



**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Haleigh King, Associate Planner

**DATE:** April 17, 2024

**RE:** Consideration to Hear on Appeal – Deschutes County Land Use File Nos. 247-23-000293-CU, 294-CU, 295-CU, 737-SMA, 738-SMA, 739-SMA; Grossmann Non-Farm Dwellings

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On April 24, 2024, the Board of County Commissioners (Board) will consider whether to hear an appeal of a Hearings Officer’s decision (ref. File Nos. 247-23-000293-CU, 294-CU, 295-CU, 737-SMA, 738-SMA, 739-SMA) approving a series of land use applications to establish a non-farm dwelling on three separate properties under the same ownership.

**I. BACKGROUND AND PROCEDURAL HISTORY**

A public hearing before the Hearing’s Officer was held on February 6, 2024. On March 22, 2024, the Hearings Officer issued a tentative decision for the subject applications. Staff notes that while these applications were evaluated under one Hearing’s Officer decision, each Conditional Use Permit and corresponding SMIA Review are distinct and separate land use applications.

The Hearing Officer’s decision is summarized as such:

- **Approval** of Applicant’s requests for conditional use and surface mining impact area review to establish three (3) non-farm dwellings on three separate legal lots of record in the EFU zone.
- **Denial** of Applicant’s requested DCC 18.88.060 B.1 exception to site the dwelling envelopes within 300-feet of the road located on the west side of the subject property.

## II. PROPOSAL

The applicant proposes to establish a non-farm dwelling on each of the three properties listed below:

- Property #1: 69900 NW Lower Valley Drive, Terrebonne, OR
  - (Map 14-12-30BA, Tax Lot 100)
- Property #2: 69850 NW Lower Valley Drive, Terrebonne, OR
  - (Map 14-12-30BA, Tax Lot 200)
- Property #3: 69800 NW Lower Valley Drive, Terrebonne, OR
  - (Map 14-12-30BA, Tax Lot 300)

The application review also included a Surface Mine Impact Area Review due to the location of the subject properties within ½ mile from the boundary of a property zoned Surface Mine (SM). The Wildlife Area Combining Zone, associated with the Metolius Deer Winter Range, also applies to the subject property and the application was required to address the dwelling siting standards in DCC 18.88.060.

## III. COLW APPEAL

Central Oregon LandWatch submitted a timely appeal of the Hearing's Officer Decision on April 3, 2024. The notice of appeal cited the following issues on appeal:

- The Hearings Officer erred in finding the proposed uses will not materially alter the stability of the land use pattern in the area.
- The Hearings Officer erred in finding the subject property is not suited for the production of farm crops and livestock and could not be used in conjunction with surrounding lands.
- The Hearings Officer misinterpreted DCC 18.88.060 regarding wildlife habitat protection.
- The Hearings Officer misinterpreted and misapplied state statute regarding parcel creation date.
- The Hearings Officer erred in their consideration of evidence in the record on multiple issue areas.
- The appellant disagrees with the appeal fee for BOCC appeals

The appellant did not specify whether *de novo*, limited *de novo*, or an on-the-record appeal was sought. The appellant requests the Board waive the transcript requirements outlined in DCC 22.32.024(D).

## IV. BOARD OPTIONS

The Board may decide to hear this appeal, or to decline to hear the appeal. In determining whether to hear the appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notices of appeal; and
3. Recommendation of staff<sup>1</sup>

## **V. STAFF RECOMMENDATION**

Reasons not to hear the appeal:

- The Hearings Officer decision could be supported, as the record exists today, on appeal to the Land Use Board of Appeals.
- The Hearings Officer addressed the issues raised by the appellant, which are largely similar to the issues raised in File No. 247-24-000200-A, 201-A, 202-A.
- The applicant and appellant were both represented by legal counsel and had ample opportunity to submit evidence for the Hearings Officer to consider. Oral testimony was provided at the February 6, 2024 public hearing, and there was a 21-day open record period following the hearing, 14 days of which the appellant was eligible to participate and when additional arguments could be provided for consideration.
- The issues raised on appeal are primarily related to provisions in State statute, and the Board is unlikely to broadly receive deference if the application is further appealed to the Land Use Board of Appeals.

For these reasons, Staff, in coordination with Legal Counsel, recommends the Board decline to hear the appeal.

If the Board decides the Hearings Officer's Decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application and associated appeals becomes final upon the mailing of the Board's decision to decline review.

## **VI. 150-DAY LAND USE CLOCK**

The 150<sup>th</sup> day on which the County must take final action on the Conditional Use applications is May 27, 2024. Because the Surface Mine Impact Area Review applications were submitted later in the process, the 150<sup>th</sup> day on which the County must take final action on these applications is July 15, 2024.

## **VII. RECORD**

The record for File Nos. 247-23-000293-CU, 294-CU, 295-CU, 737-SMA, 738-SMA, 739-SMA and the Notices of Appeal for Appeal No. 247-24-000200-A, 201-A, 202-A are as presented at the following Deschutes County Community Development Department website:

[www.deschutes.org/247-23-000293-CU-294-CU-295-CU](http://www.deschutes.org/247-23-000293-CU-294-CU-295-CU)

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<sup>1</sup> Deschutes County Code 22.32.035(D)

Attachments:

1. DRAFT Board Order 2024-013 Declining Review of the Hearings Officer's Decision
2. Notice of Appeal (Appeal No. 247-24-000200-A, 201-A, 202-A)
3. Hearing's Officer Decision (File No. 247-23-000293-CU, 294-CU, 295-CU, 737-SMA, 738-SMA, 739-SMA)
4. Location Map