

T14S, R11E Section 2 Tax Los 300 & 301
Deschutes Co, OR
(Order 1 Soil Survey)

1B – Agency-Madras complex, extremely stony, 0-8% slopes

The Agency component makes up 45 percent of the map unit and the surface is extremely stony. The Madras component makes up 40 percent of the map unit and the surface is extremely stony. Also included are very stony areas and shallow and very shallow soils making up 30 percent. Slopes are 0 to 8%. This map unit is on lava plains. The parent material consists of colluvium and residuum over basalt. Depth to a root restrictive layer, bedrock, is 20 to 40 inches. The natural drainage class is well drained. Available water to a depth of 20 inches is low.

2C- Holmzie-Searles complex, extremely stony, 0-15% slopes

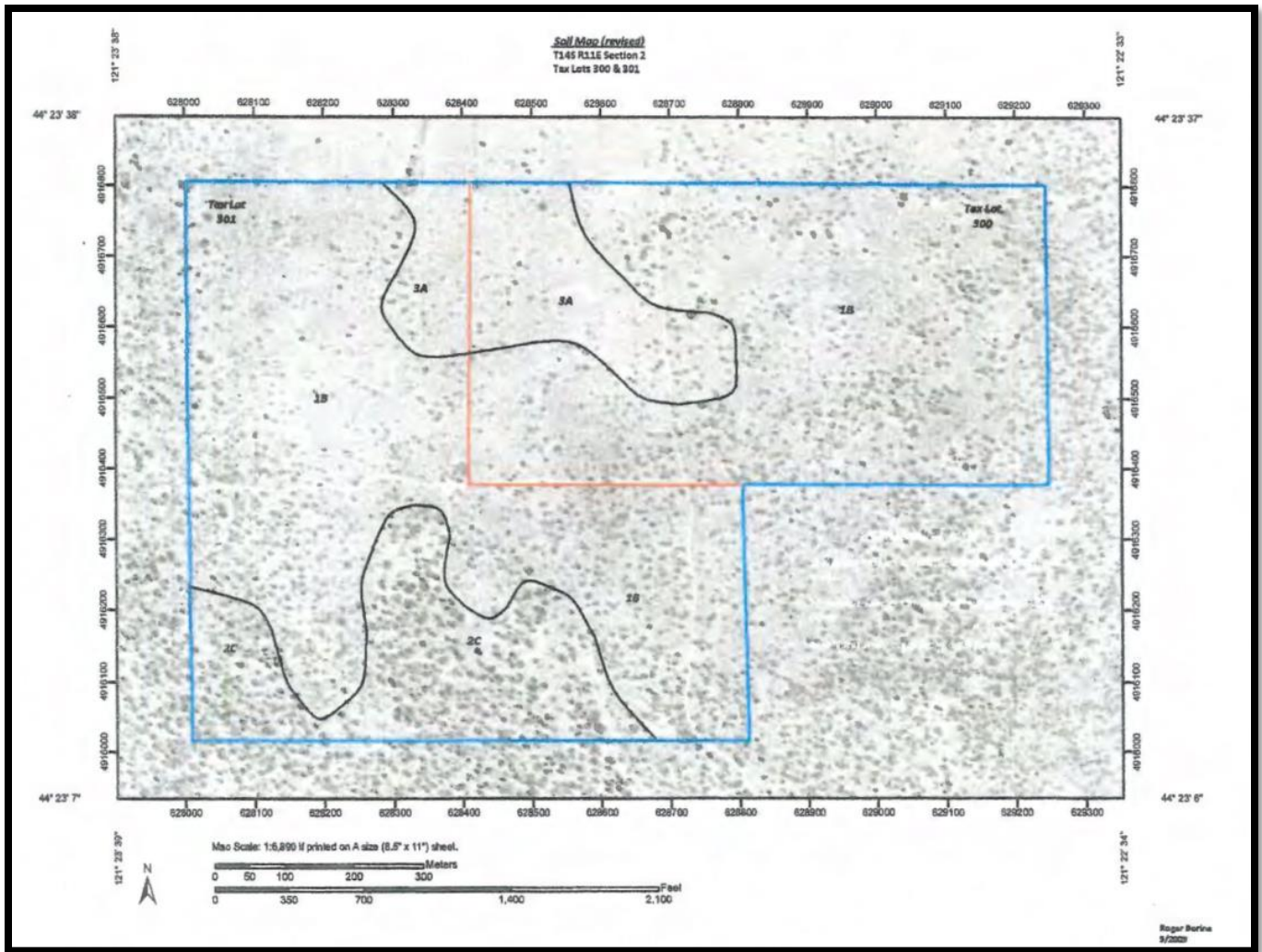
The Holmzie component makes up 50 percent of the map unit and the surface is extremely stony. The Searles component makes up 35 percent of the map unit and the surface is extremely stony. Also included are very stony areas and shallow and very shallow soils making up 15 percent. Slopes are 0 to 15%. This map unit is on lava plains. The parent material consists of colluvium and residuum over basalt. Depth to a root restrictive layer, bedrock, is 20 to 40 inches. The natural drainage class is well drained. Available water to a depth of 20 to 40 inches is very low to low.

3A – Madras stony sandy loam, 0-3% slopes

The Madras soil makes up 85 percent of the map unit and the surface is stony. Also included are very stony and non stony areas making up 15 percent. Slopes are 0 to 3%. This map unit is on lava plains. The parent material consists of colluvium and residuum over basalt. Depth to a root restrictive layer, bedrock, is 20 to 40 inches. The natural drainage class is well drained. Available water to a depth of 40 inches is low.

DCC 18.16.050(G)(2)(b) above specifies that a lot or parcel or portion of a lot or parcel is presumed suitable for the production of farm crops and livestock if it is predominately composed of Class I-VI soils. *Figure 3* in the Basic Findings section illustrates the location of soil units identified in the Applicant's Soil Study and staff has inserted it below for reader convenience.

⁹ The subject property and abutting properties were formerly identified as tax lots 300 and 301, on Deschutes County Assessor's Map 14-11 and the Soil Study references these tax lot numbers.



The Summary and Conclusions section for the Soil Study states:

This report provides and documents more detailed data on soil classification and soil ratings than is contained in the USDA-NRCS soil maps and soil survey at the published level of detail. This more detailed soils data is directly related to the NRCS Land Capability Classification system (LCC) and Prime and Unique Farmland designations as required in 660-033-0030(6).

The purpose for this study was to determine the extent of agricultural land as defined in Oregon Administrative Rules (OAR) 660-033-0020(1)(a)(A). Agricultural Land is defined as lands classified by the USDA-Natural Resources Conservation Service as predominantly Land Capability Class (LCC) 1-6 in Eastern Oregon.

These non-irrigated parcels located in T14S, R11E, Section 2 and tax lot 300 is approximately 82% or 67.5 acres of Non-Agricultural Land (LCC 7) and 18% or 15.3 acres of Agricultural Land (LCC 4); and tax lot 301 is approximately 95% or 113.7 acres of Non-Agricultural Land (LCC 7) and 5% or 6.0 acres of Agricultural Land (LCC4).

The Applicant states “[t]he study shows that the soils consist of a Class IV area, with the balance of the property Class VII. (Exhibit C).” Staff disagrees with this statement as the Soil Study is specific to a former larger configuration of the subject property and the exact Class VII soil percentages for the subject property for this application are not identified in the Soil Study.

Nevertheless, staff believes the Applicant is proposing to site the nonfarm dwelling use only on portions of the property with soils identified as 1B in the Soil Study. The Soil Study states the 1B Soils are Class VII, but it is unclear if this rating applies to both nonirrigated or irrigated soils. Based on staff’s review of the NRCS Land Capability Classification data for the Upper Deschutes River Area, the NRCS does not have a non-irrigated and/or irrigated classification for the Soils identified as 1B. Staff believes the Applicant must supplement the record with classification information on the non-irrigated and irrigated ratings for the 1B soils to demonstrate adverse soil conditions are the basis for unsuitability.

Staff asks the Hearings Officer to make clear findings on whether the Applicant has demonstrated the proposed nonfarm dwelling use is located on a portion of the property that is generally unsuitable for the production of farm crops and livestock considering the terrain, adverse soil, and land conditions.

Farm Crops

The Soil Study indicates the soils on the subject property consists of the following two soil units: Agency-Madras Complex (1B) and Madras Stony Sandy Loam (3A). As noted above, it is unclear what areas of the property the proposed nonfarm dwelling use will be located and whether the conclusions reached in the Soil Study demonstrate the proposed area is not suitable for the production of farm crops.

Staff asks the Hearings Officer to determine if the proposed nonfarm dwelling use will be located on a portion of the property that is generally unsuitable for the production of farm crops.

Livestock Production

Nonirrigated soils in Deschutes County are agriculturally suitable only as dry range land, and then generally only on a limited basis. 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 Applicant’s Soil Study shows the subject property is comprised of two soil types: Agency-Madras Complex (1B) and Madras Stony Sandy Loam (3A). However, the soil study did not include forage capabilities and the NRCS data table cited above does not provide a rating for these soil types. For this reason, staff is not able to calculate the potential value of beef production on the subject property to determine if the subject property is suitable for livestock production.

Related to the potential for livestock production on the subject property, the Applicant submitted a letter from Long Hollow Ranch in their Incomplete Letter Response:

I trust this letter finds you well. I am writing to bring to your attention a forthcoming development project initiated by our neighbors, Jeff and Cindi Schutte, who own the property located at 71510 FS RD 6360, Tax Lot 300.

The purpose of this communication is to notify whom it may concern at Deschutes County Planning Division that the Schuttes intend to construct a non-farm dwelling on their property. We believe it is essential to inform the relevant authorities about this project to ensure compliance with any zoning or regulatory requirements.

It is important to note that our organization, Long Hollow Ranch, located nearby, has thoroughly assessed the situation. After careful consideration, we are pleased to report that the construction of the non-farm dwelling on Tax Lot 300 is not anticipated to have any adverse impact on our ranch operations, including our practices and the grazing lease we maintain on the Schutte's property.

We are confident that the Schuttes' project aligns with the local regulations and will not disrupt the surrounding agricultural activities. Considering this, we request whom it concerns to review the proposed construction and provide any necessary approvals or guidance in accordance with applicable laws.

Furthermore, to signify our acknowledgment and approval of the construction project, this letter is co-signed by both the property owner, Ashanti Samuels, and myself, Jenna Hallman, the Director of Ranch Operations, Sales & Events at Long Hollow Ranch.

This letter appears to indicate the subject property is being used for livestock grazing and, for this reason, staff assumes the proposed nonfarm dwelling location is generally suitable for livestock production independent of the assurances from Long Hollow Ranch that it would not impact their livestock operation.

Staff asks the Hearings Officer to determine if the proposed nonfarm dwelling use will be located on a portion of the property that is generally unsuitable for the production of livestock.

Merchantable Trees

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

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”. It is unclear to staff what area(s) of the subject property the Applicant is requesting approval for the nonfarm dwelling use. If the Applicant clarifies their proposal is limited to a portion of the subject property and/or a building envelope, staff recommends a condition of approval be added to ensure compliance.

- 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: Public comments in the record from abutting property owners indicate there is adequate electricity, water, and sewer. In addition, the Applicant submitted additional materials to demonstrate compliance with this criterion as described below.

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 the residential use at this location.

Road Access. Access to the proposed dwelling is via Forest Service Road No. 6360, which is accessed from Holmes Road¹⁰. The Applicant submitted an approved Right-of-Way Assignment from the United States Department of the Interior – BLM Prineville District Office granting right-of-way to the Applicant (ref. Right-of-Way Assignment OR-66718).

Telephone/Internet. The Applicant did not provide a response on whether this utility service is available for the proposed use.

Domestic Water. The Applicant proposes an individual onsite residential well for domestic water use. The record materials include two well reports for nearby wells that indicated a static water level at a depth of 615 to 627 feet. No comments were received from the OWRD concerning water availability for the property dwelling. However, staff notes the Applicant may be required to have additional water supply for fire protection and it is unclear whether the Applicant can use the proposed residential well for this water supply.

¹⁰ Holmes Road is a paved public road maintained by the County.

Septic. The proposed dwelling will be served by an onsite septic disposal system. The County Onsite Wastewater Division must complete a Site Evaluation to determine the feasibility of establishing a septic system on the subject property. Staff notes if the Applicant proposes a building envelope as part of their “general unsuitability” analysis the proposed septic system must be located in the building envelope. If this area contains poor soils and a high concentration of rock, it may be difficult to site a septic system in this area. Some applicants have chosen to complete a Septic Site Evaluation in advance of requesting conditional use approval to demonstrate adequate septic will be provided. In other cases, applicants have had to modify their conditional use permit to expand their approved building envelope. It is unclear to staff if any additional information is needed in this particular case.

Staff recommends a condition of approval be added requiring the property owner obtain an approved septic Site Evaluation prior to issuance of building permits for the nonfarm dwelling.

Fire protection. The subject property is not located in a Fire Protection District¹¹. For this reason, the Applicant proposes, in consultation with County staff, the following conditions of approval be required to ensure adequate fire protection is provided for the nonfarm dwelling:

1. Firebreaks. The property owner of proposed dwelling and any future structures shall construct and maintain the following firebreaks on land surrounding the structure(s) that is owned or controlled by the property owner:
 - a. Primary Firebreak. Prior to initiating the use, a primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials.
 - b. Secondary Firebreak. Prior to initiating the use, a secondary firebreak of not less than 20 feet shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.
 - c. Fuel Break. A fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed. The fuel break shall be completed prior to the beginning of the coming fire season.

¹¹ Lower Bridge Rangeland Fire Protection Association is not a Rural Fire Protection District under ORS 477 and the subject property is not annexed into the Cloverdale Rural Fire Protection District (ref. Agency comments titled “2024-06-21 T. Olsen - RE Fire Protection Services”).

- d. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
2. The proposed dwelling and any accessory structures must comply with the Oregon Residential Specialty Code (ORSC) R327 requirements.
3. Prior to issuance of building permits for the nonfarm dwelling, the property owner shall obtain an address from the County address coordinator and shall display that number in a location of the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.
4. Prior to issuance of building permits for the nonfarm dwelling, the property owner must demonstrate one of the following requirements is met:
 - a. The dwelling shall be equipped with a residential fire sprinkler system and shall be installed to the minimum requirements of NFPA 13D "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes."; or
 - b. The dwelling shall have on-site water storage capability from a swimming pool, pond, lake, or similar water body of at least 4,000 gallons or a stream having a continuous year-round flow of at least one cubic foot per second. To demonstrate compliance, the property owner shall provide written verification from the Oregon Water Resources Department that any permits or registrations required for water diversions have been obtained or that such permits or registrations are not required under state law for the use.
5. Prior to issuance of building permits for the nonfarm dwelling, the property owner shall demonstrate compliance with the following standards:
 - a. Roads, bridges and culverts shall be designed and maintained to support a minimum gross vehicle weight (GVW) of 50,000 lbs. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 lb. GVW standard shall be provided by a Professional Engineer, registered in Oregon.
 - b. Access roads shall have an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, and provide an all weather surface.
 - c. Turnarounds shall have a minimum of 50 feet of turn radius with an all weather surface and be maintained for turning of fire fighting equipment.
 - d. Completion of the above-referenced road and driveway standards shall be confirmed by a letter submitted to the Planning Division from a professional engineer.

Staff asks the Hearings Officer to determine if it is appropriate to impose these conditions in lieu of the subject property being located in a Fire Protection District.

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

Considering the information above, staff asks the Hearings Officer to make findings on whether the Applicant has demonstrated there is adequate telephone, internet, water, septic, and fire protection services available for the proposed nonfarm dwelling.

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

FINDING: The subject property was created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) (ref. file no. MP-09-17).

- 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).

The Applicant's arguments related to the subject property being unsuitable are unclear to staff as the majority of the application materials are resubmittals of materials from prior applications for different proposals or configurations of the subject property. For this reason, it is unclear if the Applicant's "unsuitability" analysis relies on the size or location of the subject property. As noted in this Staff Report and documented in the record, there are livestock operations adjacent to, nearby, and/or occurring on the subject property. For this reason, it appears to the subject property could potentially be put to farm use in conjunction with other land based on its location.

Staff asks the Hearings Officer to make findings on whether the Applicant's "unsuitability" analysis relies on the size or location of the subject property and, if yes, can the subject property reasonably be put to farm in conjunction with other land.

- 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: As detailed in the Basic Findings section, there are at least two federal grazing allotments nearby and the letter from Long Hollow Ranch indicates the subject property is being used for grazing by their ranch. Based on this information, it appears to staff the subject property is currently or could be sold, leased, rented or otherwise managed as part of a commercial ranch.

Regarding unsuitability based on the predominate soil classification, the Applicant's Soil Study includes findings for a larger tract and the conclusions reached on the predominate soil classes are not specific to the subject property in its current configuration. For this reason, it is unclear what is the predominate soil classification on the subject property based on the information in the record.

Staff asks the Hearings Officer to make findings on whether the subject property is not "generally unsuitable" because it can be sold, leased, rented or otherwise managed as part of a commercial ranch and/or if the subject property is composed predominantly of Class I-VI soils.

- 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 criterion 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: The subject property is not receiving special assessment.

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 nonfarm dwelling. Staff recommends 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. Staff recommends conditions of approval be added to ensure compliance with the setbacks under (A) to (D) above. 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.

Chapter 18.88, Wildlife Area Combining Zone (WA)

S 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.**

FINDING: As detailed below, the requirements of DCC 18.88.040(B) do not apply to the subject proposal. The proposed use is conditionally permitted in the underlying EFU Zone. Compliance with the applicable provisions of the Comprehensive Plan, DCC 18.128 and other sections of this title are addressed in this decision.

- B. The following uses are not permitted in that portion of the WA Zone designated as deer winter ranges, significant elk habitat or antelope range:**
- 1. Golf course, not included in a destination resort;**
 - 2. Commercial dog kennel;**
 - 3. Public or private school;**
 - 4. Bed and breakfast inn;**
 - 5. Dude ranch;**
 - 6. Playground, recreation facility or community center owned and operated by a government agency or a nonprofit community organization;**
 - 7. Timeshare unit;**
 - 8. Veterinary clinic;**
 - 9. Fishing lodge.**

FINDING: The subject property located in the WA Zone designated as the Metolius Deer Winter Range. However, none of the uses listed above are proposed. This criterion is met.

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.***

FINDING: Setbacks are those described in the underlying zone with which the WA Zone is combined. The Applicant provided the following response to these criteria:

In addition to the other aerial images of the roads in existence as of August 5, 1992, the applicant submits that the County deposit packet also included a 1985 Aerial Image of FS Road 6360. The applicant has submitted a revised Proposed Plot Plan herewith showing that the dwelling as accessory features are within 300' of FS Road 6360. It can be made a condition of approval that the proposed dwelling will be located within 300 feet of the road.

Central Oregon LandWatch raised concerns about whether the WA dwelling siting requirements are met and it is unclear to staff what road(s) the Applicant is referencing to demonstrate compliance with 300-foot siting standard. Forest Service Road 6360 runs north-south along the eastern third of the subject property. The proposed nonfarm dwelling location as shown on the Applicant's Exhibit B is on the western third of the subject property. Staff believes the Applicant needs to further clarify the proposed location and road(s) the Applicant is relying upon to satisfy the WA dwelling siting standards. Staff asks the Hearings Officer to make findings on whether the Applicant has demonstrated compliance with this section.

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.***

FINDING: At the time the Applicant obtained partition approval to create the subject property (ref. file nos. MP-09-17/CU-09-48), no fencing was proposed. However, the Applicant has since constructed a 48-inch barbed wire perimeter fence around the subject property. This fencing appears to comply with the requirements of DCC 18.88.070(A). Staff asks the Hearings Officer to confirm this fencing complies with the WA Zone requirements. No additional fencing is proposed. Staff recommends a condition of approval be added to ensure ongoing compliance.

SYSTEM DEVELOPMENT CHARGE

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,670 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 \$4,592 (\$5,670 X 0.81). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final. The SDC applies to new dwellings.

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

IV. STAFF RECOMMENDATION

Based on the submitted application materials in the record at the time of writing this Staff Report, it does not appear the Applicant has met their burden and demonstrated compliance with all applicable criteria. Therefore, staff does not recommend approval unless the Applicant submits additional materials addressing the issues areas identified in this Staff Report.

V. RECOMMENDED CONDITIONS OF APPROVAL

If the Hearings Officer finds the Applicant's has demonstrated compliance with all applicable criteria, staff recommends, at a minimum, the following conditions of approval be added:

- 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.** 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.
- D.** 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.
- E.** ***Prior to issuance of building permits for the nonfarm dwelling***, the property owner must obtain an approved septic Site Evaluation from the Deschutes County Onsite Wastewater Division.
- F.** The following conditions must be met to ensure there are adequate fire protection services for the proposed nonfarm dwelling:

1. Firebreaks. The property owner of proposed dwelling and any future structures shall construct and maintain the following firebreaks on land surrounding the structure(s) that is owned or controlled by the property owner:
 - a. Primary Firebreak. Prior to initiating the use, a primary firebreak, not less than 10 feet wide, shall be constructed containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials.
 - b. Secondary Firebreak. Prior to initiating the use, a secondary firebreak of not less than 20 feet shall be constructed outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.
 - c. Fuel Break. Prior to initiating the use, a fuel break shall be maintained, extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed. The fuel break shall be completed prior to the beginning of the coming fire season.
 - d. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
2. The proposed dwelling and any accessory structures must comply with the Oregon Residential Specialty Code (ORSC) R327 requirements.
3. **Prior to issuance of building permits for the nonfarm dwelling**, the property owner shall obtain an address from the County address coordinator and shall display that number in a location of the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.
4. **Prior to issuance of building permits for the nonfarm dwelling**, the property owner must demonstrate one of the following requirements is met:
 - a. The dwelling shall be equipped with a residential fire sprinkler system and shall be installed to the minimum requirements of NFPA 13D "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes."; or
 - b. The dwelling shall have on-site water storage capability from a swimming pool, pond, lake, or similar water body of at least 4,000 gallons or a stream having a continuous year-round flow of at least one cubic foot per second. To demonstrate compliance, the property owner shall provide written verification from the Oregon Water Resources Department that any permits or

registrations required for water diversions have been obtained or that such permits or registrations are not required under state law for the use.

5. ***Prior to issuance of building permits for the nonfarm dwelling***, the property owner shall demonstrate compliance with the following standards:
- a. Roads, bridges and culverts shall be designed and maintained to support a minimum gross vehicle weight (GVW) of 50,000 lbs. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 lb. GVW standard shall be provided by a Professional Engineer, registered in Oregon.
 - b. Access roads shall have an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, and provide an all weather surface.
 - c. Turnarounds shall have a minimum of 50 feet of turn radius with an all weather surface and be maintained for turning of fire fighting equipment.
 - d. Completion of the above-referenced road and driveway standards shall be confirmed by a letter submitted to the Planning Division from a professional engineer.

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

H. All structures must be setback at least 40 feet from Forest Service Road No. 6360.

I. The nonfarm dwelling structure must be setback at least 100 feet from any adjacent property currently employed in farm use and receiving special assessment for farm use. If no adjacent property is currently employed in farm use and receiving special assessment, the minimum required setback for the nonfarm dwelling structure is 25 feet. All other structures must be setback at least 25 feet from the closest property line.

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

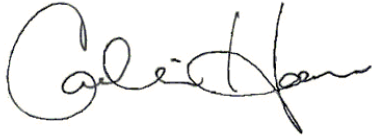
K. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

L. All new fences shall comply with DCC 18.88.070(A-B).

VI. DURATION OF APPROVAL

If the Hearings Officer findings the applicable criteria are met and approves the subject request, the property owner shall obtain a building permit for the dwelling within four (4) years from the date this decision becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the County Code, or this conditional use permit shall be void.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Caroline House, Senior Planner



Reviewed by: Anthony Raguine, Principal Planner

Attachments: Applicant's Exhibit B - "NFD Building Envelope Location with Soil Overlay"
Farm & Forest Easement
Nearby Federal Grazing Allotment Information

SCHUTTE - NFD. BUILDING ENVELOPE LOCATION WITH SOIL OVERLAY

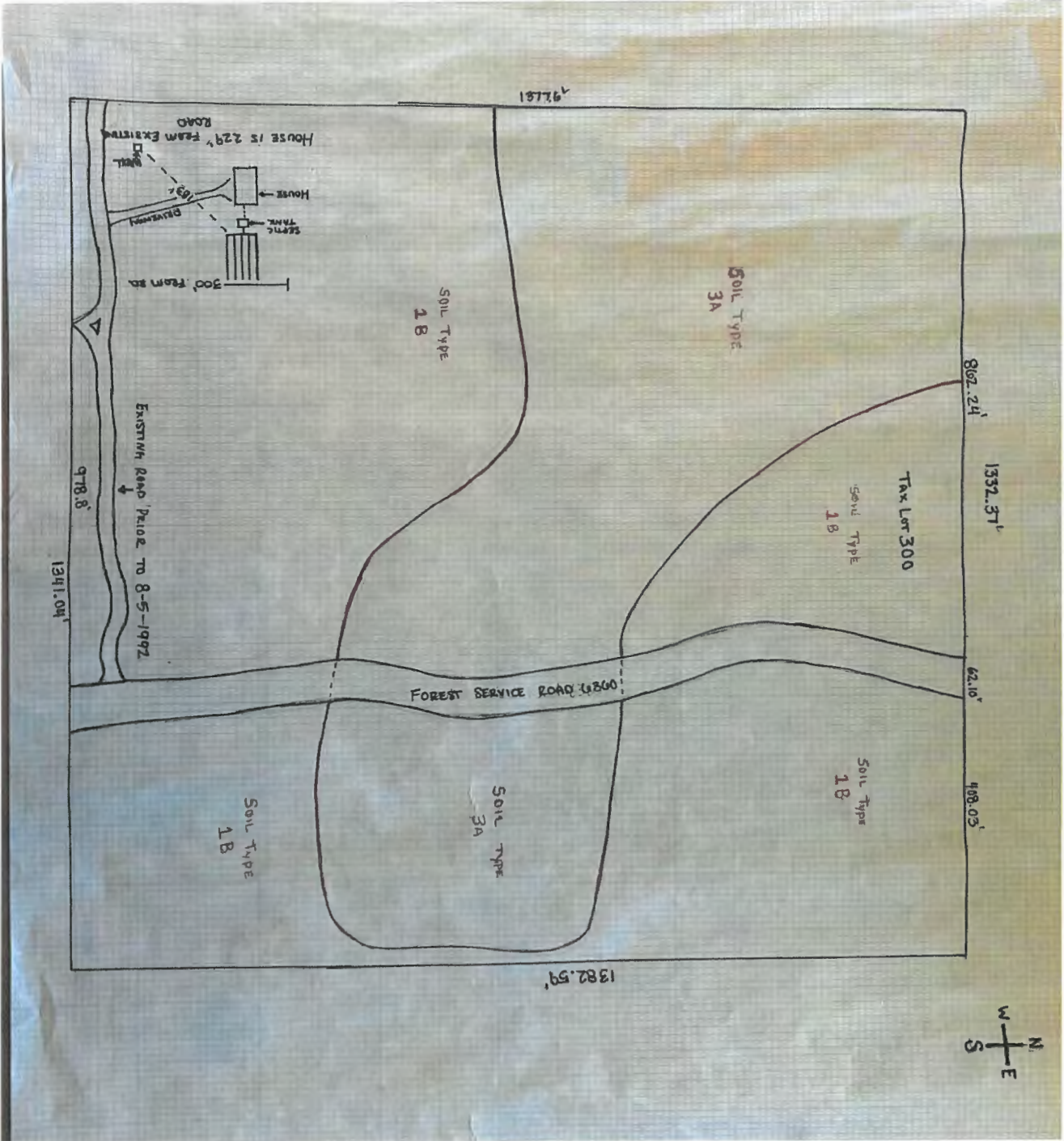


EXHIBIT
B

Return to:
Caroline House, Senior 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

Jeffrey A. Schutte and Cindi R. Schutte, herein called the Grantors, are the owners of real property described as set forth in that certain Statutory Warranty Deed dated March 28, 2022, as recorded in the Official Records of Deschutes County as instrument number 2022-13457 and by this reference incorporated herein, and further identified or depicted on Deschutes County Assessor's Map 14-11-02B, as tax lot 300. In accordance with the conditions set forth in the decision of the Deschutes County Planning Division approving land use permit 247-24-000209-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 Grantors, his/her/their heirs, successors, and assigns, hereby acknowledge by the granting of this easement that the above-described property is situated in a designated farm zone in Deschutes County, Oregon, and may be subjected to conditions resulting from farming or forest practices on adjacent lands. Such operations include management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof, and other accepted and customary farm and forest management activities conducted in accordance with federal and state laws. Such farm or forest management activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Except as allowed by ORS 30.930 through 30.947, Grantors hereby waive all common law rights to object to normal, non-negligent farm and forest management activities legally conducted on adjacent lands that may conflict with Grantors' use of Grantors' property for residential purposes, and Grantors hereby give an easement to the adjacent property owners for the resultant impact on Grantors' property caused by the farm and forest management activities on adjacent lands.
2. Grantor shall comply with all restrictions and conditions for maintaining residences in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantors shall comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property adjacent to the above-described property, and shall bind the heirs, successors, and assigns of 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.

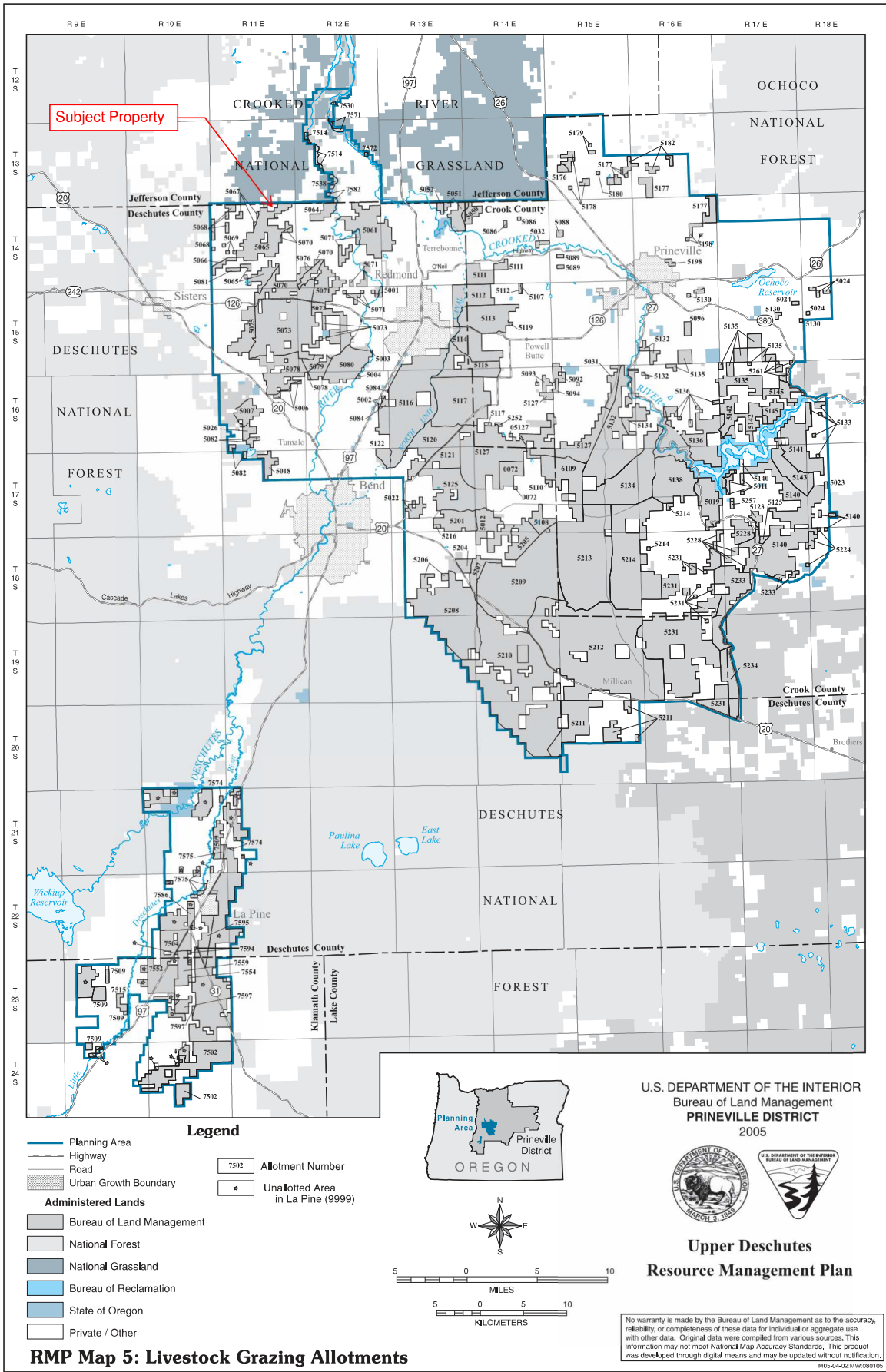
Signature Page to Follow

Dated this ____ day of _____, 20__ GRANTORS

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 Jeffrey A. Schutte and Cindi R. Schutte, who are known to me to be the identical individuals described in the above document, and who acknowledged to me that he/she/they executed the same freely and voluntarily.

Notary Public for _____
My Commission Expires: _____



Subject Property

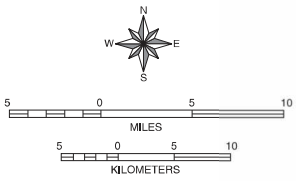
- Legend**
- Planning Area
 - Highway
 - Road
 - Urban Growth Boundary
 - 7502 Allotment Number
 - * Unallotted Area in La Pine (9999)
- Administered Lands**
- Bureau of Land Management
 - National Forest
 - National Grassland
 - Bureau of Reclamation
 - State of Oregon
 - Private / Other



U.S. DEPARTMENT OF THE INTERIOR
Bureau of Land Management
PRINEVILLE DISTRICT
2005



**Upper Deschutes
Resource Management Plan**



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.

RMP Map 5: Livestock Grazing Allotments

MMS-0423-MW-081005

Range: Allotment (Feature Layer)

Authoritative

 **USFS Enterprise Content**
U.S. Forest Service

Summary

Designates boundaries to establish extent of livestock distribution and management within the allotment.

[View Full Details](#)

[Download](#)

Details

 **Dataset**
Feature Layer

 **October 12, 2018**
Info Updated

 **August 25, 2022**
Data Updated

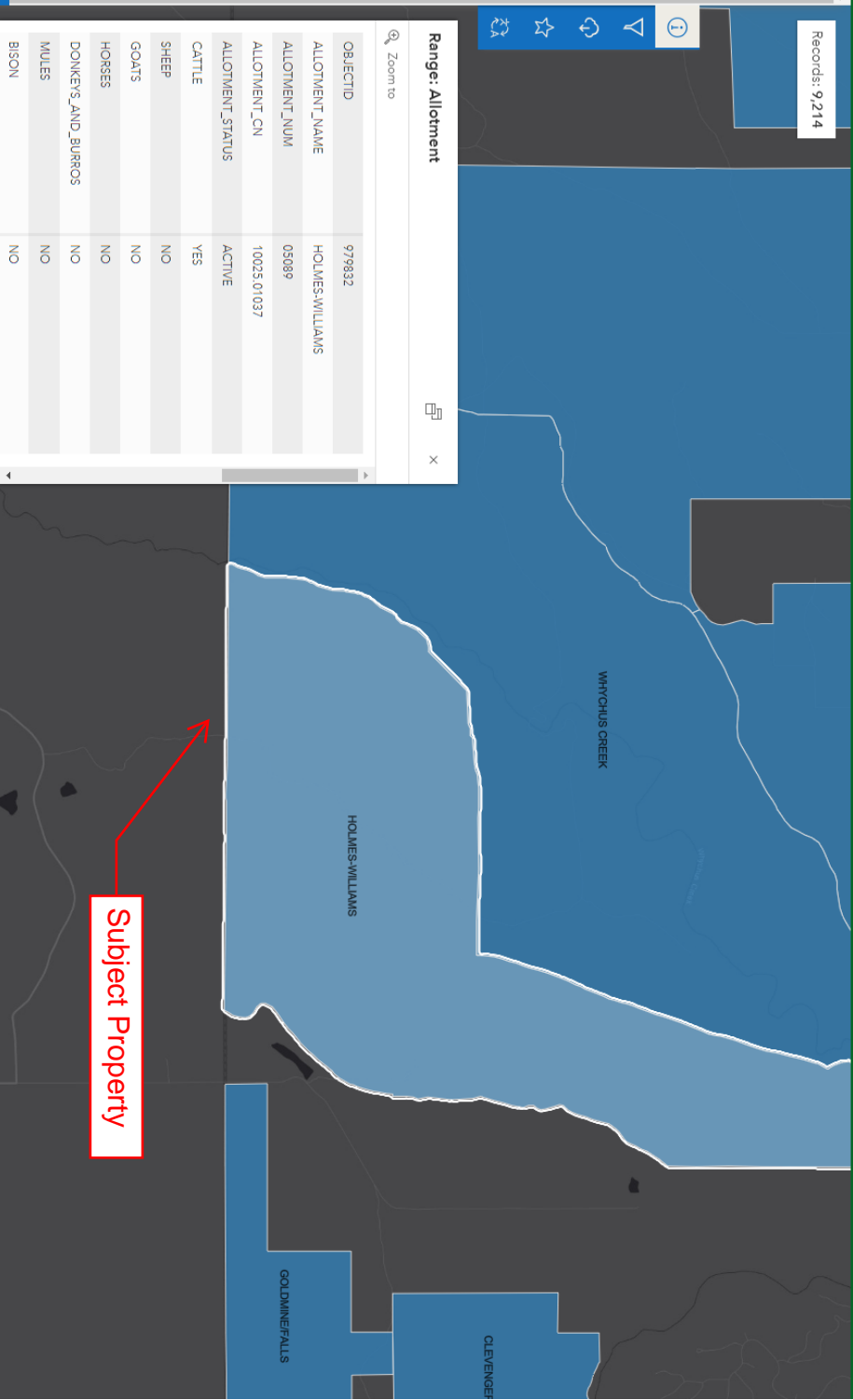
 **April 24, 2018**
Published Date

 **Records: 9,214**
[View data table](#)

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Source: <https://data-usfs.hub.arcgis.com/datasets/range-allotment-feature-layer/explore?location=44.408904%2C-121.379826%2C13.57>

owner	agent	inCareOf	address	cityStZip	Type	CDD ID	email
Jeff & Cindi Schutte			71415 Forest Service Rd 6360	Sisters, OR 97759	Staff Report	24-209-CU	classy44505@gmail.com
Lisa Andrach	Fitch & Neary, PC		210 SW 5th Ave, Ste 2	Redmond, OR 97756	Staff Report	24-209-CU	lisa@fitchandneary.com