

NOTICE OF APPEAL

Decisions on Appeal: Five (5) *Decisions of the Deschutes County Hearings Officer*, collectively denying the conditional use, tentative plan, and site plan for the five cluster/PUD developments identified as “The Tree Farm,” each decision dated March 18, 2015.

File Numbers: Tree Farm 1: 247-14-000242-CU; 247-14-000243-TP
Tree Farm 2: 247-14-000244-CU; 247-14-000245-TP
Tree Farm 3: 247-14-000246-CU; 247-14-000247-TP
Tree Farm 4: 247-14-000248-CU; 247-14-000249-TP
Tree Farm 5: 247-14-000250-CU; 247-14-000251-TP

Applicant: The Tree Farm LLC
409 NW Franklin Avenue
Bend, Oregon 97701

Appellant: Rio Lobo Investments, LLC
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Appellant’s Attorney: Myles Conway
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Standing to Appeal

Under DCC 22.32.010.A(1), Rio Lobo Investments, LLC (“Rio Lobo”) has standing as a party to appeal the five separate decisions listed above (the “Decisions”). Rio Lobo was a party pursuant to DCC 22.24.080 in the administrative proceedings before the Hearings Officer regarding the five Tree Farm applications (file numbers listed above). Rio Lobo submitted written and oral testimony regarding each of the applications, including letters submitted by Myles Conway, attorney for Rio Lobo, dated December 11, 2014 and January 6, 2015 (attached as Exhibits A and B respectively).

Introduction

Rio Lobo is the owner of an approximately 376-acre parcel that lies immediately north of the subject properties (the “Rio Lobo Property”). The Rio Lobo Property is included in the County’s Urban Area Reserve and is zoned UAR-10 under Title 19 of the Deschutes County Code (DCC). As a general matter, Rio Lobo supports the applicant’s objective of dividing and developing the subject properties, however, Rio Lobo objects to the limited nature of the transportation connections provided as part of the applicant’s consolidated development proposals.

While denying the applications, the Decisions rejected Rio Lobo’s request to require the Applicant to dedicate public roads across the Tree Farm properties to provide public road access from each of the Tree Farm developments and adjoining properties to Skyliners Road. The DCC, however, mandates public roads to facilitate necessary connections between the various Tree Farm developments and to the public road system. Further, the applicant’s plan to develop a system of private roadways is not sufficient to support future development in the Urban Area Reserve. If the Tree Farm developments are ultimately approved as proposed, the lack of public road access will negatively impact Rio Lobo’s ability to develop its adjoining property due to the absence of any public road connection from the Rio Lobo property south to Skyliners Road.

Consistent with the applicable approval criteria, a publicly dedicated roadway (with a minimum 60-foot right-of-way) should be extended from Skyliners Road “to and through” the five development parcels. The Hearings Officer thus erred in determining that no public road was required to connect to and through the individual Tree Farm properties from Skyliners Road to the Rio Lobo Property. The Board of Commissioners should only approve the Tree Farm properties if adequate publicly-dedicated road access can be provided “to and through” the Tree Farm developments, as required by the DCC.

Background/Rio Lobo Property

The Rio Lobo Property is located at the western edge of the Bend City limits and zoned by Deschutes County as Urban Area Reserve with a Destination Resort (DR) overlay. The property is designated as “Urban Area Reserve” on the City of Bend’s General Plan map but currently falls outside of the City’s Urban Growth Boundary (UGB) and City limits. The County’s UAR-10 zone is intended to serve as a “holding category” as urban growth takes place elsewhere in the planning area and to be preserved as open space until needed for orderly growth. *See* DCC 19.12.010.

In response to unprecedented growth in the region, the City of Bend has been actively working to expand its UGB since 2004. In 2009, the Bend City Council and Deschutes County Board of Commissioners approved a UGB expansion proposal that would have placed the Rio Lobo

Property in the UGB. That decision was subsequently remanded by the State of Oregon Land Conservation and Development Commission, and the City is currently working to refine its UGB expansion proposal. While the timing and ultimate outcome of the City's UGB expansion process cannot be accurately predicted, the Bend Area General Plan (BAGP) provides that lands within the urban reserve area are considered first for any expansion of the UGB. BAGP, Chapter 1- Plan Management and Citizen Involvement.

Current zoning in the UAR-10 zone allows the development of single family homes on ten-acre lots as a permitted use, together with planned unit developments and destination resorts as a conditional use. DCC 19.12.020, DCC 19.12.030. In addition to accommodating currently permissible uses, land use planning efforts in the UAR-10 zone should consider the potential for future development at urban levels of density. At 376 acres in size, the Rio Lobo Property could develop with 37 individual home sites or a destination resort under current zoning regulations. For planning purposes, the property could be developed with somewhere between 1000-1110 residential units once annexed into the City of Bend, a reasonable prospect given the property's urban reserve designation.

Miller Tree Farm Applications

The applicant has submitted a series of five separate, consolidated development applications that would authorize the construction of 50 new large lot residential home sites. The applicant's development plan would place 37 of the proposed 50 new dwelling units on lands that are zoned as Urban Area Reserve. The applicant proposes to exclusively utilize private roads to service its five cluster developments. The only public road connection contained in the applicants' five consolidated development applications is a short stubbed road at Sage Steppe Drive (aka "The Road to Nowhere"). However, Sage Steppe Drive will not provide any connection to the County or City road system, but only connects to the private Tree Farm road system, as well as to a private, gated, emergency access road proposed to cross property lying immediately to the southeast of the five Tree Farm properties. That adjacent parcel to be crossed by the secondary access road (the "Miller Tree Farm Property"), is also owned by Miller Tree Farm LLC, the same entity which owns the five Tree Farm development parcels.

The applicant's proposed private road connection at Ridgeline Drive/Tree Farm Drive would provide the only access connection between the Rio Lobo Property, the various Tree Farm developments, and Skyliners Road to the south. In lieu of publicly dedicating all or even any part of its road system, the applicant offers to provide an undefined "public access easement" along Ridgeline Drive/Tree Farm Drive. Thus, as proposed, there will be *no* public road access to or through any of the five Tree Farm developments.

The applicant also intends to site 14 of its proposed residential lots directly along its common boundary with the Rio Lobo Property. The applicant has configured its individual lots and associated development plan in a manner that provides only one 60-foot wide access connection between the subject properties and the adjacent lands zoned urban area reserve. This proposed lot and development configuration severely limits the opportunity for current and future transportation connections between the subject and surrounding properties. For the reasons set forth in detail below, the applicant's proposal is inconsistent with applicable approval criteria

Procedural History

As described in the Decisions, the Tree Farm applications were submitted on August 5, 2014.¹ After the Planning Division deemed the applications incomplete, the application submitted additional information on September 19, 2014. The Hearings Officer conducted an abbreviated site visit to the Tree Farm properties on November 4, 2014, but was unable to fully access the properties due to road closures associated with nearby utility work. A consolidated public hearing on the five Tree Farm applications was held on November 6, 2014, at which time Rio Lobo submitted oral testimony through its attorney, Myles Conway. The public hearing was continued until November 20, 2014, at which time additional testimony and evidence was provided by Rio Lobo and others.

The Hearings Officer conducted an additional site visit on December 3, 2014 and issued a site visit report on December 8, 2014. On December 11, 2014, the applicant, Rio Lobo, and other parties submitted written testimony and evidence. On December 19, 2014, Senior Transportation Planner Peter Russell issued a memorandum addressing the status of private roads in the Tree Farm and providing staff's position that a public road connection across the Tree Farm properties was required by the DCC (attached as Exhibit C). On December 23, 2014 the Hearings Officer extended the written evidentiary record through January 6, 2014 and allowed the applicant to submit final written argument through January 13, 2015, after which the record closed.

On March 18, 2015, the Hearings Officer issued and mailed Decisions on each of the Tree Farm applications. The Decisions denied the Tree Farm applications due to the applicant's failure to adequately plan for and mitigate wildfire risk, but the Hearings Officer indicated that the application otherwise complied with all aspects of the Deschutes County Code, including transportation and road requirements.

¹ For reference purposes, citations to the individual Decisions in this Notice of Appeal are as follows:

- Tree Farm 1: TF 1, at [page #].
- Tree Farm 2: TF 2, at [page #].
- Tree Farm 3: TF 3, at [page #].
- Tree Farm 4: TF 4, at [page #].
- Tree Farm 5: TF 5, at [page #].

This appeal followed on March 30, 2014, within twelve (12) days of mailing of the Decisions in compliance with DCC 22.32.015.

Request for De Novo Review

For the reasons described in this Notice of Appeal, the Hearings Officer erred in her determinations that the private road system through the Tree Farm properties complies with the requirements of the DCC. In light of the Hearings Officer's failure to fully understand the nature of the "public access easement" offered by the applicant or to properly address the consolidated applications as separate development proposals when considering the necessity of public roads, as well as the applicant's novel "takings" arguments—which effectively challenge the County's ability to *ever* require the dedication of public roads as part of a new development proposal—Rio Lobo requests the County Board of Commissioners to review this appeal de novo.

Specific Issues on Appeal

The Hearings Officer erred in finding the applicant's consolidated development proposal to be consistent with the following legal standards and criteria. The Board of Commissioners should find that public road access to and through the Tree Farm developments is required by the DCC, and that such a requirement is not a taking. Further, the Board should find that the current configuration of the Tree Farm developments does not meet applicable standards necessary to facilitate future transportation interconnections with adjoining properties.

1. Publicly Dedicated Road Connections are Required to Accommodate Through Traffic Between the Separate Tree Farm Developments.

The County subdivision ordinance requires the extension of public streets to and through the proposed development. As a general rule, streets in a subdivision must be dedicated to the public. DCC 17.36.020(B). Specifically, streets in a planned or cluster development must be dedicated to the public "where necessary to accommodate present and future through traffic." DCC 17.36.020(B). As County staff recognized, this Code provision means that private roads are only permitted where such roads will not be needed for present or future through traffic. In other words, dead-end streets or otherwise closed developments may be served by private roads. But any road that connects multiple developments or is needed to connect future developments to the public road system must be dedicated to the public. A public road is therefore by definition "necessary" where it is needed to connect different properties. Public dedication is not "necessary" based on infrastructure capacity needs, but simply on public need for access across a particular property to reach the public road system.

The record describes County staff's evaluation of this issue. In email comments dated August 29, 2014, Deschutes County Senior Transportation Planner, Peter Russell, stated that the applicant "will have to dedicate to the public the connection from the north boundary of the subdivision south to Skyliners Road. The dedication will have to be built to the standards shown in Table A, Title 17." While Mr. Raguine indicated in a September 9, 2014 letter that a public access easement might suffice to provide the access to the Rio Lobo Property, after further review staff determined that the Code in fact required publicly-dedicated street access. In a memorandum to Mr. Raguine, Mr. Russell explained: "Upon further review, staff agrees with Mr. Conway that the Code is explicit: the main access to and through a subdivision must be a public street and meet the minimum requirements set forth." See Exhibit C, at 1-2. Mr. Russell's memorandum elaborated:

Based on the submitted application materials, the current proposal utilizes Tree Farm Drive, a portion of Golden Mantle Loop, Ridgeline Drive, and a portion of Sage Steppe Drive as the main street in Miller Tree Farm. These listed roads and road segments provide access to Skyliners Road to the south, wend [sic] through Miller Tree Farm, and terminate at the site's northern boundary. This route would be the primary access road to Miller Tree Farm as that term is described at 17.48.160(C)(3). These roads and their segments will function as a future "to and through" route. These roads and their segments must meet the design requirements under DCC 17.48.050 and the 60-foot minimum public right of way under DCC 17.48.100

See Exhibit C, at 2.

As staff correctly determined, because the five Tree Farm developments require connected access across each other to reach the public road system, public road dedication of the development's primary "to and through routes" is required by DCC 17.36.020(B). Since the applicant's current proposal does not provide public roads to and through the developments, it does not comply with the requirements of the DCC. In fact, the evidence demonstrates that *none* of the new lots in any of the Tree Farm developments will have public road access. Instead, every new lot would be accessed solely via the applicant's private road system. That private road system would cross, at minimum, the Tree Farm 1, Tree Farm 2, and Tree Farm 3 developments, as well as the Miller Tree Farm Property, before reaching Skyliners Road.² In other words, none of the Tree Farm developments would be accessible by public road. Because the applicant has proposed five separate developments which require connected access between themselves to reach the public road system, the Hearings Officer erred in finding the applicant's proposed private road system meets the Code standards.

² See Applicant's July 2014 Burden of Proof Statement, Exhibit D.

It is also important to note that this outcome is dictated only by the applicant's novel configuration of the Tree Farm developments—presumably in an attempt to maximize the number of buildable home sites allowable under current zoning. In order to comply with the 10 lot maximum for “cluster developments” under the statewide land use Goal 14 regulations, OAR 660-004-0040(7)(e), the applicant frames “The Tree Farm” proposal as five separate development proposals. Yet the applicant also seeks to avoid the necessary result of its own decision – that providing access to any one of the Tree Farm developments requires road construction and permanent access across other separate Tree Farm developments. However, the applicant cannot treat this consolidated proposal as five separate developments when it serves its interests, but as only one development when that configuration is advantageous. The applicant made the decision to propose five separate developments, and it must live with the consequences of that decision. While undoubtedly interrelated and thus properly consolidated for review, the legal status and impacts of each development must also be evaluated independently. The evidence indicates that road access from Skyliners Road to any of the Tree Farm developments must cross several of the other separate developments. Thus, a public road is “necessary to accommodate present and future through traffic” between the five separate Tree Farm development proposals, irrespective of any access needs of the adjoining Rio Lobo Property.

The Hearings Officer recognized that this argument was made by Rio Lobo below,³ but failed to make findings that actually addressed the issue raised. Instead, the Hearings Officer appears to have assumed that because the road infrastructure proposed by the applicant is projected to be physically able to accommodate vehicular traffic among the Tree Farm developments that a public road is not “necessary to accommodate present and future through traffic.”⁴ However, the public road requirement is not triggered by some threshold infrastructure demand, but by the need to cross multiple development parcels to reach the public road system. The Hearings Officer completely failed to address Rio Lobo's argument below that, regardless of the amounts of traffic generated, providing access to any of the five separate Tree Farm developments requires traversing the other separate Tree Farm developments. This requires both adequate *physical* infrastructure, as well as adequate *legal* access. DCC 17.36.020.B indicates that demonstrating adequate legal access between the separate Tree Farm developments requires dedication of a public road.

Instead of addressing the issue of the necessity of public roads to connect the different Tree Farm developments, the Hearings Officer's analysis instead focused on whether the County had authority to require “off-site road improvements” across the adjacent Miller Tree Farm Property

³ TF 1, 89 (“Mr. Conway argued that [DCC 17.36.020(B)] requires the applicant to dedicate to the public not only to provide for through traffic from development on the Rio Lobo property, but also to accommodate through traffic within The Tree Farm itself.”); *see also* TF 2, at 88; TF 3, at 88; TF 4, at 91; TF 5, at 67.

⁴ TF 1, at 90-91 (agreeing with Applicant's analysis); *see also* TF 2, at 88-90; TF 3, at 87-90; TF 4, at 90-93; TF 5, at 66-69.

(also owned by the same property owner, Miller Tree Farm LLC).⁵ In characterizing the road access across the Miller Tree Farm Property as “off-site,” the Hearings Officer failed to appreciate that the applicant was in control of the prior lot line adjustment process that produced the current configuration of Tree Farm parcels, and the applicant made the choice to exclude the Miller Tree Farm Property from the Tree Farm developments. Further, it was the applicant’s decision to place the primary access to the developments from Skyliners Road immediately across the property line from the Tree Farm 1 property on the adjacent Miller Tree Farm Property. Instead, the applicant could have included the Miller Tree Farm Property within the current proposal, or simply placed the entire Tree Farm Road on the Tree Farm development properties, either through slightly rerouting the road or through a minor lot line adjustment to incorporate the proposed road access within Tree Farm 1. In any event, the portion of the Tree Farm Road on the Miller Tree Farm property must be permitted by the County as part of this land use approval process. Thus, there is no reason that the County would lack jurisdiction to require public dedication of the entirety of Tree Farm Road in such circumstances.

The Sage Steppe Drive extension/secondary access road (also proposed to cross the Miller Tree Farm Property) is similarly “necessary” to accommodate “to and through” traffic from the proposed Sage Steppe Drive to Crosby Drive or Skyliners Road, and therefore must be publicly dedicated. The Tree Farm developments explicitly rely upon such secondary access road for emergency access purposes. Thus, since it is needed to allow traffic to and through the developments, the Sage Steppe Drive extension/secondary access road *is* part of the development proposal, and the County inherently has jurisdiction over it.

2. Publicly Dedicated Road Connections are Required to Accommodate Through Traffic To the Rio Lobo Property.

Not only are public roads required to accommodate traffic between the various Tree Farm developments, publicly-dedicated street connections are necessary to facilitate the build-out and development of adjacent areas in the urban reserve. The Tree Farm developments must therefore include a publicly-dedicated road system to and through the development from Skyliners Road to the Rio Lobo property because such public road service is “necessary to accommodate present and future through traffic.” DCC 17.36.020(B). The Hearings Officer thus erred in finding that “Section 17.36.020(B) of the subdivision ordinance does not require the applicant to dedicate or construct a public road between the Rio Lobo property and Skyliners Road because none is necessary to accommodate present and future through traffic generated by The Tree Farm and/or development of Rio Lobo’s property with its current UAR-10 zoning.”⁶ That Code provision, however, requires public roads as needed to accommodate “future through traffic” and is not limited to traffic arising solely from development that may occur under current zoning. As it is

⁵ TF 1, at 90; TF 2, at 89; TF 3, at 88; TF 4, at 91; TF 5, at 67.

⁶ TF 1, at 47; TF 2, at 46; TF 3, at 46; TF 4, at 48-49; TF 5, at 45.

reasonably foreseeable that the Rio Lobo Property will be developed in a manner that will require public road access, the Code mandates the dedication of public roads through the Tree Farm development to the Rio Lobo Property.

The Hearings Officer also wrongly accepted applicant's argument that the County lacks jurisdiction over the Miller Tree Farm Property and cannot require extension of Sage Steppe Drive south to Crosby Drive or Skyliners Road because that adjacent lot is not being developed as part of the Tree Farm developments.⁷ The applicant has chosen to utilize the Miller Tree Farm Property, owned by the same property owner, as a critical component of each of the Tree Farm developments. This adjacent parcel is used to provide the location of both the primary (Skyliners Road) and secondary (emergency access to Crosby Drive) access connections supporting the Tree Farm developments. As a result, this adjacent parcel *is* being developed as an essential component of the consolidated proposals, and the extension of a 60-foot wide publicly dedicated "through" connection on Sage Steppe Drive to Crosby Drive or Skyliners Road should be required as a condition of any development approval. At the very least, the applicant should be required to obtain public dedication of the 60 to 80-foot right-of-way to facilitate the secondary emergency access, even if road construction to County standards is not required until future development occurs. As the Hearings Officer recognized, the County has the authority "to deny an application if [the County] find[s] an off-site road improvement were required for the proposal to meet the applicable approval criteria and no such off-site improvement were proposed."⁸ That is the case here. Unless the applicant is able to provide public road access to and through its five cluster developments, the development proposals do not meet applicable standards and should be denied.

Both the primary access routes through the Tree Farm developments, as well as the proposed Sage Steppe Drive and the Sage Steppe Drive extension/secondary access road southeast to Crosby Drive, must be publicly dedicated.

3. Even if a Public Access Easement Could Theoretically Meet the Code Standards, There is No Evidence in the Record to Support Such a Finding in this Case and There are No Code Standards to Apply in Making Such a Finding.

The applicant has responded to the public road requirement of DCC 17.36.020(B) with a vague offer to provide a "public access easement" across its system of private roadways. The County Code, however, contains no reference, requirements or criteria related to the "public access easement" that has been proposed by the applicant in lieu of public road connections. As a result, County staff has recognized that there is no legal or evidentiary basis for analysis or approval of this proposal. *See* Exhibit C. The simple right to take "access" across a system of privately

⁷ TF 1, at 89-90; TF 2, at 89; TF 3, at 88; TF 4, at 91; TF 5, at 67.

⁸ TF 1, at 90; TF 2, at 89; TF 3, at 88; TF 4, at 91; TF 5, at 67.

owned roadways that have been constructed, controlled, and maintained by area homeowners is not sufficient to support current or future development opportunities in the urban reserve. Publicly dedicated roadways are required to facilitate the future construction, upgrade and maintenance of the roadway and utility systems that are necessary to serve development in the urban reserve.

Even assuming that the Code could be read as permitting the use of “public access easements” across private roads instead of public dedication so long as an equivalent right of public access would result, the record lacks evidence to support any finding that any public access easement provided by the applicant would in fact meet such a standard. The applicant’s indefinite promise of a “public access easement” simply does not provide the guarantee required by the DCC that the Tree Farm roads will continue to accommodate public access needed to serve current needs as well as future development. The applicant has provided no text of a proposed easement to allow Rio Lobo or the County to evaluate whether the easement would provide sufficient permanent access to and through the various Tree Farm developments. Various restrictions on access could therefore be included in a “public access easement,” including unreasonable speed limitations, truck size or other vehicle limitations, or time-of-day restrictions.

Evaluating a public access easement is not a ministerial decision that can be made without exercising legal and policy judgment regarding potential access limitations or inadequacies in the legal instrument itself. County staff should neither be required, nor allowed to determine whether a future “public access easement” proposed by the applicant is sufficient to accommodate present and future traffic within and through the Tree Farm developments. This is particularly so because there are no County standards for evaluating a “public access easement” that County staff could rely upon to evaluate whether language proposed by the applicant was sufficient. This is undoubtedly because the use of such an easement instrument was never contemplated as meeting the Code standard at issue. In the absence of any Code standard, County staff has no basis for evaluating the acceptability of any “public access easement” proposed by the applicant. The Hearings Officer accordingly had no basis to conclude that a “public access easement” would be sufficient to meet the requirements of the code, which instead mandates dedication of a public road “where necessary to accommodate present and future through traffic.”⁹

Further, the Hearings Officer wrongly dismissed Rio Lobo’s argument that the applicant’s offer of a “temporary’ public access easement” could lead to future erection of barriers to through traffic within the subdivision.¹⁰ Because of this, the Hearings Officer’s decision incorrectly assumes that “the public access easements for Tree Farm roads will be permanent,” and that only the easement across the Miller Tree Farm property for the secondary emergency access road will

⁹ TF 1, at 89; TF 2, at 88; TF 3, at 88; TF 4, at 90; TF 5, at 66

¹⁰ See TF 1, at 89 n. 32; TF 2, at 88 n. 32; TF 3, at 88, n. 32; TF 4, at 90 n. 31; TF 5, at 66-67 n. 22.

be “interim.”¹¹ To the contrary, the applicant specifically stated to the Hearings Officer that the public access easements would be temporary:

In the interim, upon recordation of the Final Plats, the Tree Farm will record a temporary public access easement over Ridgeline Drive and Tree Farm Drive from Sage Steppe Drive (as shown in the applications). The public access easement will terminate at such time that Sage Steppe Drive connects to an improved, dedicated public right-of-way that provides access to Skyline Ranch Road or Skyliners Road. This public access would be sufficient to handle the traffic from [the] 37 lots that could be potentially developed on the [Rio Lobo] property under the existing zoning. This adequately addresses the impacts of the Tree Farm Development on the [Rio Lobo] property under current zoning.¹²

In other words, the applicant has not, in fact, provided any guarantee of permanent public access “to and through” the various Tree Farm developments. Nor does any Condition of Approval require public access to be made permanently available. The Hearings Officer was wrong to conclude otherwise.

As a matter of the Code text as well as general policy, public roads must be dedicated when needed to accommodate future through traffic. This code provision inherently contemplates the potential for future road expansion needed to service existing and future development. Unlike a public road dedication, a public access easement may not provide the opportunity for infrastructure improvements that may be needed to service such future growth. Accordingly, such an access easement is not likely to be equivalent to a publicly-dedicated road.

By focusing on the physical capacity of private roads within the Tree Farm developments to meet projected near-term traffic demands, the Hearings Officer has interpreted the DCC in a manner that would effectively allow any future developer to avoid the provision of public roads irrespective of the County’s long-term transportation plans or future development demands. By the Hearings Officer’s reasoning, as long as the developer agreed to (1) construct a private road with the infrastructure capacity to meet the immediately anticipated traffic demands expected under current zoning, and (2) provide a vague “public access easement” until such time as other access could be provided elsewhere, the developer could circumvent the County’s stated requirement that public roads are required “where necessary to accommodate present and future

¹¹ *Id.*

¹² J. Condit, Miller Nash, to K. Green, Deschutes County Hearings Officer, at 10 (Dec. 11, 2014). *See also* Letter from J. Condit, Miller Nash, to K. Green, Deschutes County Hearings Officer, at 6 (Jan. 6, 2015) (“The public access easement would provide direct public access to the Rio Lobo property pending development of Sage Steppe and/or Skyline Ranch Roads. At such time as one or more of those streets are constructed, the access easement will no longer be necessary and so the easement can terminate and Ridgeline and Tree Farm Drives can become private streets.”).

to and through traffic.” DCC 17.36.020(B). The Board should not allow such an interpretation to undermine the County’s ability to ensure the provision of adequate, connected transportation access in future development proceedings.

As a practical matter, the applicant’s private roadway with access easement proposal is insufficient to meet projected future needs. Traffic engineers from Lancaster Engineering provided the Hearings Officer with a preliminary evaluation of the publicly dedicated road connections that will ultimately be needed to serve reasonably foreseeable development in this area of urban reserve. *See* Lancaster Traffic Report (attached to Exhibit A). The Lancaster Traffic Report evaluates trip generation associated with both current and future development of the Rio Lobo Property and the limitations that are imposed by the applicant’s proposed system of private roadways. The Lancaster Traffic Report notes that the Tree Farm road system “does not provide sufficient north/south connectivity” and is not adequate to serve potential development under either current or future development scenarios. *Id.* at 1, 7. The project’s main entry is “proposed as a circuitous private street, clearly intended to serve only traffic from the Tree Farm subdivision.” *Id.* at 7. The rights-of-way, pavement widths and intersection alignments proposed by the applicant are not adequate to serve current or future land uses.

Further, the proposed “public access easement” would not facilitate any future changes, modifications or upgrades to the private road system that may be necessary to serve current or future development. The applicant and/or its homeowners association could preclude any future changes to the private road system, effectively limiting opportunities for development in the urban area reserve. Alternatively, the applicant and/or its homeowners association could impose regulatory requirements (speed limits, traffic control measures, construction limitations, etc.) that impeded the flow of traffic and worked to curtail further development. Based on its analysis of the consolidated proposals, Lancaster concludes that the applicant should be required to dedicate a public road connection between the applicant’s northern property boundary and Skyliners Road with a minimum 60-foot right-of-way width. *Id.* at 8.

As noted in the Lancaster Traffic Report, a publicly dedicated road connection to Skyliners Road with a minimum of 60 to 80-foot right-of-way width is necessary to serve current and future development. The applicant’s single stubbed public roadway at the Sage Steppe Drive “Road to Nowhere” does not provide this needed public road connection. Right-of-way for Sage Steppe Drive terminates at the applicant’s southeastern property boundary and provides no connection to the public road system. Moreover, a roadway stub provides no assurance that future development will ever be provided with access to the public road system. The applicant’s limited public road proposal would work to constrain both currently permissible and future development opportunities in the urban reserve until such time as development proceeds on the adjacent Miller Tree Farm Property. Even further, the Hearings Officer’s reasoning makes it unclear whether public roads would necessarily be made available even upon the development of that parcel.

To meet Rio Lobo's unquestioned need for future public road access, the applicant relies on the County's ability to require the extension and public dedication of Sage Steppe Drive south to Skyliners Road across the Miller Tree Farm Property as a condition of any future development of that property. Yet the Hearings Officer's acceptance of the applicant's arguments regarding the standard at DCC 17.36.020(B) effectively forecloses the County's ability to actually require such a public dedication as part of such future development. Under the Hearings Officer's incorrect interpretation, as long as Miller Tree Farm agreed to (1) construct a private road with the infrastructure capacity to meet the immediately anticipated traffic demands of the adjacent Miller Tree Farm Property (and possibly the Rio Lobo property with rural levels of development under current zoning), and (2) provide a vague "public access easement" until such time as other access could be provided elsewhere, Miller Tree Farm could again circumvent County's stated requirement that public roads are required "where necessary to accommodate present and future to and through traffic." DCC 17.36.020(B). Such a result would fundamentally alter the County's ability to require publicly-dedicated roads as part of future development proposals.

4. The Public Road Requirement of DCC 17.36.020(B) is Not a Taking under State or Federal Law.

In its application materials, the applicant acknowledged that the use of "privately owned and maintained streets" required an exception to the regulations of the subdivision and zoning ordinances under DCC 19.104.070(C).¹³ After County staff determined that the Code required the dedication of public roads to and through the Tree Farm developments, however, the Applicant switched gears and began raising constitutional arguments under the takings clause. The applicant now contends that the County's public road requirement requires scrutiny under the United States Supreme Court's decisions in *Nollan v. California Coastal Commission*¹⁴ and *Dolan v. City of Tigard*¹⁵ and potentially constitutes a "taking" of private property without just compensation in violation of the Fifth Amendment to the U.S. Constitution.¹⁶ To the contrary, the public road dedication requirement contained in the County Code is entirely consistent with the Fifth Amendment and would not constitute a "taking" under applicable law.

In *Nollan* and *Dolan*, the Supreme Court held that a local government may not impose an exaction of property as a condition of approval of a land use application unless the government demonstrates that the condition: (1) relates to the burdens created by the development ("essential nexus"); and (2) is "roughly proportional" in nature and degree to the impacts created by the development. In this case, the County's public road requirement clearly meets this standard. The

¹³ See Applicant's July 2014 Burden of Proof Statement, at 21-22.

¹⁴ 483 U.S. 825 (1987).

¹⁵ 512 U.S. 374 (1994).

¹⁶ See Letter from J. Condit, Miller Nash, to K. Green, Deschutes County Hearings Officer, at 6-12 (Dec. 30, 2014).

applicant has proposed five interrelated subdivisions that are dependent upon a continuing right of access to and between the developed parcels. Interconnections between the five subdivisions are required to facilitate transportation connections, the extension of power, data, water and utility infrastructure and to facilitate connections for emergency services. Further, the developments will be connected to the County's existing public road system, meaning that residents of The Tree Farm will be using roads dedicated to the public. The Code's requirement that such essential connections be publicly dedicated is clearly related to the burdens created by the five separate but interrelated subdivision proposals. As such the "essential nexus" requirement of *Nollan* is readily satisfied.

Similarly, the public road dedication requirement of DCC 17.36.020(B) is "roughly proportional" in nature and degree to the impacts of the applicants five subdivision proposals. The record demonstrates that the Tree Farm developments will create additional impacts on City, County and State services. Traffic from the five subdivisions will create additional demands and impacts on the City, County and State public road systems. Traffic studies submitted by the applicant provide a specific evaluation of some of the anticipated impacts. A Technical Memorandum prepared by Kittelson & Associates (Exhibit H to the Applicant's July 2014 Burden of Proof Statement) conservatively estimates 476 weekday daily trips associated with the applicant's subdivision proposal in addition to the significant road system impacts that will occur during the construction and build-out of the five subdivisions. The Kittelson memorandum specifically evaluates the anticipated distribution of vehicle trips from the five subdivisions and the specific roadways, intersections and traffic infrastructure that will be impacted.

In addition, a memorandum from Lancaster Engineering addressing the "proportionality" of requiring the dedication of public roads in the five Tree Farm subdivisions was provided to the Hearings Officer (attached to Exhibit B herein). The Lancaster memorandum finds that the traffic/infrastructure impacts associated with the five Tree Farm subdivisions significantly outweigh the marginal financial impact to the applicant from dedication of additional right-of-way. As noted by Lancaster, the dedication of additional right-of-way along the Tree Farm road system creates the only potential financial burden on the developer, other than a small marginal cost difference to upgrade roads to County public road standards. In this instance, the value of such additional right-of-way is minimal (if any) as the overall number of homes and the density of the various subdivisions are dictated by current zoning restrictions and the requirements of OAR 660-004-0040. The five subdivisions will also impact City and County emergency and fire services, the Bend La Pine School District, the Redmond School District, the City of Bend water system and the local and regional trail system and recreational amenities that have been developed by the Bend Metro Parks and Recreation District and the U.S. Forest Service.

The extent and degree of the impact of the five subdivisions on public infrastructure is detailed in the hearing record. Under any reasonable analysis, the Code's requirement of publicly dedicated

road and utility connections between the five subdivision parcels is “roughly proportional” to the impacts of the proposed developments, and therefore not an unconstitutional taking.¹⁷ There is no requirement that a particular exaction be strictly necessary to serve solely a newly-permitted development, as the applicant contends. Instead, rough proportionality is all that is required to meet constitutional muster.

Further, the applicant has accepted the County’s authority and jurisdiction to mandate a right of public access across the adjacent Miller Tree Farm Property through the imposition of a “public access easement,”¹⁸ and there is no categorical distinction between County authority to require a “public access easement” with its authority to require public road dedication. While compared to the applicant’s proposed “public access easement,” the public road dedication required by the Code involves the transfer of a few more of the applicant’s “sticks” from his property rights “bundle,” as well as a somewhat larger right-of-way, but this is a matter of degree, not of kind. The applicant has not challenged the County’s authority to require a right of public access across its development properties, as well as the Miller Tree Farm Property, as part of this development approval. As described above, the exaction of a public road dedication remains related to the development proposal and roughly proportional to the impacts of the developments. Thus, there is no unconstitutional taking.

The Hearings Officer’s apparent reliance on *Schultz v. City of Grants Pass*¹⁹ is also inapposite. In that case, the city attempted to require the public dedication of nearly 20,000 square feet of street frontage out of a 3.85 parcel, where the proposed development was “the partitioning of a single lot into two lots and nothing more.”²⁰ *Schultz* may have been relevant if the County had attempted to require public dedication of land when the applicant previously applied solely for lot line adjustments to the Tree Farm properties, but it is not relevant here where the applicant is seeking a conditional use permit and tentative plat approval for five cluster developments with 50 home sites. This is a significant development proposal for which the dedication of public roads is not disproportionate.

¹⁷ See *Hallmark Inns & Resorts, Inc. v. City of Lake Oswego*, 193 Or App 24 (2004) (upholding city’s decision to condition development permit for corporate headquarters on developer dedicating public pedestrian pathway across property); *Pengilly v. Multnomah Cnty.*, 810 F Supp 1111, 1113 (D Or 1992) (upholding county’s decision to condition approval of building permit on landowner dedicating portion of lot to widen public street).

¹⁸ See Letter from J. Condit, Miller Nash, to K. Green, Deschutes County Hearings Officer, at 6-7 (Dec. 30, 2014).

¹⁹ 131 Or App 220 (1994). Rio Lobo notes that the Hearings Officer’s reference to *Schultz v. City of Grants Pass* includes an incorrect citation to the U.S. Supreme Court decision in *Koontz v. St. Johns River Water Management District*. TF 1, at 90; TF 2, at 89; TF 3, at 88; TF 4, at 91; TF 5, at 67. This error appears to have been carried over from an incorrect citation in the applicant’s submittals. See Letter from J. Condit, Miller Nash, to K. Green, Deschutes County Hearings Officer, p. 7 n. 11 (Dec. 30, 2014).

²⁰ 131 Or App at 228.

The Board should reverse the Hearings Officer and find that requiring public roads to interconnect the five proposed cluster developments is not an unconstitutional taking.

5. The Record Contains No Evidence to Justify Any Claim of a Taking.

As noted above, the Hearings Officer appears to have accepted the applicant's argument that requiring the dedication of a public road would constitute an unconstitutional exaction, or taking under *Dolan*.²¹ Yet the Hearings Officer's analysis only addresses the implications of requiring the public dedication of *off-site* road improvements, not whether requiring dedication of public roads within the five Tree Farm properties, as part of the development of those properties, would in fact constitute a taking.²² Critically, the Hearings Officer failed to recognize that the Miller Tree Farm Property should, in fact, be considered part of the Tree Farm development proposal due to its central role in providing primary and secondary transportation and utility access to the new developments. Applicant designed a development proposal that relies upon access across adjacent land also owned by the same property owner. Applicant chose to exclude that adjacent land from the development proposals, despite its central importance to them. Either the proposed road access is part of the development, or it is not. Applicant cannot have it both ways.

Contrary to the Hearings Officer's findings, the County has jurisdiction over the Miller Tree Farm Property because the applicant included the use of this property as an essential component of the development proposals. Yet despite the central role of the Miller Tree Farm Property within the development proposals, the Hearings Officer found it of no importance that the Miller Tree Farm Property is, in fact, also owned by the same property owner as the development parcels, Miller Tree Farm LLC.²³ And irrespective of the ownership of the Miller Tree Farm Property, the applicant made the decision to site the access roads for the proposed developments on that adjacent property. Accordingly, the proposed road and underlying property *are* within the scope of the proposed developments.

Finally, The Hearings Officers' Decisions include no analysis of the relation or nexus between the burden exacted (the dedication of public roads) with the development proposals. Nor did the Hearings Officer provide any analysis of the rough proportionality of a public road requirement within the five proposed developments with the impacts of those developments. While the Hearings Officer's cursory analysis makes it somewhat difficult to fully parse out her reasoning, the Hearings Officer appears to have found that because the physical infrastructure of the private

²¹ TF 1, at 89-90; TF 2, at 89-90; TF 3, at 88-90; TF 4, at 91-93; TF 5, at 67-69.

²² *Id.*

²³ TF 1, at 90; TF 2, at 89; TF 3, at 88; TF 4 at 91; TF 5, at 67. The Hearings Officer appears to have wrongly assumed that the Miller Tree Farm Property is only crossed by the secondary emergency access road. *Id.* In fact, both the secondary and the *primary* access to the Tree Farm developments are through the Miller Tree Farm Property. *See* Exhibits A, B, and D to the Applicant's July 2014 Burden of Proof Statement.

road system would be able to handle the traffic from the five Tree Farm developments, then any exaction of a publicly-dedicated road would be per se an unconstitutional taking.²⁴ Not only is this interpretation wrong, but it sets a dangerous precedent that would effectively preclude the County from ever requiring public roads, regardless of the nature or magnitude of a proposed development, as long as the physical infrastructure proposed by a developer was minimally adequate to meet projected demands based on current zoning conditions. The Board should find that requiring public road access to and through the five Tree Farm developments is related to the development proposals and roughly proportional to development impacts, and therefore not an unconstitutional taking.

6. The Developments are Inconsistent with Design Standards for Land Divisions.

The applicant's consolidated development proposals do not individually or collectively satisfy the requirements of DCC Chapter 17.36 (Design Standards). DCC 17.36.080 provides that streets shall be extended to the boundary of a subdivision or partition when necessary to give access to or permit a satisfactory future division of adjoining land. In this matter, the Lancaster Traffic Report demonstrates that a public road connection is necessary to support the future development of an adjoining parcel zoned urban reserve. The applicant has consolidated five separate applications into a single proceeding but has not extended a single public street connection to Skyliners Road (its primary access point). Rather, the applicant seeks to stub a street at its southeastern property boundary in a location that provides no access to the public road system—the Sage Steppe Drive “Road to Nowhere.” The Hearings Officer erred in concluding that DCC 17.36.080 is satisfied by public dedication only of the proposed portion of Sage Steppe Drive.

In addition, DCC 17.36.140(B)(1) provides that “cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or inappropriate.” In this instance, the primary private roadway serving the subject property (Ridgeline Drive/Tree Farm Drive) terminates in a cul-de-sac at the Rio Lobo Property boundary (Ridgeline Court). The Hearings Officer's findings are inadequate as a matter of law because they fail to address whether a street connection to the Rio Lobo property to the north was feasible and appropriate.²⁵ Instead, the Hearings Officer found the cul-de-sac to be permitted simply because it was infeasible to continue the road further *to the east* due to steep topography.²⁶ The Board should find that it is both feasible and appropriate to extend Ridgeline Drive/Tree Farm Drive north to the Rio Lobo Property. Accordingly, the Code mandates that this road be so extended.

²⁴ See TF 1, at 89-90; TF 2, at 89-90; TF 3, at 88-90; TF 4, at 91-93; TF 5, at 67-69.

²⁵ TF 1, at 95.

²⁶ *Id.*

DCC 17.36.140(B)(3) “Subdivision Layout” provides that, “Local roads shall align themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400-foot intervals.” In this instance, the applicant has configured residential lots along the entire common boundary between the subject properties and the Rio Lobo Property. Only a single roadway connection is provided along over 800-feet of frontage in violation of the applicable criteria. The Hearings Officer erred in finding this provision to be limited solely to bicycle and pedestrian connections.²⁷ DCC 17.36.140(B) is titled “Subdivision Layout” and is found in DCC Chapter 17.36, the design standards governing subdivisions. Moreover, a separate provision in the applicable section (DCC 17.36.140(B)(2)) specifically utilizes the terms “Bicycle and pedestrian connections” when making reference to non-motorized travel. By contrast, DCC 17.36.140(B)(3) specifically references “local roads” and connections to “planned streets and undeveloped properties.” The application of this criterion is necessary to insure the development of an integrated system of public roadways within an area designated as urban reserve. The Board should find that DCC 17.36.140(B)(3) applies to the Tree Farm developments, and that additional street connections north to the Rio Lobo Property are required to meet this standard.

7. The Hearings Officer’s Findings Do Not Address Compatibility with Future Development of the Adjacent UAR-10 Lands.

DCC 18.128.015(B) requires the applicant to demonstrate that the Tree Farm developments are “compatible with existing and projected uses on surrounding properties” based on a number of listed factors, including “adequacy of transportation access to the site.” The Hearings Officer erred in only considering the impacts of the Tree Farm developments on the Rio Lobo Property as potentially developed under the current UAR-10 zoning.²⁸ While acknowledging that “because these lands are included in the urban area reserve, they may eventually be brought into the Bend UGB and developed at urban density,” the Hearings Officer relied on her analysis under DCC 17.36.020(B) to conclude that the proposed private road system is sufficient to “accommodate present and future through traffic generated by The Tree Farm and/or development of Rio Lobo’s property *with its current UAR-10 zoning.*”²⁹ (emphasis added). The Code standard, however, does not only require compatibility with currently permissible uses, or new developments capable of fulfillment within the “short-term.”³⁰ Instead, the Code requires compatibility with “*projected uses* on surrounding properties.” DCC 18.128.015(B) (emphasis added). Rio Lobo provided substantial evidence projecting urban levels of development on the Rio Lobo Property, and such development is reasonable to project given the Rio Lobo’s Property

²⁷ TF 1, at 96–97; TF 2, at 95-96; TF 3, at 95-96; TF 4, at 97-98; TF 5, at 74.

²⁸ See TF 1, at 46-48; TF 2, at 46-47; TF 3, at 46-47; TF 4, at 48-50; TF 5, at 45-46.

²⁹ TF 1, at 47; TF 2, at 46; TF 3, at 46; TF 4, at 48-49; TF 5, at 45.

³⁰ TF 1, at 46; TF 2, at 46; TF 3, at 46; TF 4, at 48; TF 5, at 45.

inclusion within the Urban Area Reserve and current efforts to expand the City of Bend's UGB. In focusing solely on compatibility with uses permitted under current zoning, the Hearings Officer improperly failed to consider the Tree Farm developments' compatibility with *projected uses* on the Rio Lobo Property. The Board should find that the limited transportation access provided by the Tree Farm developments' private road system is incompatible with projected future uses of the adjacent Rio Lobo Property.

8. Conclusion

For the above-described reasons, the Board should find that the Tree Farm developments, as currently proposed, do not meet the standards of the DCC and should be denied. To obtain County approval, the Tree Farm developments should be reconfigured to provide sufficient connectivity through a network of publicly-dedicated roads within the development itself, as well as to the adjacent Rio Lobo Property.

EXHIBIT A

Rio Lobo Record Submittal

December 11, 2014



December 11, 2014

Myles A. Conway
541.408.9291
mconway@martenlaw.com

Via Hand Delivery and Email to County Planning Staff

Karen Green
Hearings Officer
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, OR 97708-6005

RE: **Comments for the Hearing Record**
County Files: 247-14-000242-CU, 247-14-000243-TP
247-14-000244-CU, 247-14-000245-TP
247-14-000246-CU, 247-14-000247-TP
247-14-000248-CU, 247-14-000249-TP
247-14-000250-CU, 247-14-000251-TP

Dear Hearings Officer Green:

Our office represents Rio Lobo Investments, LLC (“Rio Lobo”), the owner of an approximately 376-acre future development parcel that lies immediately north of the subject property (the “Rio Lobo Property”). The Rio Lobo Property is included in the County’s Urban Area Reserve and is zoned “UAR-10” under Title 19 of the Deschutes County Code (“DCC”). As a general matter, Rio Lobo supports the applicant’s objective of dividing and developing the subject property. Rio Lobo believes the applicant has identified a satisfactory plan and associated mitigation measures to guard against the risk of wildfire in this area of the County. Rio Lobo supports the applicant’s plan to extend City of Bend water services to and through the subject property and believes such effort will be an important component in providing long term fire protection to both the development site and surrounding properties. In addition, the applicant’s plan for the preservation of large areas of open space will provide a valuable long term amenity for all current and future residents of Deschutes County and the City of Bend.

Rio Lobo objects to the limited nature of the transportation connections provided as part of the applicant’s consolidated development proposals. The applicant’s plan to develop a system of private roadways is not sufficient to support current or future development in the urban area reserve. Consistent with the applicable approval criteria, a publicly dedicated roadway (with a minimum 60-foot right-of-way) should be extended “to and through” the consolidated development parcels to Skyliners Road.

Background/Rio Lobo Property

The Rio Lobo Property is located at the western edge of the Bend City limits and zoned urban area reserve with a Destination Resort (“DR”) overlay. The property is designated as “Urban Area Reserve” on the City of Bend’s General Plan map but currently falls outside of the City’s Urban Growth Boundary (“UGB”) and City limits. The County’s UAR-10 zone is intended to serve as a “holding category” as urban growth takes place elsewhere in the planning area and to be preserved as open space until needed for orderly growth. *See DCC 19.12.010*. In response to unprecedented growth in the region, the City of Bend has been actively working to expand its UGB since 2004. In 2009, the Bend City Council and Deschutes County Board of Commissioners approved a UGB expansion proposal that would have placed the Rio Lobo Property in the UGB. That decision was subsequently remanded by the State of Oregon Land Conservation and Development Commission and the City is currently working to refine its UGB expansion proposal. While the timing and ultimate outcome of the City’s UGB expansion process cannot be accurately predicted, the Bend Area General Plan (“BAGP”) provides that lands within the urban reserve area are considered first for any expansion of the UGB. BAGP, Chapter 1- Plan Management and Citizen Involvement.

Current zoning in the UAR-10 zone allows the development of single family homes on ten-acre lots as a permitted use, together with planned unit developments and destination resorts as a conditional use. DCC 19.12.020, DCC 19.12.030. In addition to accommodating currently permissible uses, land use planning efforts in the UAR-10 zone should consider the potential for future development at urban levels of density. At 376-acres in size, the Rio Lobo Property could develop with 37 individual home sites or a destination resort under current zoning regulations. For planning purposes, the property could eventually be developed with somewhere between 1000-1110 residential units when annexed into the City of Bend. Traffic engineers from Lancaster Engineering have provided a preliminary evaluation of the publicly dedicated road connections that will ultimately be needed to serve development in this area of urban reserve. A letter report from Lancaster Engineering is attached hereto as Exhibit A (the “Lancaster Traffic Report”). The Lancaster Traffic Report evaluates trip generation associated with both current and future development of the Rio Lobo Property and the limitations that are imposed by the applicant’s proposed system of private roadways. The Lancaster Traffic Report provides that the Tree Farm subdivision “does not provide sufficient north/south connectivity” and that the proposed street system is not adequate to serve potential development under either current or future development scenarios. *See Exhibit A, pages 1 and 7*. The project’s main entry is “proposed as a circuitous private street, clearly intended to serve only traffic from the Tree Farm subdivision.” *See Exhibit A, page 7*. Lancaster further notes that the subdivision “does not comply with applicable Deschutes County Code provisions that are in place to ensure adequate connectivity is provided.” *Exhibit A, page 7*. Based on its analysis of the consolidated proposals, Lancaster concludes that the applicant should be required to dedicate a public road connection between the applicant’s northern property boundary and Skyliners Road with a minimum 60-foot right-of-way width. *Exhibit A, page 8*.

Miller Tree Farm Applications

The applicant has submitted a series of consolidated development applications that would authorize the construction of 50 new large lot residential home sites. The applicant's development plan would place 37 of the proposed 50 new dwelling units on lands that are zoned as urban area reserve. The applicant intends to site 14 of its proposed residential lots directly along its common boundary with the Rio Lobo Property. The applicant has configured its individual lots and associated development plan in a manner that provides only one 60-foot wide access connection between the subject properties and the adjacent lands zoned urban area reserve. This proposed lot and development configuration severely limits the opportunity for current and future transportation connections between the subject and surrounding properties. The applicant's proposed "private road" connection at Ridgeline Drive/Tree Farm Drive would provide the only access connection between the Rio Lobo Property and Skyliners Road to the south. The applicant offers a 30-foot wide private right-of-way with 20-feet of pavement along Ridgeline Drive. *See Applicant's Exhibit D Road Improvement Plan.* The roadway designated as Tree Farm Drive provides a 40-foot private right-of-way with a 26-foot pavement width. *See Applicant's Exhibit D Road Improvement Plan.* In lieu of publicly dedicating its road system, the applicant offers to provide an undefined "public access easement" along Ridgeline Drive/Tree Farm Drive. The only public road connection contained in the applicants' five consolidated development applications is a short stubbed road at Sage Steppe Drive. This proposed public roadway does not provide any connection to the County or City road system. For the reasons set forth in detail below, the applicant's proposal is inconsistent with applicable approval criteria.

Tree Farm Proposal is Inconsistent with Applicable Approval Criteria

As currently proposed, the applicant's consolidated development proposal is inconsistent with the following legal standards and criteria.

1. Publicly Dedicated Road Connections are Required.

The County subdivision ordinance requires the extension of public streets to and through the proposed development. As a general rule, streets in a subdivision must be dedicated to the public. DCC 17.36.020(B). Streets in a planned or cluster development must be dedicated to the public, "where necessary to accommodate present and future through traffic." DCC 17.36.020(B). In this instance, the evidence demonstrates that publicly dedicated street connections are necessary to facilitate the build-out and development of adjacent areas in the urban reserve consistent with the designated UAR-10 zoning. In email comments dated August 29, 2014, Deschutes County Senior Transportation Planner, Peter Russell, stated that the applicant, "will have to dedicate to the public the connection from the north boundary of the subdivision south to Skyliners Road. The dedication will have to be built to the standards shown in Table A, Title 17." The applicant has responded to this requirement with an offer to provide a "public access easement" across its system of private roadways. The County Code contains no reference, requirements or criteria related to the "public

access easement” that has been proposed by the applicant in lieu of public road connections. As a result, there is no legal or evidentiary basis for analysis or approval of this proposal. The simple right to take “access” across a system of privately owned roadways that have been constructed, controlled and maintained by area homeowners is not sufficient to support current or future development opportunities in the urban reserve. Publicly dedicated roadways are required to facilitate the future construction, upgrade and maintenance of the roadway and utility systems that are necessary to serve development in the urban reserve. The Lancaster Traffic Report notes that the applicant’s proposed system of private roadways is not adequate to serve either current or planned land uses in the urban reserve. The rights-of-way, pavement widths and intersection alignments proposed by the applicant are not adequate to serve current or future land uses. The proposed “public access easement” would not facilitate any future changes, modifications or upgrades to the private road system that may be necessary to serve current or future development. The applicant and/or its homeowners association could preclude any future changes to the private road system, effectively limiting opportunities for development in the urban area reserve. Alternatively, the applicant and/or its homeowners association could impose regulatory requirements (speed limits, traffic control measures, construction limitations, etc.) that impeded the flow of traffic and worked to curtail further development.

As noted in the Lancaster Traffic Report, a publicly dedicated road connection to Skyliners Road with a minimum of 60 to 80-foot right-of-way width is necessary to serve development. The applicant’s single stubbed public roadway at Sage Steppe Drive does not provide this needed public road connection. Right-of-way for Sage Steppe Drive terminates at the applicant’s southeastern property boundary and provides no connection to the public road system. Moreover, a roadway stub provides no assurance that future development will ever be provided with access to the public road system. The applicant’s limited public road proposal would work to constrain both currently permissible and future development opportunities in the urban reserve until such time as development proceeds on the adjoining parcel to the east. The applicant will likely argue that it cannot extend Sage Steppe Drive south to Skyliners Road because the adjacent lot is now under separate ownership. However, this adjacent parcel has been utilized as a critical component supporting each of the consolidated development proposals. This adjacent parcel is used to provide the location of both the primary (Skyliners Road) and secondary access connections (emergency access to Crosby Drive) supporting the consolidated development proposals. As a result, this adjacent parcel is an essential component of the consolidated proposals and the extension of a 60-foot wide publicly dedicated “through” connection on Sage Steppe Drive to Skyliners Road should be required as a condition of any development approval.

2. Development is Inconsistent with Design Standards for Land Divisions.

The applicant’s consolidated development proposals do not individually or collectively satisfy the requirements of DCC Chapter 17.36 (Design Standards). DCC 17.36.080 provides that streets shall be extended to the boundary of a subdivision or partition when necessary to give access to or permit a satisfactory future division of adjoining land. In this matter, the Lancaster Traffic Report

demonstrates that a public road connection is necessary to support the future development of an adjoining parcel zoned urban reserve. The applicant has consolidated five separate applications into a single proceeding but has not extended a single public street connection to Skyliners Road (its primary access point). Rather, the applicant seeks to stub a street at its southeastern property boundary in a location that provides no access to the public road system.

DCC 17.36.140(B)(3) "Subdivision Layout" provides that, "connections to existing or planned streets and undeveloped properties shall be provided at "no greater than 400-foot intervals." In this instance, the applicant has configured its lots along the entire common boundary between the subject and Rio Lobo properties providing only a single roadway connection along over 800-feet of frontage. The applicant's lot configuration and roadway plan do not comply with requirements of this section.

DCC 17.36.140(B)(1) provides that "cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or inappropriate." In this instance, the primary private roadway serving the subject property (Ridgeline Drive/Tree Farm Drive) terminates in a cul-de-sac at the Rio Lobo Property boundary. The applicant proposes a single stubbed public road (Sage Steppe Drive) as the only access to the neighboring UAR-10 parcels. The proposed roadway stub does not provide any connection to the public road system and provides no assurance of a future street connection. In sum, the applicant's proposal fails to comply with the requirements of DCC Chapter 17.36 and the record contains insufficient evidence to support any exception to such requirements.

3. The Applicant has Not Addressed the Impacts of its Proposal and has Provided No Evidence to Demonstrate Compatibility.

The hearings record contains no evidence to demonstrate the applicant has evaluated the impact of its five consolidated development proposals on the adjacent urban area reserve. The record contains only cursory references to the UAR-10 lands with no evaluation of potential impacts or compatibility. The analysis contained in the record does not satisfy the applicant's burden to demonstrate its consolidated proposals are compatible with surrounding properties. The general conditional use criteria contained in DCC 19.100.030(A) require the applicant to demonstrate that the "location, size, design and operating characteristics of the proposed use are such that it will have minimal impacts on the property value, livability and permissible development of the surrounding area." In the evaluation of this standard, the rule provides that, "consideration shall be given to compatibility in terms of scale, coverage and density with the alteration of traffic patterns and the capacity of surrounding streets and to any other relevant impact of the proposed use." Similarly, the Planned Unit Development requirements of DCC Title 19 (discussed below) require the applicant to demonstrate that its project is "compatible with adjacent developments and will not adversely affect the character of the area." DCC 19.104.070(E). In this case, the applicant has not addressed the impact of its privately owned road system on permissible and planned development opportunities in

the urban area reserve. The applicant has not demonstrated that its private street system, cul-de-sacs and associated exceptions to the County subdivision standards create a transportation system sufficient to support both currently permissible and planned uses in the urban area reserve. To the contrary, the record demonstrates that the applicant's proposed lot configuration and private system of roadways will impact the property value and development potential of surrounding lands in the urban area reserve.

4. Consolidated Development Proposals are Inconsistent with DCC Title 19 Zoning and the applicable "Planned Unit Development" requirements.

DCC 19.12.010 provides that UAR-10 zoning is to "serve as a holding category" as urban growth takes place elsewhere in the planning area and to be preserved as long as possible as useful open space until needed for orderly growth. The applicant asks the County to approve a number of exceptions to applicable development requirements through the authority of the Title 19-Planned Unit Development requirements. DCC 19.12.030(N) authorizes a "Planned Unit Development" ("PUD") as a conditional use in the UAR-10 zone, subject to the approval requirements of DCC 19.104. The stated purpose of DCC Chapter 19.104 is to allow for a "greater variety and diversification in the relationships between buildings and open spaces in planned building groups, while ensuring compliance with the purposes and objectives of the various zoning regulations and the intent and purpose of DCC Title 19." *See DCC 19.104.010.* In this instance, the applicant has not demonstrated compliance with several of the applicable PUD approval criteria.

First, the applicant has not demonstrated that its consolidated proposals conform to the general plans of the County in terms of location and general development standards as is required by DCC 19.104.070(B). Both the subject and adjacent Rio Lobo properties are zoned as urban area reserve and planned for eventual urban development. The applicant seeks to depart from applicable subdivision development standards and utilize a private road system that will inhibit or preclude future urban development. The applicant's PUD proposals are inconsistent with this requirement.

Second, the applicant has not demonstrated that the project will accrue benefits to the County and general public in terms of need, convenience, service and appearance sufficient to justify its proposed exceptions to applicable zoning and subdivision ordinances as is required by DCC 19.104(C). The applicant has not and cannot demonstrate any public need or benefit associated with the private road system proposed to serve its consolidated development area. To the contrary, the private system of roadways will work to limit current and future access connections to the detriment of the County, the public and surrounding properties. The applicant's PUD proposals are inconsistent with this requirement.

Third, the applicant has not demonstrated that its project is "compatible with adjacent developments and will not adversely affect the character of the area" as is required by DCC 19.104.070(E). Evidence shows that a private road system will limit the current and future development potential of adjacent lands planned and zoned as urban area reserve. The configuration and alignment of the

applicant's proposed large lot development stands inconsistent with the purpose and intent of the County's urban area reserve designation for the subject and adjacent properties. The Lancaster Traffic Report demonstrates that a private system of roadways will limit both current and future development opportunities in the urban reserve in contradiction of the approval requirements contained in DCC 19.104.070.

5. Bend Area General Plan Requires Additional Connectivity.

DCC Title 19 was designed in accordance with the goals, policies and statements of intent of the Bend Area General Plan. The general purpose of DCC Title 19 is to provide one of the "principal means for implementation of the Bend Area General Plan." DCC 19.04.020(A). As such, the applicant's proposal must demonstrate consistency with the policies set forth in the Bend Area General Plan. The BAGP recognizes that areas of the urban reserve "shall be considered first for inclusion in the UGB" when the need for additional residential land occurs. BAGP, Chapter 1- Plan Management and Citizen Involvement. The applicant's development proposal is inconsistent with the following goals and policies as set forth in the BAGP

- *BAGP Section 5.0.1.2 Plan Goals/Efficiency:
Coordinate and design transportation improvements to assure the expenditure of resources in the most cost efficient manner.*

Encourage the development of land use patterns that provide efficient, compact use of land, and facilitate a reduced number and length of trips

The applicant's proposal does not provide for the roadway connections required to make an efficient use of the urban reserve. The applicants plan to concentrate large lot home sites along the Rio Lobo property boundary in areas zoned UAR-10 creates a barrier to future access to the public road system. The proposed system of private roadways will limit opportunities for the efficient use of land in the urban reserve.

- *BAGP Plan Policies- Section 6.9.1 (Transportation and Land Use)*
 3. *The City shall consider potential land needs for long-range transportation system corridor improvements and related facilities including transit during the review of subdivisions, partitions and individual site applications.*
 4. *Developments at the edge of the urban area shall be designed to provide connectivity to existing and future development adjacent to the urban area.*
 9. *As areas that are currently beyond Bend's existing Urban Growth Boundary (UGB) are urbanized, the city, property owners, developers and all applicable service districts shall work cooperatively to develop appropriate plans for extensions and connections of the transportation system, including but not limited to; roads, sidewalks, trails and/or public*

transportation. The objective of this planning effort will be to ensure that the new areas promote and facilitate the development of urban land use densities and systems that will fulfill the goals and objectives of the Transportation System Plan- see also: 6.9.4 Policy 22.

The applicants consolidated development proposals do not provide for adequate consideration of current or future transportation needs in the urban reserve. The proposals do not provide for a public access connection to Skyliners Road as is necessary to serve current and future development in the UAR-10 zone. The single public access road that is referenced in the applicant's five consolidated development proposals provides no access to the public road system. Current and future development in the urban reserve would be significantly constrained by the applicant's minimal private right-of-way widths, pavement widths and roadway alignments, without any legal authorization to upgrade or improve private roadways to facilitate future development. The consolidated development proposals are inconsistent with relevant BAGP policies.

- *BAGP Plan Policies- Section 6.9.6 Street System*

2. Where a subdivision or partition is adjacent to land likely to be divided in the future, streets, bicycle paths, and access ways shall continue through to the boundary line of the subdivision or partition in order to achieve connectivity within the grid system

5. The City shall manage the development process to obtain adequate street right-of-way and improvements commensurate with the level and impact of development. New development shall be supported by traffic impact analysis(es) to assess these impacts and to help determine transportation system needs.

14. A grid-like pattern of residential local streets shall be developed whenever practical in order to increase street connectivity within a neighborhood. A system of local streets shall be developed within a framework that is defined by the Bend Urban Area- Bicycle and Pedestrian System Plan as much as practical.

18. Cul-de-sac or "hammer-head" residential streets may be allowed only where existing development, steep slopes, open space, or natural features prevent through street connections, or when the objectives of connectivity are met within the neighborhood.

The consolidated development proposals do not provide the transportation connections and grid street system referenced in the BAGP. The proposals do not provide for a public street connection "to and through" the subject properties to Skyliners Road to the south. To the contrary, the applicant proposes a system of meandering private roadways with cul-de-sacs and limited transportation connections that will impede public access and future development.

In summary, any approval of the applicant's consolidated development proposals should be conditioned upon the applicant providing a publicly dedicated roadway connection between its

Hearings Officer- Karen Green
December 11, 2014
Page 9

northern property boundary and Skyliners Road with a minimum of 60-feet of right-of-way as is required by DCC 17.48.100 and Table A.

Thank you for the opportunity to provide comment on the subject proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Myles A. Conway". The signature is fluid and cursive, with a long horizontal stroke at the end.

Myles A. Conway

cc: clients

TECHNICAL MEMORANDUM

TO: Karen Green, Deschutes County Hearings Officer
FROM: Rebecca Hamilton, MURP
Todd Mobley, PE, PTOE
DATE: December 11, 2014
SUBJECT: Comments for the Hearing Record
County Files 247-14-000242-CU/243-TP; 244-CU/245-TP;
246-CU/247-TP; 248-CU/249-TP; 250-CU/251-TP



**LANCASTER
ENGINEERING**

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Portland, OR 97204
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lancasterengineering.com

The purpose of this memorandum is to examine the transportation-related impacts to near and long-term development resulting from the proposed Miller Tree Farm subdivision ("Tree Farm") that is currently in land use review with Deschutes County. Of specific concern is the provision of public access to the Rio Lobo parcel, which is an approximately 376-acre property immediately north of the Tree Farm site, as described below. The street system proposed as part of the Tree Farm subdivision is not adequate to serve potential development on the Rio Lobo parcel under either the current zoning in Deschutes County or potential future zoning in the City of Bend

BACKGROUND

Rio Lobo Investments, LLC, owns two tax lots, comprising approximately 376 total acres, which are located outside the current UGB to the west of the City of Bend, OR. These two lots (the "Rio Lobo parcel") are zoned as urban area reserve (UAR-10) with a Destination Resort overlay. The UAR-10 designation that is assigned to land considered suitable for future urban development and serves as a "holding category" that preserves the area as open space until the property is need for additional growth and incorporation into the UGB. This parcel is currently being evaluated as part of the City of Bend's ongoing UGB expansion effort. Future build-out of this property to urban densities will require transportation facilities capable of providing access and supporting traffic volumes generated by the new development.

The Rio Lobo parcel is comprised of two tax lots, T17S R11E WM 6000 and T17S R11E Sec 26 400, respectively. These lots are located adjacent to Bend's UGB on the western side. Residential lands lie to the north and east of the site while vacant land lies to the south and west of the site. The two tax lots located directly to the south of the parcel are the site of the proposed Tree Farm 50-unit residential subdivision. Tax lot maps are included in the Appendix to this memo.

FUTURE DEVELOPMENT OF THE RIO LOBO PARCEL

The Rio Lobo parcel is planned for development at urban levels of density, as it will eventually be within the City of Bend UGB. Following conversations with the City, which has indicated that it would

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prefer to see higher residential densities and a mix of different housing types, Rio Lobo is considering a development plan that includes both multi-family housing and several different densities of single-family housing, with a total of between 1,000 and 1,110 residences. A conceptual division of acreage and of the proposed zoning mix is described in the table below:

Expected Zoning	Density (dwelling units/area)	Acreage	# of Residences at Buildout (approx.)
Single-Family Residential			
Estate	1 per 2 acres	80	40
R20	1/20,000 sq ft	40	60
R10	1/10,000 sq ft	50	150
R8	1/8,000 sq ft	70	200
R6	1/6,000 sq ft	55	150
R4	1/4,000 sq ft	50	100
Single-Family Residential Subtotal		345	700
MultiFamily			
MF-1	17/acre	15	200
MF-2	23/acre	15	200
MultiFamily Residential Subtotal		30	400
Total		375	1,100

Note that the allocated acreages and number of residences per zone are conceptual. The geographic distribution of density within the parcel will vary based on the locations of open space areas and areas that are unbuildable due to challenging topography.

Trip Generation

To estimate the trips generated by the development of new residential dwellings on the subject property, trip rates from the *Trip Generation Manual*¹ were used. The data for land use #210, *Single-Family Detached Housing* are used to calculate trip rates for the 700 single family residences proposed in the development plan, and the data from land use #220, *Apartments* was used to calculate trips for the proposed 400 multi-family residences. The trip generation estimates are summarized in Table 1, and detailed trip generation calculations are included in the appendix to this letter.

¹ Institute of Transportation Engineers (ITE), *Trip Generation Manual, 9th Edition, 2012.*

Table 1: Trip generation under future City of Bend zoning

Land Use Type	Number of Units	AM Peak Hour			PM Peak Hour			Weekday
Code	# Dwelling Units	In	Out	Total	In	Out	Total	Total
#210, Single Family Detached Housing	700	131	394	535	441	259	700	6,664
#220, Apartment	400	41	163	204	161	87	248	2,660
Total	1,100	172	557	739	602	346	948	9,324

The trip generation calculations show that the combined single family and multi-family residential development proposed for the project site will generate 739 additional trips during the morning peak hour and 948 additional trips during the evening peak hours. The new residences are projected to generate 9,324 additional trips in total each weekday.

Road Connections & Trip Distribution

The subject site is located on the western edge outside of the developed land within the UGB. The *Transportation Systems* chapter of the Bend Area General Plan shows planned and existing roads in the site vicinity that will support future connections from the Rio Lobo parcel to the larger transportation network:

- Mt. Hood Drive is an existing residential street that stubs in to the northern boundary of the site that would serve as ingress and egress, with access to Shevlin Park Road.
- McClain Drive is another existing residential street that will serve the site. Currently, the road terminates along the eastern boundary of the Rio Lobo parcel in the northern portion of the site.
- Skyline Ranch Road is a north/south roadway that is planned to eventually connect Shevlin Park Road to Crossing Drive. Development within far southeast corner of the Rio Lobo site will likely facilitate this connection.

The connection of Skyline Ranch Road will be of limited benefit to Rio Lobo, as significant topography limits road connectivity between the southeast corner of the site and large, more



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developable areas in the center, west, and northern portions of the site. As explained below, another connection to the south is necessary to serve future development on the Rio Lobo parcel.

Given the location of the site west of the city and the street connections serving the site, it is expected that the majority of trips to and from the Rio Lobo parcel would travel to and from the south and southeast. Street connections to the north and northeast will provide access for nearby homes, but will be less heavily used than street connections to the south and southeast. For the majority of the property, use of Mt. Hood Drive and McClain Drive would require out-of-direction travel to the north, then back to the south and southeast on Shevlin Park Road.

Skyline Ranch Road will provide a useful connection, but is also expected to be heavily used by future development that is already within the City's UGB and planned for urban development. Future development on the Rio Lobo parcel as well as other properties that are planned for inclusion in the UGB will require additional transportation infrastructure beyond what is currently included in the Bend Area General Plan.

Based on the street connections serving the Rio Lobo parcel and the expected density of development within the site, it is expected that approximately 20 percent of the trips to and from the site will utilize Mt. Hood Drive and McClain Drive (approximately 1900 trips per day). The remaining 80 percent will be better served by connections to the south and southeast (approximately 7,500 trips per day).

Recommended Transportation Facilities

Development of the site at the urban density preferred by the City will require a facility with the capacity to handle the projected traffic volumes. According to the Street Functional Classification System described in the Bend Area General Plan, a Major Collector facility is appropriate for serving an ADT between 1,500 and 9,000. A Minor Arterial, which is designed to accommodate traffic volumes between 5,000 and 18,000 ADT.

Based on projected traffic volumes and the expected distribution of trips, it is recommended that a north-south Major Collector facility, in addition to Skyline Ranch Road, be constructed to the south to serve the site. A facility of this functional classification will be sufficient to accommodate traffic generated from the proposed development and will be more appropriate in scale for the residential environment than a Minor Arterial.

Deschutes County code section 17.48.100 states that the minimum right-of-way width for a public street is 60 feet. Table A in Title 17 of the code confirms that this width is appropriate for a collector. City of Bend Development Code section 3.4.200 (Table A) requires 80 feet of right-of-way for a Major Collector. Either the 60 or 80-foot right-of-way width would be sufficient to accommodate the anticipated demand.



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REVIEW OF TREE FARM APPLICATION

Materials in the record for the Tree Farm application were reviewed, with particular attention to provisions for street connectivity in the area. Three provisions are present on the site plan that pertain to future connectivity:

1. A single street connection is proposed to the boundary of the Rio Lobo parcel. This street, Sage Steppe Drive, is proposed as a two-lane roadway with only 20 feet of paved travel way within a 60-foot right of way. This street was originally proposed to be private with a public use overlay, although I understand the current proposal is for a public street.
2. A note is placed on the plans along with a conceptual roadway alignment that is labeled "POTENTIAL FUTURE SKYLINE RANCH ROAD RIGHT-OF-WAY".
3. Tree Farm Drive and Ridgeline Drive provide access for the subdivision to Skyliners Road, but are proposed to be private streets with a public access easement. As proposed, Tree Farm Drive and Ridgeline Drive would not be adequate to serve potential development on the Rio Lobo parcel under current County zoning or future City zoning. The Tree Farm streets would not contribute to necessary street connectivity to serve the surrounding areas in the City and County.

Sage Steppe Drive

A number of concerns are noted regarding Sage Steppe Drive as currently proposed:

- With only a 20-foot paved travelled way, this roadway is clearly not sized sufficiently to accommodate the future transportation demands associated with urban development on the Rio Lobo parcel. As noted above, a Major Collector facility will be necessary.
- The road was originally proposed to be a private street, which would presumably preclude the ability to widen, modify, or rebuild the street in the future to accommodate future travel demands. It is our understanding that the street is now proposed to be a public right-of-way.
- There is no provision for future connectivity to the south, other than the use of the internal Tree Farm subdivision streets, which are circuitous and also of insufficient width in their connection to Skyliners Road.
- The only public street proposed in the Tree Farm subdivision is Sage Steppe Drive, but this street offers no public connection to the surrounding arterial street system.

Future Skyline Ranch Road

As noted previously, this street connection is shown on the Bend Area General Plan and is necessary to serve planned development that is already within the City's UGB. While the alignment shown on the Tree Farm plat is not consistent with the General Plan, it should be clearly noted that



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this connection does *not* provide additional capacity needed to serve properties that are currently in the UAR-10 zone. An additional collector-level street connection through the Tree Farm site is needed.

Deschutes County Code section 17.36.140(B)(3) speaks to subdivision layout and requires that connections to existing or planned streets and undeveloped properties shall be provided at intervals no greater than 400 feet. This code section helps ensure that development occurs in a thoughtful manner that does not preclude additional future street connections. The Tree Farm subdivision clearly does not comply with this criterion.

CURRENT DEVELOPMENT POTENTIAL

Under the current UAR-10 zoning designation, the Rio Lobo parcel still has significant development potential. As described in Deschutes County Code section 19.20, there are a number of uses that are permitted or conditional in the UAR-10 zone. Given the size of the site, up to 37 homes could be constructed. Other allowed uses such as ranches, parks, community buildings, and particularly destination resorts, could generate significantly more traffic than 37 homes.

Based on data contained in a 2009 study of destination resorts in Oregon², development of a destination resort on the 376-acre Rio Lobo parcel could accommodate as many as 450 total residential units and nearly 2,000 vehicle trips per day.

As discussed in the trip distribution section on pages three and four of this report, a street connection to the Rio Lobo parcel to south and southeast will offer the most convenient and direct route for development on the property without out-of-direction travel to other possible access locations. This trip distribution holds true whether Rio Lobo development occurs under the County zone or under the future City zone.

Given this significant development potential under the current UAR-10 zone, the following concerns are identified:

- 1) The southern portion of the Rio Lobo site is one of the areas least restricted by topography, increasing the potential for the highest residential densities and thereby reliance on the Sage Steppe Drive connection.
- 2) Sage Steppe Drive is not adequate to serve development on the Rio Lobo parcel without a complete connection to Skyliners Road, given the following constraints on Tree Farm Drive and Ridgeline Drive:

² Fiscal & Economic Impact of Destination Resorts in Oregon, March 2009 by Fodor & Associates

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- a) Tree Farm Drive is proposed as a 40-foot private right-of-way with a 26-foot paved width and Ridgeline Drive is proposed as a 30-foot private right-of-way with only a 20-foot paved width. These right-of-way and street widths, particularly on Ridgeline Drive, are not sufficient to serve the potential increase in trips from potential development on the Rio Lobo parcel.
 - b) The circuitous alignment of Tree Farm Drive and Ridgeline Drive do not support future development. The travel path from the Rio Lobo parcel to Skyliners Road would require the use of three separate streets, turning movements at two intersections, and significant out of direction travel, inhibiting throughput.
 - c) The structural cross section of the private Tree Farm streets is slightly less than what would typically be used for even a public local residential street in the City of Bend. If the streets were to carry collector-level traffic volumes, which this analysis demonstrates is a possibility, the design life of the Tree Farm streets would be significantly diminished.
- 3) Private streets with public access easements are not sufficient to serve development under either current County zoning or future City zoning. As shown here, the Tree Farm streets as currently proposed would not be sufficient to serve increased demand. If constructed as proposed, these streets and intersections would almost certainly need to be upgraded or improved to accommodate additional demand, but private ownership with a public access easement would not provide assurance that such future improvements, or even more periodic maintenance, could be implemented.

CONCLUSIONS

Future development on the Rio Lobo parcel with urban levels of residential density is expected to generate approximately 9,300 vehicle trips per day. Even development of the site under the current UAR-10 zoning could generate nearly 2,000 trips per day. The large majority of these trips will rely on street connections to the south and southeast of the site. To accommodate this future travel demand, at least one Major Collector will be required in addition to facilities such as Skyline Ranch Road that are shown on the current Bend Area General Plan.

As proposed, the Tree Farm subdivision does not provide sufficient north/south connectivity. This is of significant concern, since the subdivision establishes the size and location of important street connections that are necessary to serve long-term growth in Bend and Deschutes County. Tree Farm Drive and Ridgeline Drive, the project's main entry and connection to Sage Steppe Drive, are proposed as circuitous private streets, clearly intended to serve only traffic from the Tree Farm subdivision, while the Sage Steppe Drive street stub is clearly intended to carry traffic from eventual development on the Rio Lobo parcel. Tree Farm Drive and Ridgeline Drive would not provide a meaningful connection to serve future development and does not contribute to street connectivity.

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December 11, 2014
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The subdivision does not comply with applicable Deschutes County Code provisions that are in place to ensure adequate connectivity is provided.


To provide assurance that there will be suitable connectivity and transportation infrastructure to serve both short-term and long-term growth in the area, it is recommended that the Tree Farm subdivision include the following:

1. Sage Steppe Drive should be clearly described as a public right of way, not a private street with a public use overlay.
2. Right of way for a southern extension of Sage Steppe Drive to Skyliners Road should be identified and dedicated as part of the current application. In the event the applicant is unable to dedicate such right-of-way as part of this application, then another publicly-dedicated road should be provided between the Rio Lobo parcel and Skyliners Road.
3. The public dedication of Tree Farm Drive and Ridgeline Drive as collector roadways with a minimum 60-foot right-of-way would provide the necessary public connection between the Rio Lobo parcel and Skyliners Road, with the ability for future street improvements if necessary.
4. The structural depth of Sage Steppe Drive should be constructed to current collector-level public street standards.

Without the above provisions, traffic from future development on the Rio Lobo parcel will be forced to seek alternative north/south routes such as Tree Farm Drive and Ridgecrest Drive. If those streets were constructed as proposed, this use would not be consistent with the applicant's intended function or structural carrying capacity of the street, but without other suitable infrastructure, this could be an unintended consequence. This lack of adequate transportation infrastructure would inhibit development opportunities on adjacent, developable properties.

If you have any questions regarding this analysis or if you need any further assistance, please feel free to call me at any time.

Yours truly,



Todd Mobley, PE, PTOE
Principal



Rebecca Hamilton, MURP
Senior Transportation Planner

Le

TRIP GENERATION CALCULATIONS

Land Use: Single-Family Detached Housing
Land Use Code: 210
Variable: Dwelling Units
Variable Value: 625

AM PEAK HOUR

Trip Rate: 0.75

	Enter	Exit	Total
Directional Distribution	25%	75%	
Trip Ends	117	352	469

PM PEAK HOUR

Trip Rate: 1.00

	Enter	Exit	Total
Directional Distribution	63%	37%	
Trip Ends	394	231	625

WEEKDAY

Trip Rate: 9.52

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	2,975	2,975	5,950

SATURDAY

Trip Rate: 9.91

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	3,097	3,097	6,194

Source: TRIP GENERATION, Ninth Edition

Le

TRIP GENERATION CALCULATIONS

Land Use: Apartment
Land Use Code: 220
Variable: Dwelling Units
Variable Value: 400

AM PEAK HOUR

Trip Rate: 0.51

	Enter	Exit	Total
Directional Distribution	20%	80%	
Trip Ends	41	163	204

PM PEAK HOUR

Trip Rate: 0.62

	Enter	Exit	Total
Directional Distribution	65%	35%	
Trip Ends	161	87	248

WEEKDAY

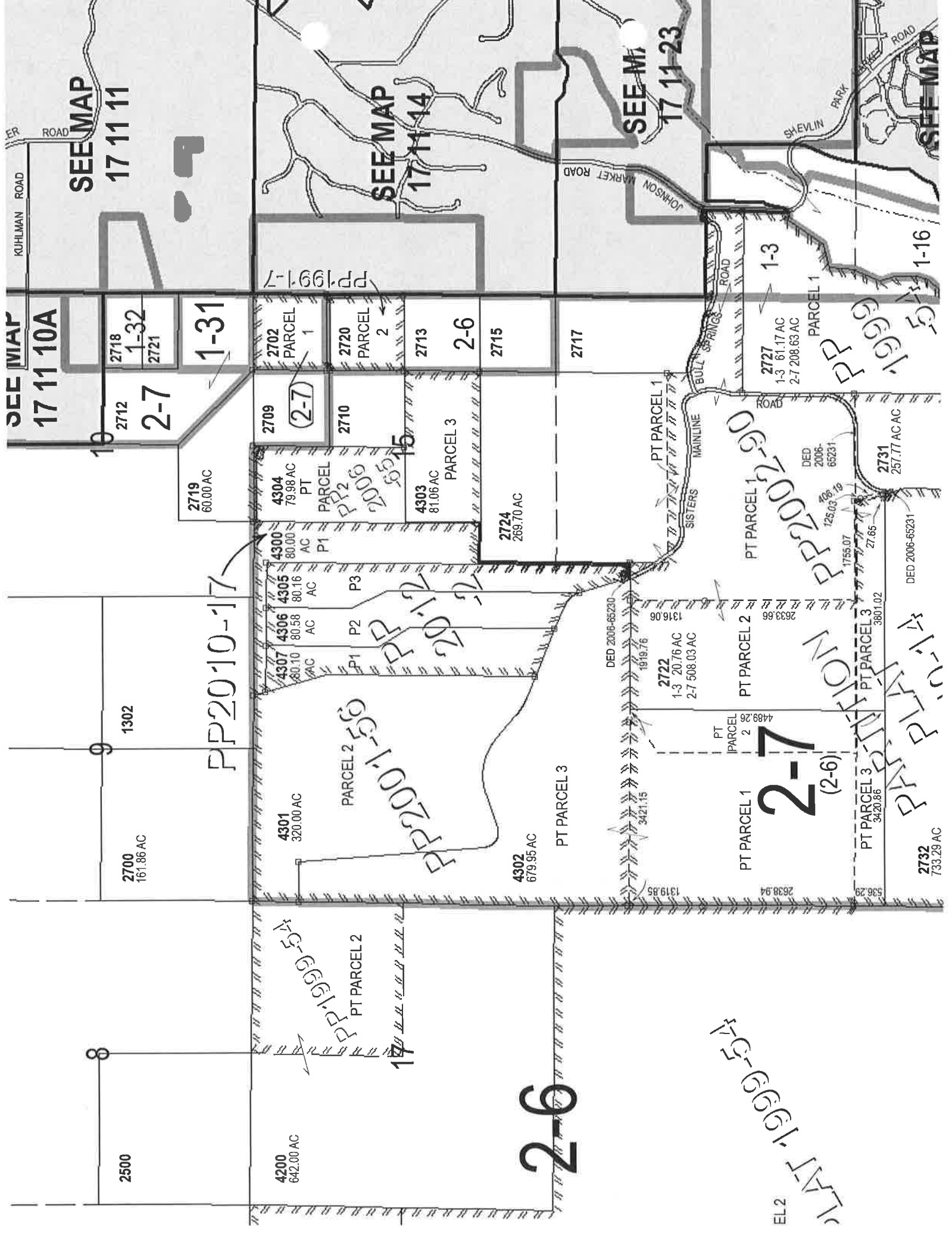
Trip Rate: 6.65

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	1330	1,330	2,660

SATURDAY

Trip Rate: 6.39

	Enter	Exit	Total
Directional Distribution	50%	50%	
Trip Ends	1278	1,278	2,556



SEE MAP
17 11 10A

SEE MAP
17 11 11

SEE MAP
17 11 14

SEE MAP
17 11 23

SEE MAP

SEE MAP
17 11 10A

2712
2-7

1-31

PP 1991-7

2702
PARCEL 1

2720
PARCEL 2

2713

2-6

2715

2717

1-3

2727
1-3 61.17 AC
2-7 208.63 AC
PARCEL 1

1-16

2719
60.00 AC

2709
2-7

2710

4303
81.06 AC
PARCEL 3

2724
269.70 AC

PT PARCEL 1

PP 2002-90

PT PARCEL 1

2731
257.77 AC AC

DED 2006-65231

PP 2010-17

4300
80.00 AC
P1

4304
79.98 AC
PT

4305
80.16 AC
P3

4306
80.16 AC
P2

DED 2006-65230

2722
1-3 20.76 AC
2-7 508.03 AC

PT PARCEL 2

PP 2003-90

PT PARCEL 3

DED 2006-65231

2700
161.86 AC

1302

4301
320.00 AC

PARCEL 2

PP 2001-39

4302
679.95 AC

PT PARCEL 3

2722
1-3 20.76 AC
2-7 508.03 AC

PT PARCEL 1

2-7

(2-6)

PT PARCEL 3

2732
733.29 AC

PP 2010-17

2500

4200
642.00 AC

2-6

PP 1999-54

EL 2

EXHIBIT B

Rio Lobo Record Submittal

January 6, 2014

January 6, 2015

Myles A. Conway
541.408.9291
mconway@martenlaw.com**Via Hand Delivery and Email to County Planning Staff**

Karen Green
Hearings Officer
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, OR 97708-6005

RE: **Rebuttal Comments for the Hearing Record**
County Files: 247-14-000242-CU, 247-14-000243-TP
247-14-000244-CU, 247-14-000245-TP
247-14-000246-CU, 247-14-000247-TP
247-14-000248-CU, 247-14-000249-TP
247-14-000250-CU, 247-14-000251-TP

Dear Hearings Officer Green:

We are writing on behalf of Rio Lobo Investments LLC (“Rio Lobo”) in rebuttal to information placed into the hearing record prior to the December 30, 2014 deadline.

In this consolidated proceeding, the applicant asks the County to approve five different subdivision proposals. Each of the proposed subdivisions is entirely dependent upon the other related applications in order to facilitate through vehicle traffic, utility connections, proposed trail systems and the provision of emergency services. The applicant has configured its lots in a manner that concentrates development in areas that are zoned and planned as “Urban Area Reserve”, with 37 of the proposed 50 new lots located in the UAR-10 zone. In an effort to maximize view corridors¹, lots have been configured along the entirety of the applicant’s northern boundary with the Rio Lobo property, with one stubbed dead-end road providing the only dedicated roadway within the five proposed subdivisions. In contradiction of DCC Chapter 17.36, the applicant seeks to serve both “present and future through traffic” from the subdivisions and surrounding properties through a system of privately owned and maintained roadways that would be owned and controlled by a homeowners association. As is outlined in greater detail below, the County Code requires the applicant to publicly dedicate the roadways that serve its five consolidated subdivision proposals in

¹ See applicant’s various burden of proof statements for Tree Farm 1- 5, “Lots are also sited to maximize views to Cascade peaks and regional volcanic points of interest, further enhancing a residents connection to their natural environment.”

order to accommodate both present and future through traffic and to provide a connection to Skyliners Road.

The Code Requires Publicly Dedicated Roads

DCC 17.36.020(B) requires streets in a planned development to be publicly dedicated where necessary to accommodate present and future through traffic. In this instance, the individual streets within each of the applicant's five proposed subdivisions are necessary to accommodate both present and future through traffic. As referenced above, each of the applicant's five subdivision proposals are entirely interrelated and contemplate "through traffic" in order to facilitate the vehicle access, utility connections and emergency corridors that are necessary to support the consolidated development proposals. The applicant's development plans, infrastructure plans and supporting traffic analysis are entirely dependent upon accommodating "through traffic" as referenced in DCC 17.36.020(B), thereby triggering the requirement of a public road system. Publicly dedicated roadways are needed to accommodate the traffic that will take access through and across the five proposed subdivisions.

In addition, a significant portion of the applicant's five subdivision proposals are located in an area zoned "urban area reserve" where future through traffic is planned and anticipated. The record demonstrates there are no physical barriers that would preclude transportation connections between the applicant's northern property boundary and Skyliners Road to the south. The County, the applicant and Rio Lobo all contemplate the use of the applicant's subdivision roads to serve "future through traffic" from adjoining properties in the urban area reserve. Traffic reports submitted by both the applicant and Rio Lobo specifically anticipate the use of the Tree Farm road system for future "through traffic." *See Report from Lancaster Engineering dated December 11, 2014 and Technical Memorandum from Kittelson & Associates, Inc., dated June 27, 2014 and December 29, 2014.* As a result, the roadways providing connections between the applicant's five subdivision proposals are required to be publicly dedicated.

Senior County Transportation Planner, Peter Russell, has stated that public streets are required for the applicant's primary access, stating that "the Code is explicit; the main access to and through a subdivision must be a public street and meet the minimum requirements set forth in 17.48 (Design and Construction Specifications), especially 17.48.050(A); staff has not found any discretionary language in the Code on this topic." *See County Staff Memorandum dated December 19, 2014.* The applicant seeks to avoid the County's public road requirement by offering what it characterizes as a "temporary public access easement" over its private system of roadways. The County Code contains no support for the use of a temporary public access easement to satisfy the road dedication requirement of DCC 17.36.020(B). The Code contains no definition of the term, "temporary public access easement" and does not authorize the use of such an easement in lieu of public dedication requirements. The Code does not authorize a finding of compliance with DCC 17.36.020(B) based on the proposed "temporary public access easement."

In addition to the legal prohibition, the record contains no evidentiary basis that would support the use of a “temporary public access easement” to satisfy road dedication requirements.² Even if a temporary public access easement was permitted by the Code, which it is not, the record does not define the scope, terms or limitations that would be contained in any easement the applicant would utilize to satisfy applicable approval criteria. The record does not demonstrate the type, scope or extent of public use that would be allowed in the proposed “temporary public access easement.” Nor does the record demonstrate how future public uses, road construction, road maintenance, road upgrades and traffic flow would be regulated. The sample CC&R’s and Declaration submitted by the applicant (*Burden of Proof, Exhibit L*) pertain to an entirely different residential development and contain no reference to public use rights and associated limitations on the private road system. As a result, the evidentiary record is insufficient to support any evaluation of the applicant’s proposed alternative. As a practical matter, there are many potential problems associated with the use of a temporary public access easement as a substitute for public roads. The private road system would be owned and managed by the applicant and, ultimately, its homeowners association (“HOA”) which would be responsible for the construction and long term maintenance of the private system of roads. Based on the current evidentiary record, the applicant and/or its HOA could unilaterally make decisions regarding the regulation of road use and the extent of road maintenance and repair. The applicant’s undefined system of private regulation does not provide adequate safeguards to protect future public use of the proposed easement area. The HOA would be free to erect speed bumps, gates or other traffic control measures that would work to curtail or impede public “through access” on its privately owned road system. Moreover, as currently proposed, the HOA would undertake the entire financial burden of maintaining a system of private roads that has been delegated to serve and accommodate through traffic from adjoining properties in the urban reserve. This would give the HOA and individual homeowners a strong financial incentive to limit or curtail any outside use of the private road system.

The applicant seeks to satisfy its public road dedication requirements by offering right-of-way for two short and isolated dead-end sections of public road.³ The first is a short public road stub at Sage Steppe Drive and the second is a short and isolated extension of the future Skyline Ranch Road right-of-way along an alternative alignment proposed by the applicant. While Rio Lobo supports the applicant’s willingness to provide such a dedication, such efforts do not satisfy applicable approval criteria. The roadway stub at Sage Steppe Drive terminates at the applicant’s property boundary and provides no connection whatsoever to the public road system. Similarly, the isolated dedication of a right-of-way segment along an alternative alignment for Skyline Ranch Road does not provide any connection between the subject properties and the surrounding road system and is not sufficient to satisfy applicable approval criteria. Moreover, evidence demonstrates that the steep topography of the Rio Lobo property will prohibit a road connection to Skyline Ranch Road along the alignment

² Rio Lobo objects to the extent the applicant seeks to meet its initial burden of proof through materials submitted into the record in rebuttal or to utilize its final argument to add new or additional evidence to the record related to the terms, meaning or scope of a “temporary public access easement.”

³ It should be noted that the applicants initial five application submittals contained no commitment whatsoever for the extension or dedication of public roads in connection with its various subdivision proposals.

referenced by the applicant in Exhibit 4 to its December 30, 2014 submittal. *See Engineering Report from HWA, Inc, dated January 6, 2015 and attached hereto as Exhibit A.* The applicant contends that the public dedication of these two isolated segments of right-of-way will be sufficient to assure future connectivity in the urban reserve based on entirely non-binding letters of intent submitted by a representative of the applicant and an adjacent property owner. While Rio Lobo is supportive of the property owners' intent to dedicate roadways in the future, such gestures are not sufficient to fulfill the applicant's responsibility to provide a public road connection to and through the subject properties.

In sum, the Code requires the public dedication of the roadways that will be utilized to serve the applicant's five interconnected subdivision applications. The applicant's proposed, "temporary public access easement" is not authorized by the Code or supported by the evidentiary record and cannot provide a basis for compliance with applicable approval criteria.

Public Road Requirement is Not a Taking

In its letter dated December 30, 2014, the applicant and its attorney argue that the County's public road requirement requires scrutiny under the United States Supreme Court's decisions in *Nollan v. California Coastal Commission*⁴ and *Dolan v. City of Tigard*⁵ and potentially constitute a "taking" of private property without just compensation in violation of the Fifth Amendment to the U.S. Constitution. Rio Lobo contends that the public road dedication requirement contained in the County Code is entirely consistent with the Fifth Amendment and would not constitute a "taking" under applicable law.

In *Nollan* and *Dolan*, the Supreme Court held that a local government may not impose an exaction of property as a condition of approval of a land use application unless the government demonstrates that the condition: (1) relates to the burdens created by the development ("essential nexus"); and (2) is "roughly proportional" in nature and degree to the impacts created by the development. In this case, the County's public road requirement clearly meets this standard. The applicant has proposed five interrelated subdivisions that are dependent upon a continuing right of access between the parcels. Interconnections between the five subdivisions are required to facilitate transportation connections, the extension of power, data, water and utility infrastructure and to facilitate connections for emergency services. The Code's requirement that such essential connections be publicly dedicated is clearly related to the burdens created by the five separate but interrelated subdivision proposals. As such the "essential nexus" requirement of *Nollan* and *Dolan* is readily satisfied.

Similarly, the public road dedication requirement of DCC 17.36.020(B) is "roughly proportional" in nature and degree to the impacts of the applicants five subdivision proposals. The record demonstrates that the applicant's five subdivisions will create additional impacts on City, County

⁴ 483 US 825, 107 S Ct 3142, 97 L Ed 2d 677 (1987).

⁵ 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994).

and State services and the public road system. Traffic from the five subdivisions will create additional demands/impacts on the City, County and State road systems. Traffic studies submitted by the applicant provide a specific evaluation of some of the anticipated impacts. A Technical Memorandum prepared by Kittelson & Associates (*Exhibit H to the Applicant's July 2014 Burden of Proof Statement*) conservatively estimates 476 weekday daily trips associated with the applicant's subdivision proposal in addition to the significant road system impacts that will occur during the construction and build-out of the five subdivisions. The Kittelson memorandum specifically evaluates the anticipated distribution of vehicle trips from the five subdivisions and the specific roadways, intersections and traffic infrastructure that will be impacted. In addition, a memorandum from Lancaster Engineering addressing the "proportionality" of requiring the dedication of public roads in the five Tree Farm subdivisions is attached hereto as Exhibit B. The Lancaster memorandum finds that the traffic/infrastructure impacts associated with the five Tree Farm subdivisions significantly outweighs the marginal financial impact of requiring an additional right-of-way dedication from the applicant. As noted by Lancaster, the dedication of additional right-of-way along the Tree Farm road system creates the only potential financial burden on the developer, other than the small marginal cost difference to upgrade roads to County standards. In this instance, the value of such additional right-of-way is minimal (if any) as the overall number of homes and the density of the various subdivisions are dictated by current zoning restrictions and the requirements of OAR 660-004-0040. In addition to traffic impacts, the five subdivisions will impact City and County emergency and fire services, the Bend La Pine School District, the Redmond School District, the City of Bend water system and the local and regional trail system and recreational amenities that have been developed by the Bend Metro Parks and Recreation District and the U.S. Forest Service. The extent and degree of the impact of the five subdivisions on public infrastructure is detailed in the hearing record. Under any reasonable analysis, the Code's requirement of publicly dedicated road and utility connections between the five subdivision parcels is "roughly proportional" to the impacts of the proposed developments.

In the evaluation of a potential "taking" claim under the Fifth Amendment, it should be noted that the applicant has not been asked to construct new or additional roadways beyond those needed to serve its own five subdivisions. Moreover, the applicant has not been asked to build or upgrade any of its roadways to the standards that may ultimately be necessary to facilitate the build out of adjoining areas of urban reserve. Rather, County planning staff has required the applicant to construct the specific public roadways that are necessary to support interconnections between its five subdivision proposals to the road design standards specified in DCC 17.48.050 and its accompanying Table A. The construction of public roadways to the standards specified in Table A would withstand scrutiny under any takings analysis.

DCC 17.36.140(B) Limits Cul-de-sacs and Requires Additional Road Connections

DCC 17.36.140(B)(1) provides that, "Cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or the lack of through-street connections to the area, a street connection is determined by the Planning Director or

Hearings Body to be infeasible or inappropriate.” In this instance, the primary roadway serving the subject properties (Ridgeline Drive/Tree Farm Drive) terminates in a cul-de-sac at the Rio Lobo parcel boundary. A cul-de-sac cannot be justified by topographical or environmental constraints in this location and the hearing record does not contain sufficient information to support a finding of compliance with applicable approval criteria.⁶

DCC 17.36.140(B)(3) “Subdivision Layout” provides that, “Local roads shall align themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400-foot intervals.” In this instance, the applicant has configured residential lots along the entire boundary between the subject properties and the Rio Lobo parcel. Only a single roadway connection is provided along this entire frontage in violation of the applicable criteria. Rio Lobo disagrees with any assertion this provision is limited solely to bicycle and pedestrian connections. DCC 17.36.140(B) is titled “Subdivision Layout” and is found in DCC Chapter 17.36, the design standards governing subdivisions. Moreover, a separate provision in the applicable section (DCC 17.36.140(B)(2)) specifically utilizes the terms “Bicycle and pedestrian connections” when making reference to non-motorized travel. By contrast, DCC 17.36.140(B)(3) specifically references “local roads” and connections to “planned streets and undeveloped properties.” The application of this criteria is necessary to insure the development of an integrated system of public roadways within an area designated as urban reserve.

Compatibility/Setbacks

The applicant has not demonstrated that its placement and configuration of residential lots along the entirety of its common border with the Rio Lobo property satisfies the compatibility requirements set forth in DCC 19.100.030(A) and DCC 19.104.070(E). The placement of lots and individual home sites in this area of elevated topography will create additional fire risks and adversely affect future development of the Rio Lobo property. Home sites in this area should be subjected to additional setbacks from the applicant’s northern property boundary to ensure compliance with the compatibility provisions contained in DCC Title 19.

Thank you for the opportunity to provide comment on the subject proposals.

Sincerely,



Myles A. Conway

⁶ Again, Rio Lobo objects to any efforts by the applicant to meet its initial burden of proof through information submitted in rebuttal or to supplement the hearing record with new or additional evidence in final argument.



engineers · planners · surveyors
Hickman, Williams & Associates, Inc.

January 6, 2015

Karen Green, Hearings Officer
Deschutes County Community Development Department
117 NW Lafayette Ave
Bend, OR 97708

Dear Ms. Green:

At the request of Rio Lobo Investments, LLC, Hickman Williams & Associates, Inc. performed a preliminary analysis to determine the feasibility of constructing a collector road that would connect to the proposed Skyline Ranch Road (as shown on the Applicant's Exhibit 4 pages 8 and 10), and be able to serve the Rio Lobo Parcel.

The attached plan and profile design shows the Skyline Ranch Road alignment as proposed, and two "best case" potential alignments with corresponding profiles for a collector road connection. These connector roads were designed as a collector that would meet Deschutes County, and AASHTO Standards. This analysis was based on the best topographic information available at the time and the following Code criteria.

Deschutes County Code (Table 'A') requires an 8% maximum grade for collectors, with an allowable 2% increase in steep areas. For a collector / collector intersection, the Deschutes County Road Department Standard Drawing 2-8 requires that the intersecting street must be at 3% maximum grade from the edge of the main road for a distance of 100 feet before a 100 foot long vertical curve can be introduced. After this point the grade could be increased to 10%. Standard Drawing 2-8 (and 17.48.090) also requires the side street to intersect the main street at right angles for 100 feet before a horizontal curve can be introduced.

In order to construct this connector road a cut of approximately 45' - 50' deep with a top width of approximately 240 feet (assuming 2:1 side slopes) would be required. It is our opinion that a collector road connection from the Rio Lobo Parcel to the proposed Sky Line Ranch Road location is not a practical option if designed to County Collector Standards.

In examining the proposed "Potential Future Access Road" shown on the Applicant's Exhibit 4, page 10, we note that the profile uses an 11.9% grade road that intersects Skyline Ranch Road at the centerline, with no reduced grade area prior to intercepting the edge of Skyline Ranch Road. This does not appear to meet the County Code for a collector/collector intersection.

Sincerely,

A handwritten signature in black ink that reads "Mark Douglas".

Mark Douglas, P.E.
Hickman, Williams, & Associate, Inc.

Serving Our Clients Since 1987

62930 O B RILEY ROAD, SUITE 100, BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

ANDERSON RANCH PUD

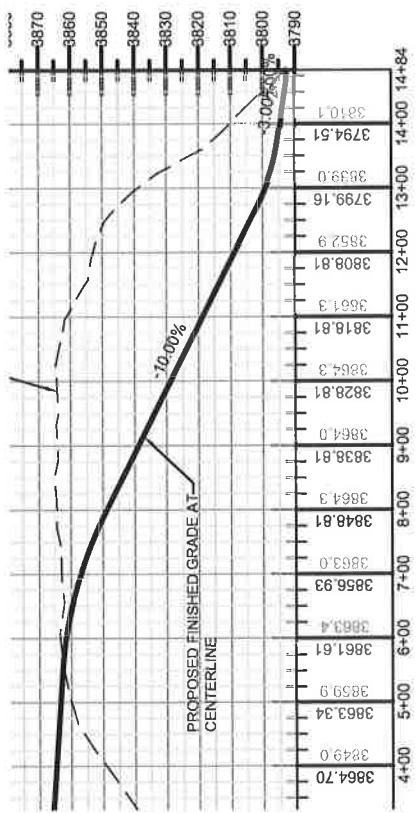
POTENTIAL SKY LINE RANCH ALIGNMENT, PER EXHIBIT 4, ATTACHMENTS A AND B, PAG AND 10.

POTENTIAL CONNECTOR ROAD ALIGNMENT OPTION B

POTENTIAL CONNECTOR ROAD ALIGNMENT OPTION A

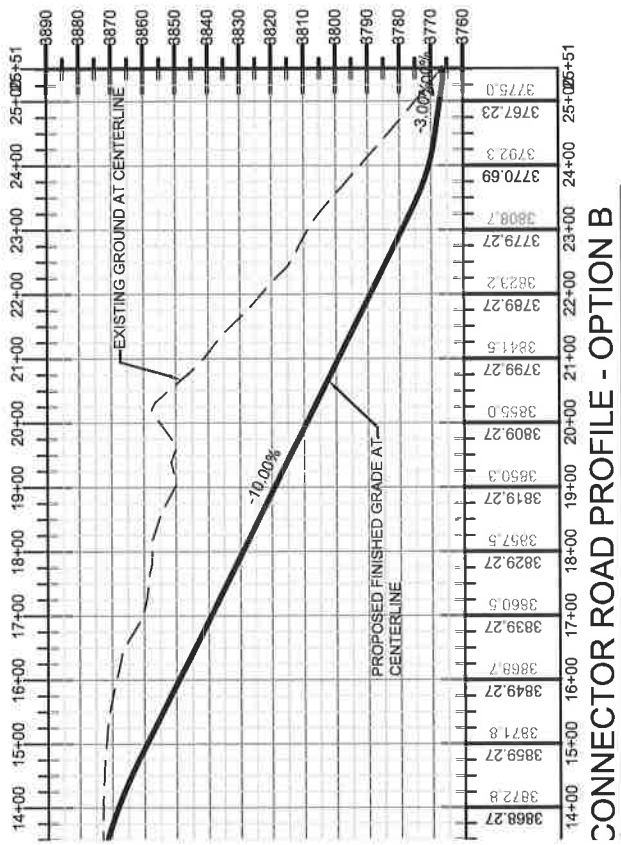
RIO LOBO PARCEL

PROPERTY LINE



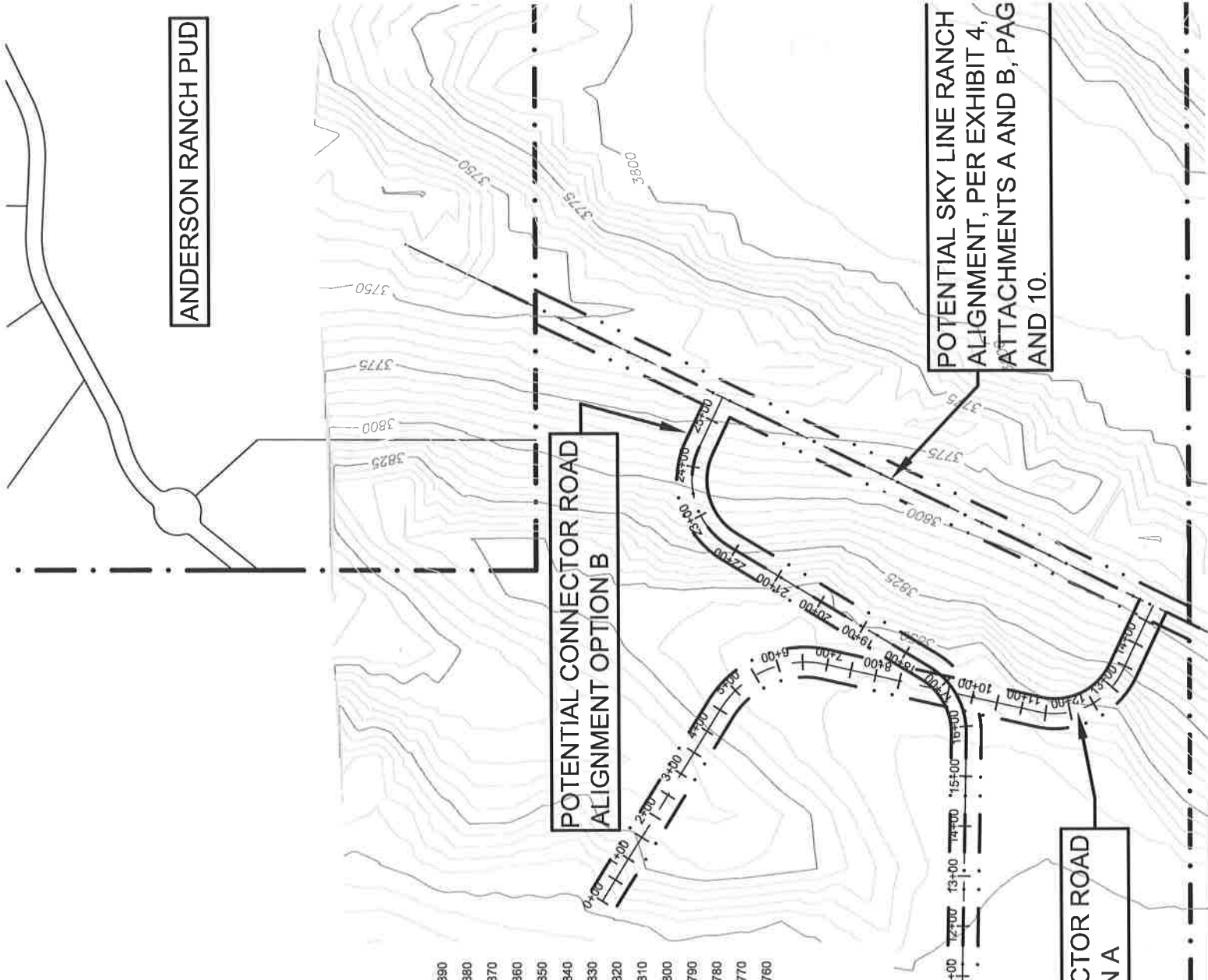
CONNECTOR ROAD PROFILE - OPTION A

SCALE: Horizontal: 1" = 300'
Vertical: 1" = 60'



CONNECTOR ROAD PROFILE - OPTION B

SCALE: Horizontal: 1" = 300'
Vertical: 1" = 60'



TECHNICAL MEMORANDUM

TO: Karen Green, Deschutes County Hearings Officer
FROM: Todd Mobley, PE, PTOE
DATE: January 6, 2015
SUBJECT: Comments for the Hearing Record
 County Files 247-14-000242-CU/243-TP; 244-CU/245-TP;
 246-CU/247-TP; 248-CU/249-TP; 250-CU/251-TP



LANCASTER
ENGINEERING

321 SW 4th Ave., Suite 400
 Portland, OR 97204
 phone: 503.248.0313
 fax: 503.248.9251
 lancasterengineering.com

This memorandum is written in response to materials submitted by the applicant. Namely, the December 30, 2014 letter from Jeffrey Condit at Miller Nash and the accompanying December 29, 2014 memorandum from Joe Bessman at Kittelson and Associates. In particular, this memo addresses the proportionality of requiring public streets within the Tree Farm subdivisions.

PUBLIC STREETS: PROPORTIONALITY

Dedication and construction of public streets within subdivisions is commonplace, particularly when the streets provide access to future development on adjoining properties. Establishing this public street system is essential to serve both near term and long term traffic. In the same manner that each of the five separate Tree Farm subdivision applications rely on one another for transportation infrastructure, future development on the Rio Lobo parcel will also rely on the same infrastructure. In accordance with DCC 17.36.020(B), it is necessary and appropriate to include public streets to accommodate this present and future through traffic.

Requiring public streets in this case meets the rough proportionality test and it is appropriate to require public streets within the subdivision. The following points support this rough proportionality test and illustrate how it is appropriate for the Tree Farm subdivisions to contribute to the County's public transportation infrastructure.

1. The location of the Tree Farm subdivisions on the northwest edge of the City of Bend increases the marginal impacts of each home, as residents must travel farther to reach common destinations within the City. This increase in miles traveled heightens the burden on both City and County-owned transportation facilities.
2. Impacts from future Tree Farm residents extend far beyond the explicitly-analyzed impact area examined by Kittelson and Associates. Although the extent of these impacts diminish with distance, the cumulative reductions in system capacity must be considered in a holistic proportionality analysis.
3. Examining the planned transportation infrastructure and anticipated population growth from the Deschutes County Transportation System Plan (TSP), there is a total of \$306 million in

Karen Green
January 6, 2014
Page 2 of 2

transportation infrastructure to accommodate an increase in population of 71,139 people over the planning horizon. This results in a cost of approximately \$4,300 per person. Assuming an average occupancy of 2.5 people per dwelling unit in the 50-lot Tree Farm subdivision, that equates to a total of \$537,625 in infrastructure cost that could be reasonably attributed to the application. Further, that estimate includes *only* Deschutes County infrastructure needs. Accounting for impacts to the City would raise the cost.

4. For comparison, a detailed 2010 analysis conducted in Washington County, Oregon found the marginal cost per home for transportation infrastructure was \$22,211. For the proposed 50-lot subdivision, assuming comparable costs, this equates to \$1.1 million in public transportation system improvements required to support the traffic from the proposed subdivision. This Washington County example is particularly useful because the County and all cities within the County use a common transportation system development charge methodology, which is designed to assess impacts to all facilities under either City or County jurisdiction.
5. The primary increase in cost to the applicant in providing public streets is the value of the right-of-way that would be dedicated. Even with this dedication, the number of lots in the five subdivisions would not be reduced. Based on the impact of the subdivision and the monetary considerations discussed above, the marginal increase in cost for public streets is clearly proportional with the impact of the development.

The provision of public streets within the Tree Farm subdivision is consistent with County code requirements, is recommended by County staff, and is clearly proportional to the impacts of the proposed development.

Yours truly,

Todd Mobley, PE, PTOE
Principal

EXHIBIT C

Deschutes County Staff Memorandum Re. Miller Tree Farm Streets

December 19, 2014



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

MEMORANDUM

TO: Anthony Raguine, Senior Planner
FROM: Peter Russell, Senior Transportation Planner
RE: Miller Tree Farm streets (247-14-000242-CU/243-TP)
DATE: December 19, 2014

I have reviewed the December 11, 2014, transmittal from Myles Conway of Marten Law and its attached December 11, 2014, traffic memo from Lancaster Engineering.¹ The two documents argue the consolidated application for the Miller Tree Farm, a proposed subdivision of 50 single-family homes, lacks adequate transportation facilities and that a public easement on a private road does not meet the Deschutes County Code's (DCC) requirements.

After reviewing the applicable sections of County code, staff agrees a public street is required for the primary access. The requirements for a public street are addressed below; staff disagrees with Mr. Conway about alignment requirements of that primary access. Staff also disagrees with Lancaster Engineering that the transportation system has inadequate capacity to support the proposed Miller Tree Farm.

1) Requirement for Public Streets in Subdivisions

The portions of the Code below pertain to partitions and subdivisions and public streets. Staff had explored the possibility of using a public easement on a private road to satisfy the requirements of DCC 17.36 (Design Standards) and in particular 17.36.020(B). The rationale for the public easement was the traveling public would experience no operational difference as the easement would be the same paved width as a public road. As the County has no minimum right of way requirement for a private road, the applicant would have more flexibility in designing the site plan.

Upon further review, staff agrees with Mr. Conway that the Code is explicit: the main access to and through a subdivision must be a public street and meet the minimum requirements set forth

¹ Mr. Conway represents Rio Lobo Property, which borders the northern boundary of the proposed Miller Tree Farm subdivision.

in 17.48 (Design and Construction Specifications), especially 17.48.050(A); staff has not found any discretionary language in the Code on this topic.

Specifically, DCC 17.36.020(B) reads:

*Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned **or cluster development** where roads can be privately owned [emphasis added].*

As Miller Tree Farm is a cluster development, this highlighted language initially would seem to allow the applicant the option of having private roads. However, the next sentence limits the type of streets which would qualify.

Continuation of DCC 17.36.020(B) reads:

*Planned developments shall include **public streets** where necessary to **accommodate present and future through traffic** [emphasis added].*

Based on the submitted application materials, the current proposal utilizes Tree Farm Drive, a portion of Golden Mantle Loop, Ridgeline Drive, and a portion of Sage Steppe Drive as the main street in Miller Tree Farm. These listed roads and road segments provide access to Skyliners Road to the south, wend through Miller Tree Farm, and terminate at the site's northern boundary. This route would be the primary access road to Miller Tree Farm as that term is described at 17.48.160(C)(3). These roads and their segments will function as a future "to and through" route. These roads and their segments must meet the design requirements under DCC 17.48.050 and the 60-foot minimum public right of way under DCC 17.48.100.

If the County did have discretionary language regarding the use of public easements on private roads as a way to comply with the street requirements for subdivisions, staff would anticipate finding such language in the Code. Staff did not find any such discretionary language at either DCC 17.16 (Master Plans and Subdivisions) especially 17.16.050(D); 17.36, especially 17.36.020(A) and (B); 17.48, especially 17.48.160(A) and (B); 17.48.180 (Private Roads); or 17.36.160 (Easements) which only speaks to utility and drainage easements. Given the Code's silence on the topic of public easements on private roads, staff concludes this is not a viable option.

2) The Lack of a Direct To and Through Route

DCC 17.36.080 requires streets to be extended to the boundary of a subdivision or partition. Miller Tree Farm links Skyliners Road and the northern boundary of the subdivision via a combination of Tree Farm Drive, Golden Mantle Loop, Ridgeview Drive, and Sage Steppe Drive. The Code has no language that a "to and through" street must be as direct an alignment as practical. DCC 17.36.020(A) discusses minimal width of the streets as set forth in 17.36, but is silent on alignment. DCC 17.36.080 is also mute on the alignment of a street extension.

DCC 17.36.140 (Bicycle, Pedestrian and Transit Requirements) does touch upon circulation within the subdivision and to nearby schools, shopping areas, parks or similar

activity areas. The text mentions bicycle and pedestrian routes, but that term could refer to multi-use paths just as easily as it could mean roads.

DCC 17.36.140(A)(2) states in part:

Provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers, and...

The applicant has worked with Bend Park and Recreation Department (BPRD) on a system of both paved multi-use paths and naturalized trails system within the site. This hybrid system of paths and trails satisfies the criteria of in DCC 17.36.140(A)(2) for direct routes. Cascade East Transit does not currently serve this property and has no long-term plans to serve this area with transit.

Staff is reluctant to bootstrap the “provide a direct route” proviso from the bicycle, pedestrian, and transit section of the Code to mean roadways must be aligned as directly as possible. Streets are dealt with explicitly in several places in the Code; the relevant examples are described and analyzed below.

DCC 17.16.050 focuses on master plans and 17.16.050(D) deals specifically with transportation. This section of Code contains nothing about alignment.

DCC 17.16.105 addresses access to subdivisions, but, again the language only concerns itself with construction standards, functional classification, or maintenance responsibility. There is no language regarding alignment. The term “direct” appears, but only to modify the word “access.” In the transportation planning lexicon direct access means an immediate physical connection to a road. A driveway is a direct access to a street or the intersection of Tree Ridge Drive to Skyliners would be a direct access for the subdivision.

DCC 17.36.020(A) provides guidance on the location, width, and grade of streets in relation to topography, public convenience and safety, and the continuation of streets. Yet, nowhere does the text have any phrasing along the lines of “streets must follow as direct a route as possible” or “minimize out of direction travel” or similar verbiage.

DCC 17.36.080 merely says streets shall be extended to the boundary of the subdivision or partition. Again, the Code is silent on the alignment of the road and whether it must be as direct as possible.

DCC 17.48.050 and Table A pertain to paved surfaces, widths, rights of way, shoulders, grades, etc. Neither the text nor Table A, even including the 23 footnotes, references alignment. The discretionary language in the footnotes relates to paved width, traffic volume, how bicycles and pedestrians are accommodated, etc., but no terms such as “streets must follow a route as direct as possible” or “minimize out of direction travel” appear.

In summary, staff has reviewed the development code and has not found any specific requirement or even general guidance that “to and through streets” that provide primary access must take as direct and short of a route as practical.

3) Requirement for Connections Every 400 Feet

DCC 17.36.140, Bicycle, Pedestrian and Transit Requirements, sets design criteria to ensure the built environment does not result in barriers to trips by non-automotive modes. Mr. Conway's letter several times refers to DCC 17.36.140(B)(3) and how the submitted site plan would result in a barrier for bicyclists and pedestrians from traveling from Miller Tree Farm to his client's property, Rio Lobo. Staff partially agrees with Mr. Conway.

DCC 17.36.140(B)(3) reads:

Local roads shall align and connect with themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400-foot intervals.

Mr. Conway's letter appears to equate connection with roads or streets, but staff doubts the Code intends for connection to be synonymous with road or street. Elsewhere in 17.36 the term "connection" is obviously meant to refer to a bicycle- or pedestrian-scaled facility. Specifically, staff refers to DCC 17.36.140(C)(3).

DCC 17.36.140(C)(3) reads:

Connections shall have a 20-foot right of way, with at least a 10-foot usable surface.

Additionally, DCC 17.36.140(B)(4) states "[C]onnections shall not be more than 400 feet long and shall be as straight as possible." It seems highly unlikely the County code would limit rural roads to 400' in length if the term connection equaled a road.

Reviewing DCC 17.36.140 in its entirety, staff believes the requirement for a connection at no more than every 400 feet means a bicycle/pedestrian facility and not a local road. For instance, DCC 17.36.140(A) states a subdivision "...shall provide for bicycle and pedestrian **routes**..." DCC 17.36.140(A)(2) calls for [P]rovide for a direct **route** of travel..." [*emphases added*]. It is important to note the use of the term route, rather than road or street. A single route can utilize many different transportation facilities (a street, a trail, a multi-use path) to link Points A and B. Route is a much more generalized term, especially when contrasted to specific terms in the Code such as road, street, or highway. This distinction can be seen in the definitions section of the Code dealing with roads, streets, and bicycle routes:

DCC 18.04.030 reads:

"Road or street" means a public or private way created to provide ingress or egress to one or more lots, parcels, areas or tracts of land...

C. "Bicycle route" means a right of way for bicycle traffic.

Ultimately, staff agrees with Mr. Conway that bicycle/pedestrian connections do need to be provided between the common border of Miller Tree Farm and Rio Lobo. These connections need to occur at no more than 400-foot intervals. However, these connections need not be provided by roads or streets.

4) Lack of Capacity in the Affected Transportation Network

Both Mr. Conway's letter and the Lancaster Engineering technical memo conclude there is inadequate transportation capacity on present and proposed streets to support the future development of Rio Lobo. Staff disagrees.

The applicant's engineer, Kittelson & Associates, prepared a traffic study dated June 27, 2014, according to the County's requirements at DCC 18.116.310. As part of a Traffic Impact Analysis (TIA) the projected traffic includes the proposed development and any other in-process developments. Currently, there is no simultaneous land use application from the vacant Rio Lobo property. Therefore, the potential trip generation from the Rio Lobo property is zero. Based on the current zoning, Urban Area Reserve 10 (UAR-10), the site could only have 37 single-family homes. The transportation effects of such nominal development would be *de minimis*.

The Lancaster traffic memo includes a variety of land use types based on City zoning, even though the site is under rural County zoning. The Miller Tree Farm applicant is not required to consider speculative land use development patterns from the Rio Lobo property. While the Lancaster memo alludes to several types of land uses being considered, that is not the same as an actual pending or approved land use application and thus is irrelevant. If the Rio Lobo property is annexed into the City, the resulting land use applications would be analyzed under the City's code. If a destination resort is applied for on the Rio Lobo property, the County Code would require traffic analysis. If Rio Lobo develops 37 units under the current UAR-10 zoning, the County Code would require a TIA. However, based on the projected traffic volumes from the Miller Tree Farm application and the current use of the Rio Lobo property, the TIA for Miller Tree Farm concluded there were no transportation inadequacies. Staff agrees with that conclusion.

Summary

After a careful review of the issues raised by Mr. Conway, staff concurs the primary access to Miller Tree Farm, which also functions as a "to and through street" of Tree Farm Drive, Golden Mantle Road, Ridgeview Drive, and Sage Steppe Drive, must be a public street with a minimum of 60 feet of right of way. Additionally, bicycle/pedestrian connections of a minimum 20 feet of right of way and 10 feet of usable surface must be provided on the border of Miller Tree Farm and Rio Lobo at intervals of no more than 400 feet. The proposed transportation network has adequate capacity to accommodate the development. There is no requirement that the Tree Farm to Sage Steppe Drive alignment must take as direct a route as is practical.

Please enter these comments into the record for the Miller Tree Farm application(s).