



Deschutes County Board of Commissioners
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(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of 4/8/15

DATE: April 2, 2015

FROM: Will Groves CDD (541) 388-6518

TITLE OF AGENDA ITEM:

Deliberation on a conditional permit (247-14-000 228-CU and 229-SP) to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

On February 3, 2015 staff issued an administrative approval of a conditional permit (247-14-000 228-CU and 229-SP) to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

By Order 2015-011, dated February 4, 2015, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing.

The Board conducted a de novo public hearing on March 2, 2015. The written record closed on March 23, 2015. Staff has developed a decision matrix to help the Board engage with the key decision points in this matter.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Conduct deliberation and give direction to Staff.

ATTENDANCE: Will Groves, Laurie Craghead

DISTRIBUTION OF DOCUMENTS:

Will Groves, Legal, Parties to 247-14-000 228-CU and 229-SP.



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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MEMORANDUM

DATE: April 2, 2015

TO: Board of County Commissioners

FROM: Will Groves, Senior Planner

RE: Deliberation on a conditional permit (247-14-000 228-CU and 229-SP) to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

I. Background

On February 3, 2015 staff issued an administrative approval of a conditional permit (247-14-000 228-CU and 229-SP) to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

By Order 2015-011, dated February 4, 2015, the Board of County Commissioners (Board) initiated review of this application under DCC 22.28.050 through a *de novo* hearing.

The Board conducted a *de novo* public hearing on March 2, 2015. The written record closed on March 23, 2015. Staff has developed a decision matrix to help the Board engage with the key decision points in this matter.

II. Key Issues

A. Least Suitable Ground

Staff: The "least suitable" standard of DCC 18.16.040(A)(3) does not apply to this application under the plain language of the code. If this is an error, it should be fixed as part of a future text amendment.

Applicant¹: Applicant’s biologist identified the park area as the least suitable for agriculture on the property. However, the suitability standard does not apply to 18.16.031 uses (including Private Park).

Opponents: The exclusion of suitability requirements under 18.16.031 must be a clerical error. These requirements should apply and failure to apply them is an important policy decision.

Staff Recommendation: Adopt Staff’s findings on this issue.

B. Should the Agri-Tourism and Commercial Activity provisions preclude Private Park weddings?

Staff: The allowance of weddings under Agri-Tourism and Commercial Activity provisions neither precludes nor was intended to preclude Private Park weddings.

Applicant: The Agri-Tourism and Commercial Activity provisions do not preclude Private Park weddings.

Opponents: The Board could choose to interpret County Code as providing Agri-Tourism and Commercial Activity as the appropriate use categories for weddings in the EFU zone and disallow weddings in private parks.

Staff Recommendation: Find that the allowance of wedding under Agri-Tourism and Commercial Activity provisions neither precludes nor was intended to preclude Private Park weddings.

C. Will the park force a significant in change on surrounding farm use?

Staff: No traffic impacts were identified by the Deschutes County Transportation Planner or Deschutes County Road Department. The administrative decision cited a research paper showing no significant impact to livestock at anticipated noise levels.

Applicant: Provided a study on noise impacts to dairy use, showing no significant impact at 80 decibels and below.

Opponents: Insufficient analysis on noise impacts on livestock and traffic impacts.

Staff Recommendation: Find that the record demonstrates that the park will not force a significant in change on surrounding farm use.

D. Can the dwelling be used as part of the Park Facilities?

Staff: Staff concluded that the occasional and voluntary use of the dwelling to support events at the park did not preclude or significantly interfere with the use of the dwelling for residential or farm management purposes. The proposed dwelling use is not a “home occupation” as defined under DCC 18.04.

¹ Applicant and Opponent positions are Staff attempts to summarize longer arguments. Generally, these are not direct quotes.

Applicant: Structures are frequently found in parks. Compliance with building and septic codes will ensure the structure is suitable for this use.

Opponents: No. Use of the dwelling would require a home occupation permit. This proposal represents a change of use from the approved use as a farm dwelling.

Staff Recommendation: Find that the dwelling can be used as part of the park facilities, as proposed. Adopt Staff's findings on the compatibility of the park use of the dwelling with the residential and farm management use of the dwelling.

E. Cinder as an All-Weather Surface:

Staff: Based on comments and analysis provided by the Deschutes County Transportation Planner, cinder is not an all-weather surface that complies with the code. The administrative decision required that areas used for standing and maneuvering of vehicles be paved or gravel, but not cinder surfaces. The proposed 95 parking spaces are adequate for the proposed use.

Applicant: Cinder is allowed as a surface on County roads (like Buckhorn Road) with much higher traffic.

Opponents: The applicant has proposed insufficient parking and an inappropriate parking surface (cinder).

Staff Recommendation: Adopt Staff's findings on this issue.

F. Is the Use a Private Park?

Staff: Following the Hearings Officer's analysis in CU-13-13, staff believes that the hallmark of a park is recreational use. The receptions are plainly recreational and the very brief wedding ceremonies are incidental and subordinate to that use. While the facts of the case were slightly different in CU-13-13, staff believes the "recreational" analysis applies equally here. Nothing in the statute requires construing "private park" narrowly under *Utsey*.

Applicant: Concurs with staff. The reception uses are the same one would observe in a typical park on the weekend during the summer.

Opponents: No. Oregon Court of Appeals found EFU uses should be construed narrowly. Even if recreation is allowed, this is a commercial event center. The Board should not rely on the Hearings Officer's findings from CU-13-13, as the facts of that case were different.

Staff Recommendation: Adopt Staff's findings on this issue. Find that nothing in the statute requires construing "private park" narrowly under *Utsey v. Coos County*.

G. Has the Applicant complied with the 2001 Farm Management Plan (FMP)? / Does the 2001 FMP still apply?

Staff: The 2001 FMP was required as part of the dwelling approval (CU-00-65). It is unclear, under *ONDA v. Harney County*, if the resident of the farm dwelling is required to continue to follow the prior FMP or continue to be principally engaged in farming at a commercial scale. The Board need not decide this issue as part of this case. Staff recommends the Board revise the administrative decision to find that:

- 1) as part of this case, the Board need not evaluate current compliance with the 2001 FMP or determine if CU-00-65 requires the resident of the farm dwelling to continue to be principally engaged in farming at a commercial scale, and
- 2) the proposed park use would not preclude or significantly interfere with the farm use described in the 2001 FMP, the current farm use of the property, or the desired future farm operations described by the applicant since the park and these farm uses are spatially and/or temporally separated. As such, farm and park uses are harmonious under 18.124.060 and the site is suitable for both uses under 18.128.015.

Alternatively, the Board could adopt the administrative decision that found that there is nothing in the dwelling approval (MA-01-9/CU-00-65) that requires the applicant to continue the prior owner's agricultural operations or to complete the future activities described in the FMP. The private park use will be separated spatially and/or temporally from both the present and the contemplated future farm use of the property. As such, the private park would not preclude or significantly interfere with the present or contemplated future farm use.

Applicant: The farm dwelling approval was a "snapshot" in time. Nothing requires the applicant to continue the activities described in the 2001 FMP or risk losing their dwelling.

Opponents: Commercial scale farming is not occurring on the property. Commercial scale farming must be continued by an owner principally engaged in farm use. If this is not occurring, a non-farm dwelling application is a possible remedy.

Staff Recommendation: Revise the administrative decision as described in the "Staff" section above.

H. Is the park consistent with the 2001 Wildlife Management Plan (WMP)?

Staff: The administrative decision found that the private park, as conditioned, would be compatible with either the 2001 WMP or the proposed modification (247-14-000401-MC), if approved.

Applicant: Concurs with staff.

Opponents: Does not comply with the "very little road usage" provision of the 2001 WMP.

Staff Recommendation: Adopt Staff's findings on this issue.

I. Staff recommended changes

Amend Condition #9

Staff Recommendation: Based on Board concerns at the hearing, amend Condition #9 as follows for clarity:

The private park shall only be open to event participants one weekend day (Saturday or Sunday) per week beginning on May 15 of each year and ending on October 15, not to exceed 18 days per calendar year. Each event shall last no more than 8 hours and conclude by 10 p.m.

A limit of no more than 250 guests per event shall be enforced by the applicant. Any park use on the property by non-residents shall count as an “event”.

Set Up and Clean Up:

Staff: The Board expressed concern regarding the potential for the limited duration events to extend into several days when set-up and take down are included. The applicant acknowledged that there would be day-before and day-after set-up and take down associated with events. Analysis of compatibility of the proposed park with farm use of the property, residential use of the property, and wildlife impacts assumed the events to be limited duration. To ensure that the all event activities are of limited duration, Staff recommends copying the Agri-Tourism requirements.

Staff Recommendation: Add a condition requiring: “Set-up and take down of all temporary structures and facilities shall occur up to one business day prior to the events or activities and one business day after the events between 7:00 a.m. and 10:00 p.m.”

Add a condition regarding DCC 8.08, Noise Control.

Staff Recommendation: Based on Board concerns at the hearing, add the following condition: Nothing in this decision waives compliance with or acts as a variance to the requirements of DCC 8.08, Noise Control.

Amend Condition #2

Staff Recommendation: Based on Board concerns at the hearing, amend Condition #2 as follows for clarity:

The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use. Specifically, the applicant shall provide written documentation from Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions to Deschutes County Planning Division that all park structures and facilities are adequate for the proposed park use and comply with all applicable regulations, prior to initiation of the use.

Attachments

1. Administrative approval of 247-14-000 228-CU and 229-SP
2. Arguments submitted by parties during the post hearing process.
3. Decision matrix.

SHEPHERD PARK DECISION MATRIX

The Appellant's testimony identified several issue areas in the Staff Decision. These are summarized in the matrix below.

	Issue	Information in Record	Board Options	Staff Comment
1.	Least Suitable Ground	<p>Staff: The “least suitable” standard of DCC 18.16.040(A)(3) does not apply to this application.</p> <p>Applicant: Applicant’s biologist identified the park area as the least suitable for agriculture on the property. The suitability standard does not apply.</p> <p>Opponents: The exclusion of suitability requirements under 18.16.031 must be a clerical error. These requirements should apply.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that the suitability requirements apply under 18.16.031.</p>	<p>Staff Recommendation: Adopt Staff’s findings on this issue.</p> <p>Sample motion for BOCC: “Move that the Board adopt the staff’s findings.”</p>
2.	Do Agri-Tourism and Commercial Activity provisions preclude Private Park weddings?	<p>Staff: The allowance of wedding under Agri-Tourism and Commercial Activity provisions neither precludes nor was intended to preclude Private Park weddings.</p> <p>Applicant: No.</p> <p>Opponents: The Board could choose to interpret County Code as providing Agri-Tourism and Commercial Activity as the appropriate use categories for wedding in the EFU zone and disallow wedding in private parks.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Restrict EFU weddings to Agri-Tourism and Commercial Activity permits.</p>	<p>Staff Recommendation: Adopt Staff’s findings on this issue.</p> <p>Sample motion for BOCC: “Move that the Board adopt the staff’s findings.”</p>
3.	Will the park force a significant in change on surrounding farm use?	<p>Staff: No traffic impacts were identified. Record shows no significant impact to livestock at anticipated noise levels.</p> <p>Applicant: Provided a study on noise impacts to dairy use, showing no significant impact at 80 decibels and below.</p> <p>Opponents: Insufficient analysis on noise impacts on livestock and traffic impacts.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that the record is insufficient on noise and traffic impacts to surrounding farm use.</p>	<p>Staff Recommendation: Find that the record demonstrates that the park will not force a significant in change on surrounding farm use.</p> <p>Sample motion for BOCC: “Move that the Board find that the record demonstrates that the park will not force a significant in change on surrounding farm use.”</p>
4.	Can the dwelling be used as part of the Park Facilities?	<p>Staff: The occasional and voluntary use of the dwelling to support events at the park did not preclude or interfere with the use of the dwelling for residential or farm management purposes.</p> <p>Applicant: Structures are frequently found in parks. Compliance with building and septic codes will ensure the structure is suitable for this use.</p> <p>Opponents: No. Use of the dwelling would require a home occupation permit. This proposal represents a change of use from the approved use as a farm dwelling.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that the dwelling may not be uses as a part of the private park.</p>	<p>Staff Recommendation: Find that the dwelling can be used as part of the park facilities, as proposed. Adopt Staff’s findings on the compatibility of the park use of the dwelling with the residential and farm management use of the dwelling.</p> <p>Sample motion for BOCC: “Move that the Board adopt the staff’s findings and also find that the dwelling may be used as part of the private park, as proposed so long as necessary permits from the Deschutes County Environmental Soils, Environmental Heath, and Building Safety Divisions are obtained prior to initiation of the use..”</p>

	Issue	Information in Record	Board Options	Staff Comment
5.	Cinder as an All-Weather Surface	<p>Staff: Cinder is not an all-weather surface that complies with the code. The proposed 95 parking spaces are adequate for the proposed use.</p> <p>Applicant: Cinder is allowed as a surface on County roads (like Buckhorn Road) with much higher traffic.</p> <p>Appellant: The applicant has proposed insufficient parking and an inappropriate parking surface (cinder).</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that cinder is an all-weather surface.</p>	<p>Staff Recommendation: Adopt Staff’s findings on this issue.</p> <p>Sample motion for BOCC: “Move that the Board adopt the staff’s findings.”</p>
	Is the Use a Private Park?	<p>Staff: Following the Hearings Officer’s Analysis in CU-13-13, staff believes that the hallmark of a park is recreational use. The receptions are plainly recreational and the very brief wedding ceremonies are incidental and subordinate to that use. As stated in <i>Utsey</i>, nothing in the statute requires construing “private park” narrowly.</p> <p>Applicant: Concurs with staff. The reception uses are the same one would observe in a typical park on the weekend during the summer.</p> <p>Opponents: No. Oregon Court of Appeals found EFU uses should be construed narrowly. Even if recreation is allowed, this is a commercial event center. The findings from CU-13-13, do not apply as the facts of that case were different.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that the proposed use is not a private park.</p>	<p>Staff Recommendation: Adopt Staff’s findings on this issue. Find that, per <i>Utsey v. Coos County</i>, nothing in the statute requires construing “private park” narrowly.</p> <p>Sample motion for BOCC: “Move that the Board adopt the staff’s findings and find that nothing in the statute requires construing “private park” narrowly under <i>Utsey v. Coos County</i>.”</p>
6.	Has the Applicant complied with the 2001 FMP? / Does the 2001 FMP still apply?	<p>Staff: The 2001 FMP was required as part of the dwelling approval (CU-00-65). It is unclear, under <i>ONDA v. Harney County</i>, if the resident of the farm dwelling is required to continue to follow the prior FMP or continue to be principally engaged in farming at a commercial scale. The Board need not decide this issue as part of this case. Staff recommends the Board revise the administrative decision;</p> <p>Applicant: Nothing requires the applicant to continue the activities described in the 2001 FMP or risk losing their dwelling.</p> <p>Opponents: Commercial scale farming is not occurring on the property. Commercial scale farming must be continued by an owner principally engaged in farm use. If this is not occurring, a non-farm dwelling application is a possible remedy.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that demonstrated adherence to the approved FMP is required as part of this application.</p>	<p>Staff Recommendation: Staff recommends the Board revise the administrative decision.</p> <p>Sample motion for BOCC: “Move that the Board find that:</p> <ol style="list-style-type: none"> 1) as part of this case, the Board need not evaluate current compliance with the 2001 FMP or determine if CU-00-65 requires the resident of the farm dwelling to continue to be principally engaged in farming at a commercial scale, and 2) the proposed park use would not preclude or significantly interfere with the farm use described in the 2001 FMP, the current farm use of the property, or the desired future farm operations described by the applicant since the park and these farm uses are spatially and/or temporally separated. As such, farm and park uses are harmonious under 18.124.060 and the site is suitable for both uses under 18.128.015.
7.	Is the park consistent with the 2001 Wildlife Management Plan (WMP)?	<p>Staff: The administrative decision found that the private park, as conditioned, would be compatible with either the 2001 WMP or the proposed modification (247-14-000401-MC), if approved.</p> <p>Applicant: Concurs with staff.</p> <p>Opponents: Does not comply with the “very little road usage” provision of the 2001 WMP.</p>	<p>a. Adopt staff decision findings, with or without modification.</p> <p>b. Find that the park is not compatible with the 2001 WMP.</p>	<p>Staff Recommendation: Adopt Staff’s findings on this issue.</p> <p>Sample motion for BOCC: “Move that the Board adopt the staff’s findings.”</p>

	Issue	Information in Record	Board Options	Staff Comment
8.	Amend Condition #9	Staff: Based on Board concerns at the hearing, amend Condition #9.	a. Amend Condition #9 b. Decline the amendment.	Staff Recommendation: Staff recommends the Board revise the administrative decision. Sample motion for BOCC: “Move that the Board amend condition #9 to specify that a “weekend day” is Saturday or Sunday.”
9.	Set Up and Clean Up	Staff: The Board expressed concern regarding the potential for the limited duration events to extend into several days when set-up and take down are included. Staff recommends copying the Agri-Tourism requirements.	a. Apply Agri-Tourism provisions. b. Decline the new condition of approval.	Staff Recommendation: Staff recommends the Board revise the administrative decision. Sample motion for BOCC: “Move that the Board finds that analysis of compatibility of the proposed park with farm use of the property, residential use of the property, and wildlife impacts require the events to be of limited duration. To ensure that the all event activities are of limited duration, the Board adds the following condition of approval: <u>Set-up and take down of all temporary structures and facilities shall occur up to one business day prior to the events or activities and one business day after the events between 7:00 a.m. and 10:00 p.m.”</u>
10	DCC 8.08, Noise Control.	Staff: Based on Board concerns at the hearing, add the following condition: Nothing in this decision waives compliance with or acts as a variance to the requirements of DCC 8.08, Noise Control.	a. Apply the condition of approval. b. Decline the new condition of approval.	Staff Recommendation: Staff recommends the Board revise the administrative decision. Sample motion for BOCC: “Move that the Board adds the following condition of approval: <u>Nothing in this decision waives compliance with or acts as a variance to the requirements of DCC 8.08, Noise Control.”</u>
11	Amend Condition #2	Staff Recommendation: Based on Board concerns at the hearing, amend Condition #2 as follows for clarity.	a. Amend Condition #2 b. Decline the amendment.	Staff Recommendation: Staff recommends the Board revise the administrative decision. Sample motion for BOCC: “Move that the Board amend condition #2 as follows: The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use. <u>Specifically, the applicant shall provide written documentation from Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions to Deschutes County Planning Division that all park structures and facilities are adequate for the proposed park use and comply with all applicable regulations, prior to initiation of the use.”</u>



Community Development Department

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FINDINGS & DECISION

FILE NUMBER: 247-14-000 228-CU and 229-SP

APPLICANT: John Shepherd
71120 Holmes Road
Sisters, Oregon 97759

PROPERTY OWNERS: John and Stephanie Shepherd
71120 Holmes Road
Sisters, Oregon 97759

APPLICANT'S ATTORNEY: Dave Hunnicutt
Oregonians in Action
P.O. Box 230637
Tigard, Oregon 97281

REQUEST: The applicant requests conditional approval to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

LOCATION: The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.

STAFF CONTACT: Will Groves, Senior Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance
Chapter 18.04, Title, Purpose and Definitions
Chapter 18.16, Exclusive Farm Use
Chapter 18.88, Wildlife Area Combining Zone
Chapter 18.116, Supplementary Provisions
Chapter 18.124, Site Plan Review
Chapter 18.128, Conditional Use
Title 22 of the Deschutes County Code, the Development Procedures Ordinance

II. **BASIC FINDINGS:**

- A. **LOCATION:** The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.
- B. **LOT OF RECORD:** The record indicates the county determined the subject property is a legal lot of record through a 1995 lot-of-record verification (LR-95-44).
- C. **ZONING:** The subject property is zoned Exclusive Farm Use–Lower Bridge Subzone (EFU-LB), and is within a Wildlife Area (WA) Combining Zone. The property is designated Agriculture on the Deschutes County Comprehensive Plan map.
- D. **PROPOSAL:** The applicant is proposing to establish a private park on the subject property. The purpose of the private park would be to host wedding, wedding receptions, family reunions, fundraisers, and charity balls. The applicant describes the following activities that will occur during events:
- Wedding Ceremony (which typically lasts only 15-20 minutes)
 - Outdoor eating with family and friends
 - Public speaking using a sound system
 - Listening to amplified music
 - Singing, including karaoke
 - Dancing in the pavilion (gazebo)
 - Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

The events would be conducted on an approximately 1.6-acre lawn area that is a 350-foot by 250' oval which includes some juniper trees. Parking is provided on a contiguous 1-acre parking area, which is accessed from a driveway that connects to Holmes Road. Event participants would have limited access to the existing dwelling and full access to a gazebo on the property. The wedding party (including bridesmaids, groomsmen, and immediate family) will have access to the main floor of the home and two upstairs rooms. Weddings will not be conducted inside the dwelling. Temporary tents and the gazebo will be used in the event of inclement weather.

Restrooms will be provided through portable restrooms and guest access provided to an existing downstairs restroom in the dwelling. Food is either prepared off site or cooked on-site by licensed caterers using their own equipment. The existing kitchen in the dwelling will be used for food assembly only.

The private park would be open to event participants one weekend day per week beginning in late May of each year and end in early October, not to exceed 18 days per calendar year. Each reception would last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event would be enforced by the applicant.

The applicant has proposed that guests will be allowed to tent camp or stay in recreational vehicles following events as a precaution against unsafe driving. The applicant states that this uses does not constitute a commercial campground.

The remainder of the parcel would remain in its current use including the residential use approved under County File Nos. MA-01-9/CU-00-65 and farm use. At the time of application, approximately 2 acres were used to raise poultry for-profit and small-scale livestock grazing (limited to a single ewe at the time of application). In the applicant's January 12, 2015 Incomplete Letter Response, the applicant indicated that 3.5 acres of Three Sisters Irrigation District water rights are being obtained and will be applied to the existing lawn area (0.9 acres) and a new fenced grazing area in the southeast corner of the property. The grazing area will encompass approximately 17 acres that include 2.5 acres of future irrigation. No fewer than 10 head of cattle will be kept in this grazing area during the months of park operation.

During winter months (outside of park operations), the cattle will be penned and hayed in an area adjacent to the applicant's barn. During the spring, the cattle would graze other areas of the property, but not the private park area.

The applicant also proposes an indoor/outdoor penned chicken operation on the property, to be located within the existing barn area. The chicken operation will not occur in the area set aside for park use.

The remainder of the property has been characterized by the applicant as "wasteland", including dry lands, with no history of irrigation, that are covered in juniper trees, scrub vegetation and rock.

- E. SITE DESCRIPTION:** The subject property is approximately 216 acres in size and irregular in shape. It is developed with a single-family dwelling, gazebo and access driveway. The property takes access from Holmes Road, a designated rural collector road, which abuts the property along its northern property boundary. The property contains steep north-facing slopes and has vegetation consisting of juniper trees and native brush and grasses. The developed area consists of approximately two acres located at the highest elevation on the property, approximately 180 feet above Holmes Road, and includes the dwelling, gazebo, a large grassy area and a circular driveway. The Assessor's records indicate the subject property has no irrigated land. The record indicates the subject property has received farm tax deferral.
- F. SURROUNDING LAND USES:** The subject property is surrounded by properties zoned EFU in both public and private ownership. To the north is an approximately 540-acre property engaged in cattle grazing and developed with a guest ranch (Long Hollow Ranch). Other land to the north along Holmes Road is generally engaged in farm use. To the south is a large undeveloped, publicly-owned tract owned and managed by the US Bureau of Land Management (BLM) that consists of juniper woodland. Also to the south is an approximately 80-acre parcel engaged in farm use and developed with a single-family dwelling. Adjacent to and east of the subject property is a 77-acre parcel engaged in farm use and developed with a dwelling. Adjacent to the west are two 40-acre parcels, each of which is developed with a single-family dwelling. Further to the west are two approximately 100-acre parcels engaged in farm use.

- G. SOILS:** According to Natural Resources Conservation Service (NRCS) maps of the area and the soil map included in the County packet, there are five soil units mapped on the subject property:

Map Unit Symbol	Map Unit Name	Rating	Percent
63C	Holmzie-Searles complex, 0 to 15 percent slopes	6	54.8%
101E	Redcliff-Licksillet-Rock outcrop complex, 30 to 50 percent south slopes	6	9.0%
106D	Redslide-Licksillet complex, 15 to 30 percent north slopes	6	30.0%
138B	Stukel sandy loam, 3 to 8 percent slopes	6	5.8%
141C	Stukel-Deschutes-Rock outcrop complex, 0 to 15 percent slopes	6	0.4%
Totals for Property			100.0%

The proposed private park is located on soils mapped as 63C, Holmzie-Searles complex (0-15% slopes), with a capability class of 6 without irrigation. The property does not presently have any irrigation rights. The applicant has proposed to purchase 3.5 acres of irrigation water from the Sisters Irrigation District. As of the writing of this decision, Staff believes that purchase had not been completed.

- H. PUBLIC AGENCY COMMENTS:** The Planning Division mailed notice to several public agencies and received the following comments:

- 1. US Fish and Wildlife Service:** The Service has reviewed the proposed "private park" (228 CU) and has no ESA or eagle concerns regarding this proposed wedding event site.
- 2. County Transportation Planner: (5/23/14)** I used your figures and even with a worst-case scenario, the daily trips are still less than 50 and thus no traffic study would be required. I'm assuming all park activities occur on those 2.6 acres.

Going with 2.6 acres and the Institute of Traffic Engineers (ITE) Trip Generation handbook, City Park (LU 411) has a Sunday trip generation rate of 16.74 per acre, which is 43.5 daily trips. County Park (LU 412) has a Saturday trip generation rate of 12.14 trips per acre, which is 31.5 daily trips. State Park has a Sunday rate of 1.10 trips per acre which is 2.86 daily trips.

You will still have to pay a transportation system development charge (SDC). Our base rate for an SDC as set forth in BOCC Resolution 20130-020 is \$3,578 per p.m. peak hour trip. Looking at our SDC table, we charge \$338 an acre for a Local Park and \$752 an acre for a Regional Park. We have in the past accounted for seasonal uses such as farm stands. Say for instance the farm stand was only open three months out of the year, we calculate the full SDC based on our rate, then multiply that amount by 0.25 as the farmstand is only open 25% of the year. If the private park is open year round, we'd charge the full SDC. If the private park is only open for six months as a condition of approval, then we'd multiply the SDC by 0.50.

(8/15/14) As County Planning and Road Department staff have previously informed the applicant, cinder is not considered an all-weather surface, let alone suitable for this proposed land use. DCC 18.116.030(F)(4) requires all surfaces

used for standing or maneuvering of vehicles "...shall be paved surfaces adequately maintained for all weather use..." While the applicant may have an opinion that cinders are adequate to meet that requirement, the County's code at 17.48, Table A, lists the surface types acceptable to the County, which includes asphaltic concrete, aggregate, or an oil mat. Cinder is not listed as an acceptable surface type. Additionally, if cinders were considered an all weather element, they would be allowed under federal, state, and the County's construction specifications for roads. They are not due to the impermanent nature of cinders, their relatively poor performance vis a vis gravel roads in rainy and snowy weather, and the increased dust in the summer, and cinders do not bind as well.

The County code allows cinders for partitions of more than 10 acres as that land use generates little traffic. Notice for all other land uses the roads are required to be paved. A private park will generate far more traffic than a partition and thus the road and parking lots will be subjected to more vehicular use. Partitions generate little traffic. The applicant has indicated the driveway and parking lot will be used by several hundred vehicles during the summer season. Given these anticipated volumes, the County should require the applicant adhere to the code and surface the parking lot and driveway wither either pavement or gravel, not cinders.

2. **Deschutes County Building Safety Division:** Due to the mixed use with Residential and Business occupancies, if the buildings are to be considered Commercial, they will need to be sprinkled to a minimum of a 13R level of protection. Once any B area exceeds 49 occupants, it would be considered an A-3 occupancy and that occupancy triggers a full 13 system at 300 occupants. Section 3408.

A State of Oregon Fire Protection Engineer may be able to lessen the some of the requirements for this mixed use structure through calculations in Section 3412.

ADA upgrades will need to be per Section 3411, 25% rule for Architectural Barrier Removal for any altered area. If no alterations will occur, then structure may remain as is per Section 3408.

Additional items of concern noted during my visit are the residential height guards on the deck and the unpermitted electrical installation for the gazebo and party lights.

Recreational Parks, once allowed by Planning, are covered by Division 650 (918-650-0000) and will require permits and plan review from our division. The allowance of overnight of RV's would also be considered during this review.

3. **Deschutes County Road Department:** Holmes Road is classified as a rural collector in the County maintenance system. Traffic volumes on this section of Holmes Road are less than 400 ADT. There will be no adverse impact to Holmes Road from this application.

4. **Deschutes County Environmental Health:**

- 1) The owner must satisfy Drinking Water requirements for his private well. Contact: Jeff Freund, 541-388-6563
- 2) Any food provided to wedding (or other event) guests must be from a licensed Deschutes County Foodservice Establishment. If owner provides/prepares food, then the kitchen on-site must satisfy Oregon Health Authority plan review and licensure requirements. The Oregon Food Sanitation Rules and a Public Health Plan Review Packet are available in the link below:

<http://www.deschutes.org/Health-Services/Environmental-Health.aspx>

- 3) The septic system should be reviewed by Deschutes County Environmental Soils for the proposed change of use.

5. **Oregon Department of Fish and Wildlife:** The Oregon Department of Fish and Wildlife submitted a comment dated August 22, 2014, that is incorporated herein by reference.

6. **Deschutes County Environmental Soils:** Events served with portable toilets are recommended to have a toilet for every 50 – 100 persons at the event, particularly longer duration events. Given the proposal and submitted information, a minimum of two portable toilets are necessary for most events. At least one portable toilet should be ADA accessible. These are guidelines and not outlined by code, but industry standards found online indicate ranges of 2-6 portable toilets for similar events up to eight hours in duration. Events that include food and alcohol recommend additional toilets.

The proposal to include use of the bathroom in the residence for events will require an authorization notice. An authorization notice is required because of the proposed change in use and the potential increase in flow to the onsite system. Depending on the specific proposal and potential impacts to the onsite wastewater system, a construction-installation may be necessary.

7. **No comment:** The following agencies either responded with “no comment” or did not respond to a request for comment: Oregon Department of Agriculture, Deputy State Fire Marshal, Deschutes County Code Enforcement, Deschutes County Assessor, and Three Sisters Irrigation District.

I. **PUBLIC COMMENTS:** The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property. No comments were received in response to the notice.

J. **REVIEW PERIOD:** These applications were submitted on July 28, 2014. An incomplete letter was mailed on August 25, 2014. The applicant supplied the requested information and these files were accepted as complete on January 16, 2015.

K. **LAND USE HISTORY:** In July of 2001, the applicant’s predecessor Darlene Woods received conditional use approval to establish a farm-related dwelling on the subject

property and to site the dwelling more than 300 feet from a public or private road in the WA Zone (CU-00-65). Subsequently Ms. Woods applied to modify the conditional use application (MA-01-9) to modify her farm management plan and to move the dwelling location. The modified application was approved by an administrative decision. The approval was based in part on findings that the property was currently engaged in farm use consisting of cattle grazing, Ms. Woods' submission of a farm management plan, and her submission of a wildlife management plan which stated, among other provisions, that human activity would be limited to the southeast corner of the plateau at the top of the property and that there would be very little vehicular usage of the access driveway. The farm dwelling approval was conditioned on implementation of the farm management plan. This Hearings Officer dismissed an appeal of the decision (A-01-15).

In 2013 the applicant was denied conditional use approval (CU-13-13 and MA-13-3) to establish a private park on the subject property to be called "Shepherdsfield Park." The park would host weddings, wedding receptions, special events and recreational activities. Denial was based on several issues, including that the application did not include a site plan review application.

On December 18, 2014 staff issued an administrative approval of a modification (247-14-000401-MC) to an existing conditional use decision (CU-00-65/ MA-01-9). A Wildlife Management Plan (WMP) is required because the dwelling was not located near a pre-existing road or driveway in the Metolius Winter Deer Range [see DCC 18.88.060 (B)(1)].

The modification wholly removed the Wildlife Management Plan (WMP) required under the previous decision and replaced it with six conditions of approval designed to protect and enhance deer habitat on the property. By Order 2014-046, dated December 29, 2014, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing. On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application. The notice of appeal identifies six objections to the administrative decision. Since this modification is under appeal and has not received final local approval, Staff finds that the existing 2001 Wildlife Management Plan applies for the purposes of this decision. However, Staff analyzes compatibility of the private park proposal with the 2001 WMP and the one proposed under modification (247-14-000401-MC) in this decision, as the WMP modification may receive final approval in the future.

III. CONCLUSIONARY FINDINGS:

TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

A. CHAPTER 18.16, EXCLUSIVE FARM USE ZONES.

1. 18.16.020. Uses Permitted Outright.

The following uses and their accessory uses are permitted outright:

A. Farm use as defined in DCC Title 18.

FINDING: Staff finds that the proposed cattle and poultry operations, described in the "Proposal" section above and incorporated herein by reference, are "farm use" as defined in DCC Title 18 and allowed outright.

2. Section 18.16.031, Nonresidential Conditional Uses on Nonhigh Value Farmland Only

The following uses may be established only on tracts in the Exclusive Farm Use Zones that constitute nonhigh value farmland subject to applicable provisions of the Comprehensive Plan and DCC 18.16.040 and other applicable sections of DCC Title 18.

* * *

E. Private parks, playgrounds, hunting and fishing preserves, and campgrounds.

FINDING: The record indicates the soils on the subject property are not high value soils. Title 18 does not define “nonhigh value farmland.” However, the Hearings Officer found in County File No. CU-13-13/MA-13-3 that it was reasonable to interpret this term to mean EFU-zoned land that does not contain high value soils. Therefore, Staff finds the subject property constitutes nonhigh value farmland, and “private park” is a use permitted conditionally on the subject property.

The applicant has proposed a private park on the subject property. Staff incorporates herein by reference the “Proposal” section, above, which describes the proposed park uses and periods of operation.

In her decision in CU-13-13/MA-13-3, the Hearings Officer provided extensive analysis of this topic for a similar, prior application for a private park on the subject property. In the following findings, staff closely follows that analysis and applies it to the present application.

The threshold question presented by this application is whether the applicant’s proposal constitutes a “private park,” a term that is not defined in Section 18.04.030. In ascertaining the meaning of this term, staff must examine its text and context and may consider any relevant legislative history. If the drafter’s intent remains unclear after examining text, context, and legislative history, staff may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty. *State v. Gaines*, 346 Or 606, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993).

1. Text. On two previous occasions a Hearings Officer has addressed what types of uses might be encompassed by the term “private park.” In *Bend Trap Club* (CU-07-63, SP-07-32, MA-07-12) the applicant requested conditional use approval to establish a private trap club shooting range on a privately-owned 160-acre EFU-zoned parcel. In *Dorsett* (CU-07-79), the applicant requested conditional use approval to establish a private paintball park on a privately-owned 18.7-acre EFU-zoned parcel. In both cases, the proposed private park would be used by members of a private club of which the property owner was a member.

In approving the Bend Trap Club conditional use permit, the Hearings Officer found as follows:

*“The staff report states counties previously have approved trap shooting ranges as ‘private parks’ in the EFU Zones, citing approval of the applicant’s facility in Crook County, as well as Union County’s 1983 approval of a trap club which was upheld by LUBA (Okeson v. Union County, 10 Or LUBA 1 (1983)). The zoning ordinance does not define ‘park.’ However, the ordinary definition of that term includes: ‘an area of public land with walks, playgrounds, etc. for recreation.’ Webster’s New World Dictionary and Thesaurus, Second Edition. **The Hearings Officer finds the***

key component of this definition is the land's design and use for recreation and not whether it is public or private. Therefore, I find it is reasonable to apply this definition in interpreting the language in Subsection (E) of this section, and to find the applicant's proposal constitutes a private park." (Bold emphasis added.)

In granting conditional use approval for the private paintball park in *Dorsett*, the Hearings Officer quoted the above language from *Bend Trap Club* and stated:

"I find there is no meaningful distinction between the characteristics of the trap club and the characteristics of the proposed paintball facility. Both involve the use of a private parcel by members of a private club and their guests for an organized recreational activity involving shooting at targets – shooting lead pellets at clay targets in the case of the trap club, and shooting paintball pellets at game participants in the case of the proposed paintball facility. Therefore, I find the paintball park also constitutes a 'private park' permitted conditionally on the EFU-zoned subject property." (Bold emphasis added.)

LUBA also has held that a paintball park constitutes a "private park" permitted conditionally on EFU-zoned land under ORS 215.213(2)(e). In *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993), LUBA cited the following definitions of "park" from several sources, including Webster's Third New World Dictionary, the Second Edition of the American Heritage Dictionary, the 1991 Uniform Zoning Code, and the 1989 Survey of Zoning Definitions:

- a tract of land maintained by a city or town as a place of beauty or of public recreation;
- a large area often of forested land reserved from settlement and maintained in its natural state for public use (as by campers or hunters) or as a wildlife refuge;
- a large enclosed area used for sports; esp: ball park;
- an area of land set aside for public use, as for recreation;
- a stadium or enclosed playing field;
- a baseball park;
- a public or private area of land, with or without buildings, intended for outdoor active or passive recreation;
- any public or private land available for recreational, educational, cultural, or aesthetic use; and
- an area open to the general public and reserved for recreational, educational, or scenic purposes.

LUBA stated that all of the above definitions recognize a tract of land set aside for public recreational use as a "park," that none of the definitions nor any provision in ORS 215.213 excludes the concept of a privately owned and managed recreational "park," and that there is nothing in ORS 215.213 that limits the intensity of the uses allowed thereunder. As to the last finding, LUBA noted that schools, churches, golf courses and living history museums are allowed in EFU zones under ORS 215.213(1)(a) and (b) and (2)(f) and (v), all of which could involve gatherings of people as large as those proposed for the paintball park.

Based on the definitions cited by LUBA in *Spiering*, and those cited by the Hearings Officer in *Bend Trap Club* and *Dorsett*, staff find that with the exception of weddings, the term "park" clearly includes the types of recreational activities set forth above that the applicant proposes for the private park, including:

- Outdoor eating with family and friends
- Public speaking using a sound system
- Listening to amplified music
- Singing, including karaoke
- Dancing in the pavilion (gazebo)
- Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

The next question is whether the applicant's proposal constitutes a "private park" because it would host weddings. Former Hearings Officer Ed Fitch issued a decision in 1991 denying a conditional use permit for a private park for weddings on an EFU-zoned parcel under former Section 4.040(3)(3) of PL-15, the county's previous zoning ordinance (*Grund*, CU-91-59). That ordinance, like current Section 18.16.031(E), allowed "private parks, playgrounds, hunting and fishing preserves and campgrounds" as conditional uses in the EFU-20 Zone.

The decision in *Grund*, the applicant requested approval "to have a wedding and reception facility" for up to 200 guests. Hearings Officer Fitch cited the following definition of "park" from *Webster's Dictionary*:

"An area of public lands; specifically, (a) an area in or near a city, usually laid out with walks, drives, playgrounds, etc. for public recreation; (b) an open square . . . (c) a large area known for its natural scenery and preserves for public recreation by state and national government . . . (d) a level of open areas surrounded by mountains or forests . . . an area of lands containing pasture, woods, lakes, etc. surrounding a large country house or private estate."

Based on this definition, he made the following findings:

*"6. After reviewing the proposal of the applicant, it does appear that although the applicant's property does establish a park like setting for wedding receptions, **the type of commercial use proposed by the applicant does not fall within the parameters of a 'park use' that is contemplated by the ordinance.** For this reason, the conditional use cannot be approved."* (Bold emphasis added.)

Hearings Officer Fitch focused on the nature of the proposed use – weddings and receptions – and not on the nature of the property itself in determining whether the proposal could be approved. However, because his analysis is so limited, it is not clear whether he concluded weddings and receptions did not constitute a "private park" use in the EFU Zone because they are "commercial," or because they are not "recreation" of the type identified in the ordinary definition of "park." Moreover, the *Grund* decision predates *Spiering* and therefore LUBA's reasoning in that case was not available to Hearings Officer Fitch.

The staff report for CU-13-13/MA-13-3 discussed the *Grund*, *Bend Trap Club* and *Dorsett* decisions and stated:

*"[W]hile weddings may be compatible with park activities and, while weddings may take place on park land, that does not mean that a wedding or other special events as proposed by the applicant meet the definition of park **because they are not primarily a recreational activity.** In the opinion of this reviewer, **the land's design***

and use is primarily for weddings and other special events and not primarily for recreational use. The use of the property for these gatherings is more akin to an outdoor mass gathering or commercial events, as those terms are used in DCC 18.16.020(R) and 18.16.042, respectively.” (Bold emphasis added.)¹

The staff report for CU-13-13/MA-13-3 concluded, as did Hearings Officer Fitch in *Grund*, that a venue established *solely* for weddings and wedding receptions does not constitute a “private park.” However in CU-13-13/MA-13-3 and in the present application, the applicant argues that *all* proposed park activities *including weddings* would constitute “recreation.” Title 18 does not define the terms “recreation” and “wedding.” According to *Webster’s Dictionary and Thesaurus, Second Edition*, their ordinary definitions are:

“Recreation. 1. Refreshment in body or mind, as after work, by some form of play, amusement, or relaxation. 2. Any form of play, amusement or relaxation used for this purpose, as **games, sports, hobbies, reading, walking, etc.**”

“Wedding. 1. a) the act or **ceremony** of becoming married; marriage; b) **the marriage ceremony with its attendant festivities.**” (Bold emphasis added.)

Applying these definitions, the staff finds it is reasonable to find the wedding *ceremony* itself is not “recreation” because it does not typically involve “play” or “amusement” such as the listed activities. However, staff finds that the other types of activities that could occur during wedding *receptions* and other special events would fall within the definition of “recreation” and therefore would be encompassed in the “private park” use.

2. Context. Staff finds that there is nothing in this context of the “private park” use that requires staff to interpret that term to exclude weddings, wedding receptions, and similar events. Staff bases this conclusion on the analysis provided by the Hearings Officer in CU-13-13/MA-13-3:

LandWatch argues the context in which the “private park” use is permitted -- the statutes, administrative rules and ordinances governing uses in the EFU Zone -- precludes holding weddings and wedding receptions in a “private park” because both the legislature and the county adopted provisions to allow weddings as “agri-business” in certain circumstances. In his November 1, 2013 letter, Mr. Dewey points to 2011 Senate Bill 960, codified in ORS 215.283(4), which authorizes counties to allow “agri-tourism and other commercial events or activities that are related to and supportive of agriculture.” Mr. Dewey asserts that because this statute “explicitly” allowed weddings and other events on EFU land under strict conditions designed to protect EFU land it is the exclusive means by which the applicant can obtain approval to host weddings on his property.

¹ Section 18.16.020(T) allows “outdoor mass gathering described in ORS 197.015(10)(d)” as a permitted use in the EFU Zone “subject to DCC Chapter 8.16.” Section 8.16.010 defines “outdoor mass gathering” in relevant part as:

*** * * an assembly of persons, including but not limited to spectators, whose actual cumulative number is or is reasonably anticipated to be less than 3,000 persons but more than 500 persons for a period that continues or can reasonably be expected to continue for more than 4 but less than 240 hours, * * * ***

The Hearings Officer finds there is nothing in ORS 215.283(4), or Sections 18.16.042 and 18.16.043 of the county's zoning ordinance governing "agri-tourism," that expressly addresses weddings or makes "agri-tourism" the only means by which weddings may be authorized on EFU-zoned land. In fact, as Mr. Hunnicutt points out, the statute makes clear "agri-tourism" is not the sole basis for approval of weddings or similar commercial events on EFU land. Section 215.283(6)(c) states:

The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015(10)(d), do not include agri-tourism or other commercial events and activities.

Nor do the county's "agri-tourism" provisions provide the exclusive method for authorizing weddings on EFU-zoned land. Section 18.16.042(A) states the section applies to commercial events or activities "related to and supportive of agriculture." Section 18.16.043 prohibits the combining of agri-tourism and "other commercial events or activities on a lot or tract" to "the total number of commercial events **allowed by any individual land use approval.**" (Emphasis added.) The Hearings Officer finds this language acknowledges there are multiple means by which commercial events or activities such as weddings may be permitted on EFU-zoned land. Therefore, I find there is nothing in this context of the "private park" use that requires me to interpret that term to exclude weddings, wedding receptions, and similar events.

3. Interpretation. The remaining question is whether the applicant's proposed use can be a "private park" if it includes wedding *ceremonies*. Staff finds that a private park designed and operated for outdoor recreation can host weddings and similar ceremonies so long as they are incidental and subordinate to the recreational activities – i.e., minor and secondary activities relative to the recreational activities. Staff bases this conclusion on the analysis provided by the Hearings Officer in CU-13-13/MA-13-3:

I find there is nothing in Title 18 or the existing case law that establishes any particular amount or percentage of outdoor recreational activity that must occur on the subject property in order for it to qualify as a "private park." Nevertheless, even the applicant seems to acknowledge some minimum amount of recreational activity is necessary to qualify as a "private park" use. In his final argument, Mr. Hunnicutt stated:

"Mr. Dewey claims that Mr. Shepherd is arguing that as long as there is any recreational aspect to an event, it qualifies as an activity allowed in a private park. That is not what Mr. Shepherd argues. As we have stated previously, the events being proposed in this application may or may not contain a ceremony. If they do contain a ceremony, the ceremony is brief, and is a very small portion of the overall time spent for the event. Mr. Shepherd has testified that the ceremony is also recreational, but even if it is not considered to be recreational, it is akin to an awards ceremony at a baseball field or soccer event. A

*baseball game does not cease to be a recreational event that can be held in a park due to the fact that the players are presented with an award at a ceremony held after the game. **The fact that a ceremony plays a part in the event does not make the event 'non-recreational,' when the remainder of the activities consist of recreational events** which we have outlined in our previous testimony, even if the ceremony is not considered recreational activity, especially when the recreational events occur for nearly the entirety of the event. **Mr. Shepherd is not arguing, however, that a non-recreational activity can immediately transform itself into a recreational activity by incorporating a nanosecond of recreational activity.**" (Bold emphasis added.)*

...

The Hearings Officer finds Mr. Hunnicutt's analogy to a baseball or soccer event awards ceremony provides a useful construct for determining whether and to what extent the applicant's proposed "private park" may host non-recreational activities such as wedding ceremonies. In those examples, the awards ceremony is related, but is clearly incidental and subordinate, to the underlying recreational activity – i.e., the sports event. The venue, a baseball or soccer field, is designed for the outdoor recreational activity and the ceremony is a minor offshoot of that recreational activity. Using this analogy, a private park designed and operated for outdoor recreation could host weddings and similar ceremonies so long as they are incidental and subordinate to the recreational activities – i.e., minor and secondary activities relative to the recreational activities.

The applicant's burden of proof indicates wedding *ceremonies* would be minor and secondary to the proposed recreational activities, described in his burden of proof as follows:

- Outdoor eating with family and friends
- Public speaking using a sound system
- Listening to amplified music
- Singing, including karaoke
- Dancing in the pavilion
- Lawn games such as volleyball and badminton in the volleyball court, croquet on the lawn, catch, bocce ball, corn hole and ring toss.

The applicant proposes to hold up to 18 events during the late spring, summer and early fall. The events will occur on Saturday. Only one event will occur each week. The events may include a wedding ceremony or they may not. Some events, such as family reunions, school reunions, community dances, and fundraisers will not have any ceremony and some weddings will be held off-site, with only the reception held on the subject property. However, even if a ceremony is part of the event, the ceremony lasts for just a fraction of the time in which the event is held. During the remainder of the event, recreational uses would occur.

Based on the above discussion, staff finds that the proposed events (such as family reunions, school reunions, community dances, wedding receptions and fundraisers) are recreational in nature and that the proposed use constitutes a private park. Staff also finds that the applicant may host wedding ceremonies and similar ceremonies to the extent they are incidental and subordinate to the recreational activities for which the park is designed and operated.

Camping Use

The applicant has proposed that guests be allowed to tent camp or stay in recreational vehicles following events as a precaution against unsafe driving. The applicant states that this use does not constitute a commercial campground. DCC 18.04.030 defines campground as:

“Campground” means an area devoted to overnight, temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor amenity that is accessible for recreational use by the occupants of the campground. It is also where facilities are provided to accommodate camping for two or more tents, travel trailers, yurts or recreational vehicles. A campground shall not include campsite utility hook-ups, intensely developed recreational uses such as swimming pools or tennis courts or commercial activities such as retail stores or gas stations. A private campground may provide yurts for overnight camping. The yurt shall be located on the ground or on a wood floor with no permanent foundation. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. Overnight temporary use in the same campground by a camper or camper’s vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

For any campground use to be allowed on the property, that use would need to fall within the definition of campground and comply with DCC 18.128.320. The applicant did not address this definition or DCC 18.128.320. Staff understands that the applicant does not intend to apply for a campground, but simply make non-commercial camping available on site “...as a precaution against unsafe driving”. As such, staff finds that the applicant has neither applied for nor met the burden-of-proof required for any campground use and that campground use is not allowed under this land use decision.

2. Section 18.16.040, Limitations on Conditional Uses.

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

- 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***
- 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and***
- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

FINDING: The applicant argues and staff concurs that these criteria apply to DCC 18.16.030 uses. “Private park” is allowed under DCC 18.16.031. Therefore, these criteria do not apply. However, the applicant notes and staff concurs that criteria (A)(1) and (A)(2) impose requirements independently required under ORS 215.296:

215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or**
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

The record indicates the dominant tree species in the area surrounding the subject property is juniper which is not a commercial tree species. Therefore, Staff finds there are no surrounding lands devoted to forest uses.

The subject property is surrounded by farm uses on the north, east and west. Typical farm operations in the area include livestock grazing (horses and cattle) on irrigated pasture and grass hay production. Based on staff's measurements from aerial photography, the park site is located approximately 1,600 feet from the farm use to the north (Long Hollow Ranch), 4,200 feet from the farm use to the west, and 2,500 feet from the farm use to the east.

A private park could significantly change accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use if some externality from the proposed park use adversely impacted these farm operations. Staff finds that potential adverse externalities include noise and traffic impacts. Staff notes that the park site is significantly screened from adjacent properties and finds that there is no evidence that visual impacts would adversely impact surrounding farm operations.

Based on comments submitted by the Deschutes County Road Department and Deschutes County Traffic Planner and incorporated herein by reference, Staff finds that Holmes Road is adequate to handle traffic from the proposed use and that the one-day-a-week additional traffic would not significantly change in accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

The applicant has proposed that events will include amplified music up to 90 decibels. Staff finds that typical noise attenuation over distance for 90 decibels is as follows²:

Distance in Feet	Decibels	Equivalent Sound
50	90	Heavy Truck
150	80	Pneumatic Drill
500	70	Vacuum Cleaner
1500	60	Conversational speech
5000	50	Average Home
15000	40	Quiet Library

Staff notes that these numbers are based on a flat topography, no vegetation, and a clear line-of-sight between the amplified music and receiving location. The applicant submitted decibel measurements taken with a handheld meter during 90 decibel playback of amplified music at the park site. Reported measurements included 20 decibels at the east fence line (approximately 800 feet from the park site), 30 decibels at the south fence line (approximately 200 feet from the park site), and undetectable at the north fence line. Staff's research indicates

² <http://chcheating.org/noise/common-environmental-noise-levels/>

that vegetation and topography can significantly reduce sound intensity. Staff notes that the nearest dwelling is approximately 1,400 feet south of the park site and the nearest farm use is approximately 1,600 feet northwest of the park site.

Staff's research efforts produced little information on the adverse impacts of noise to agricultural activities. One research summary³ recommended that noise exposure to horses should be limited to those levels recommended for humans and concluded poultry and pigs would not be significantly adversely affected by noise not to exceed 90 decibels.

Staff finds that, at minimum, noise from amplified music will be reduced to a volume typical of conversational speech before reaching nearby agricultural activities and that the applicant's test sound measurements, in combination with the topographic changes and vegetation, suggest much lower off-site volumes. Therefore, Staff finds that there is no evidence that the proposed amplified music will significantly change accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

B. CHAPTER 18.88, WILDLIFE AREA COMBINING ZONE

1. Section 18.88.040, Uses Permitted Conditionally

- A. *Except as provided in DCC 18.88.040(B), in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, DCC 18.128 and other applicable sections of this title.***

FINDING: A private park is permitted conditionally in the underlying EFU zone and therefore is permitted conditionally in the WA Zone.

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

FINDING: The subject property is located within a WA Zone established to protect the Metolius Deer Winter Range. The applicant's proposed private park is not one of the uses prohibited by

³ [http://www.epa.govt.nz/resource-management/NSP000033/NSP000033_BoD_Volume_4_31_Siiri_Wilkening_\(10_March_2014\)_Summary_of_research_of_noise_effects_on_animals.pdf](http://www.epa.govt.nz/resource-management/NSP000033/NSP000033_BoD_Volume_4_31_Siiri_Wilkening_(10_March_2014)_Summary_of_research_of_noise_effects_on_animals.pdf)

this section. In MA-13-3/CU-13-13 an opponent argued the applicant's proposed use is essentially the same as the recreation use in Subsection (7) and therefore cannot be permitted. The Hearings Officer disagreed. She found that the plain language of Subsection (7) limits the prohibited recreational uses to those "owned and operated by a government agency or a nonprofit community organization," neither of which applies to the applicant. Staff finds this analysis applies equally to the present application.

2. Section 18.88.060, Siting Standards

- A. ***Setbacks shall be those described in the underlying zone with which the WA Zone is combined.***
- B. ***The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:***
 - 1. ***Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; or,***
 - 2. ***The siting within 300 feet of such roads or easements for vehicular access would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least possible impact on wildlife habitat considering browse, forage, cover, access to water and migration corridors, and minimizing length of new access roads and driveways; or,***
 - 3. ***The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.***

FINDING: No new dwelling is included in this proposal. These criteria do not apply.

3. Section 18.88.070. Fence Standards.

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

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

2. **Corrals used for working livestock.**

FINDING: To the extent that the cattle fencing might be viewed "...constructed as a part of development of a property in conjunction with a conditional use permit or site plan review" staff finds that the fencing constitutes "corrals used for working livestock" and is exempt from these criteria.

C. **CHAPTER 18.116, SUPPLEMENTARY PROVISIONS**

1. Section 18.116.020, Clear Vision Areas.

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

B. ***A clear vision area shall consist of a triangular area on the corner of a lot at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines adjoining the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:***

1. ***In an agricultural, forestry or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.***
2. ***In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:***

Right-of-Way Width	Clear Vision
80 feet or more	20 feet
60 feet	30 feet
50 feet and less	40 feet

FINDING: No new structures are proposed. The proposed park will not impact a clear vision area at the intersection of two streets or a street and a railroad.

2. Section 18.116.030, Off-street Parking and Loading.

A. ***Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off-street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall***

be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

FINDING: Staff finds that the applicant has presented plans to show how the off street parking requirements are to be met in a 95-space parking area. As a condition of approval, subsequent use of the property for which this permit is issued shall require the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

B. Off-Street Loading. Every use for which a building is erected or structurally altered to the extent of increasing the floor area to equal a minimum floor area required to provide loading space and which will require the receipt or distribution of materials or merchandise by truck or similar vehicle, shall provide off-street loading space on the basis of minimum requirements as follows:

FINDING: Staff finds that this proposal does not include a “use for which a building is erected or structurally altered” and that DCC 18.116.030(B) does not apply to this proposal.

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

FINDING: The applicant argues that DCC 18.116.030(C) does not apply, as this section only requires parking spaces “be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.” The applicant notes that no structural changes are proposed.

DCC 18.116.030(C) first requires that, “Off-street parking spaces shall be provided and maintained as set forth in DCC 18.116.030 for all uses in all zoning districts.” Staff finds that provision of parking spaces is plainly required under this section. The second portion of this criterion states, “Such off-street parking spaces shall be provided at the time a new building is hereafter erected or enlarged or the use of a building existing on the effective date of DCC Title 18 is changed.” Staff finds that the second sentence of the criterion specifies the timing for the provision of parking for certain specified uses, but does not negate the requirement that parking be “provided and maintained as set forth in DCC 18.116.030 for all uses”. As a condition of approval, all required parking shall be in place prior to initiation of the use.

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

1. Residential.

Use	Requirements
One, two and three family dwellings	2 spaces per dwelling unit

...

9. Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.

FINDING: As proposed, the private park would be open to event participants one weekend day per week beginning in late May of each year and end in early October, not to exceed 18 days per calendar year. Each reception would last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event would be enforced by the applicant.

The existing dwelling unit requires 2 spaces. The private park use falls under "other uses not specifically listed". As such, Staff uses the listed uses, "as a guide for determining requirements for said other uses." Staff finds that this use is somewhat similar to the use "church", in that church use typically includes weddings. DCC 18.116.030(D)(4) requires 1 space per 4 seats for church use. As such, Staff finds that a minimum of 63 spaces ($250 / 4 = 62.5$) must be provided for the private park and two spaces for the dwelling, for a total of 65 spaces. Staff finds that the proposed 95 spaces will provide adequate parking for the private park use as well as the existing dwelling.

E. General Provisions. Off-Street Parking.

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

FINDING: The total requirement for off-street parking equals the sum of the requirements of the several uses (park and residential) computed separately.

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

FINDING: No joint use facilities are proposed.

- 3. Location of Parking Facilities. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.**

FINDING: All parking is located on the subject parcel.

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

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

5. ***Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District and the La Pine UUC Business Park (LPBP) District and the LaPine UUC Industrial District (LPI), but such space may be located within a required side or rear yard.***

FINDING: No parking in a required front yard is included in this approval.

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

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

FINDING: The proposed parking is located over 400 feet from any property line. Staff finds that vegetation and topography will effectively screen the parking area from any adjacent residential use.

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

FINDING: No adjoining property is in a residential zone. This criterion does not apply.

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

FINDING: Parking spaces are located and designed to prevent the need to back vehicles into a street or right-of-way.

4. ***Areas used for standing and maneuvering of vehicles shall be paved surfaces adequately maintained for all weather use***

and so drained as to contain any flow of water on the site. An exception may be made to the paving requirements by the Planning Director or Hearings Body upon finding that:

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

FINDING: The applicant has proposed a cinder surface for the driveway from Holmes Road and the parking area. Since the use is located outside of an unincorporated community, an exception to the paving requirement is allowed provided the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties. However, based on the comment by the Deschutes County Transportation Planner, quoted above and incorporated herein by reference, Staff finds that cinder is not an all-weather surface that complies with this criterion. As a condition of approval, areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties.

Staff also finds that any storm water drainage from the driveway and parking area will drain to adjacent pervious surfaces and so be contained on-site.

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

FINDING: Table 1 at the end of Chapter 18.116 requires, at minimum, a twenty-four-foot-wide surface for two-way traffic and 12-foot-wide surface for one-way traffic. The applicant has proposed a minimum of a thirty-two-foot-wide surface for two-way traffic and 16-foot-wide surface for one-way traffic. Staff finds that the proposed parking area includes travel surfaces of sufficient width for all vehicular turning and maneuvering.

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

FINDING: No service drives are proposed.

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

FINDING: No service drives are proposed.

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

FINDING: The proposed parking is located over 400 feet from any property line or a street right of way. Staff finds that no curbs or bumper rails are required to prevent a motor vehicle from extending over an adjacent property line or a street right of way.

- G. ***Off-Street Parking Lot Design. All off-street parking lots shall be designed subject to County standards for stalls and aisles as set forth in the following drawings and table:***

(SEE TABLE 1 AT END OF CHAPTER 18.116)

1. ***For one row of stalls use "C" + "D" as minimum bay width.***
2. ***Public alley width may be included as part of dimension "D," but all parking stalls must be on private property, off the public right of way.***
3. ***For estimating available parking area, use 300-325 square feet per vehicle for stall, aisle and access areas.***
4. ***For large parking lots exceeding 20 stalls, alternate rows may be designed for compact cars provided that the compact stalls do not exceed 30 percent of the total required stalls. A compact stall shall be eight feet in width and 17 feet in length with appropriate aisle width.***

FINDING: The applicant has proposed nine-foot-wide by twenty-foot-deep head-in parking spaces. The applicant has proposed a minimum of a thirty-two-foot-wide surface for two-way traffic and 16-foot-wide surface for one-way traffic. The proposed spaces comply with County standards for stalls and aisles as set forth Table 1.

3. Section 18.116.031. Bicycle Parking.

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

- A. ***Number and Type of Bicycle Parking Spaces Required.***
 1. ***General Minimum Standard.***

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

FINDING: The proposed private park is located outside of an unincorporated community, a destination resort, or a rural commercial zone. An exception to the bicycle parking standards is warranted since the use of the site (formal events in a park setting), requires equipment (formal attire, catering equipment) that makes it unlikely that a bicycle would be used to access the site. Staff finds that no bicycle parking is required for this use.

C. CHAPTER 18.124, SITE PLAN REVIEW

1. Section 18.124.030. Approval Required.

- A. **No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.**
- B. **The provisions of DCC 18.124.030 shall apply to the following:**
 - 1. **All conditional use permits where a site plan is a condition of approval;**
 - 2. **Multiple family dwellings with more than three units;**
 - 3. **All commercial uses that require parking facilities;**
 - 4. **All industrial uses;**
 - 5. **All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community**

- buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and*
6. *As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).*

FINDING: The site is a park and recreation facility that requires parking facilities. The provisions of this chapter apply.

2. Section 18.124.060. Approval Criteria.

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

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

FINDING: No new structures or earthmoving are included in this proposal. Topography, vegetation and distance will either completely or significantly buffer the park use visually from nearby properties. Therefore, staff finds this proposal minimizes visual impacts and preserves views and topographical features.

Staff divides the remaining findings under this criterion into those pertaining to the natural environment and those pertaining to existing development.

NATURAL ENVIRONMENT

The natural environment on the property consists of juniper scrub woodland in the mapped Tumalo Winter Deer Range. Under DCC 18.128.015(A)(3), below, staff finds that the proposed private park is compatible with the natural resources, including wildlife habitat and deer, on the property. Staff finds that those findings also demonstrate that the proposed private park would relate harmoniously to the natural environment, as required under this criterion, and incorporate those findings herein by reference.

Findings regarding the Wildlife Management Plan are included in the Existing Development section below, as this plan was required in association with the farm related dwelling.

EXISTING DEVELOPMENT

Existing development of the property consists of residential and agricultural use. Existing structures include a dwelling, barn, and gazebo. The existing farm-related dwelling was approved under County File Nos. MA-01-9/CU-00-65 and included a Farm Management Plan (FMP) and Wildlife Management Plan (WMP). Staff finds that a private park proposal would not relate harmoniously to existing development if it precluded or significantly interfered with residential use of the property, agricultural use of the property, or compliance with the WMP.

Residential Use

The private park would be open to event participants one weekend day per week beginning in late May of each year and end in early October, not to exceed 18 days per calendar year. Each

reception would last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event would be enforced by the applicant.

Event participants would have limited access to the existing dwelling and full access to a gazebo on the property. The wedding party (including bridesmaids, groomsmen, and immediate family) will have access to the main floor of the home and two upstairs rooms. Weddings will not be conducted inside the dwelling. Temporary tents and the gazebo will be used in the event of inclement weather.

Restrooms will be provided through portable restrooms and guest access provided to an existing downstairs restroom in the dwelling. Food is either prepared off site or cooked on-site by licensed caterers using their own equipment. The existing kitchen in the dwelling will be used for food assembly only.

Staff finds that the proposed private park use will only occur at the discretion of the applicant, is of limited duration, and involves no significant changes to the residence. Therefore, the proposed private park use would not preclude or significantly interfere with residential use of the property.

Agricultural Use

Prior Approvals

The existing farm-related dwelling was approved in conjunction with a Farm Management Plan (FMP). The prior approval (MA-01-9/CU-00-65), granted to the applicant's predecessor, required that the property be "...currently employed in farm use, as evidenced by a farm management plan...". In CU-00-65/MA-01-9 the following findings were made regarding farm use of the property:

The applicant has proposed to modify the submitted application for a conditional use permit (CU-00-65) to allow the establishment of a farm-related dwelling on an approximate 216 acre, unirrigated, non-high value parcel. The applicant proposes to modify CU-00-65 by proposing a new homesite location and modifying the farm management plan. The modified application indicates that the property currently supports 24 head of cattle, has perimeter fencing and watering troughs. The applicant has submitted financial documents, photographs, soils and irrigation maps, a site plan and burden of proof statement in support of this application, which are incorporated herein by reference. According to the modified farm management plan and business plan, and verified by staff during a visit to the property on May 31, 2001, the subject property currently supports 24 head of cattle, has perimeter fencing along the boundary of the subject property, watering troughs for livestock that are filled with water that according to the applicant will be hauled onto the property until such time a well is installed and electricity provided to the property. The applicant also indicates that they intend to obtain water rights from Squaw Creek Irrigation District. In addition, the applicant indicates that they propose to incorporate approximately 30 hogs into the livestock operation following occupancy of the proposed farm dwelling. The applicant's plot plan depicts the location of areas that are used for livestock grazing. Based on the above findings and the applicant's burden of proof statement, staff finds this criterion to be satisfied.

Staff finds that there is nothing in the dwelling approval that requires the applicant to continue the prior owner's agricultural operations or to complete the future activities described in the FMP. This criterion requires that the proposed development relate harmoniously to existing development. Since neither the previous cattle operation nor the contemplated hog operation is "existing" on the property, Staff finds there is no requirement under this criterion that the private park be harmonious with those farm uses.

Current Farm Use

The current agricultural use of the property includes approximately 2 acres used to raise poultry for-profit and small-scale livestock grazing (limited to a single ewe at the time of application). Staff finds that these farm uses are conducted outside of the proposed private park area and that they would not be precluded or significantly interfered with by the private park.

Future Farm Use

In the applicant's January 12, 2015 Incomplete Letter Response, the applicant indicated that 3.5 acres of Three Sisters Irrigation District water rights are being obtained and will be applied to the existing lawn area (0.9 acres) and a new fenced grazing area in the southeast corner of the property. The grazing area will encompass approximately 17 acres that include 2.5 acres of future irrigation. No fewer than 10 head of cattle will be kept in this grazing area during the months of park operation.

During winter months (outside of park operations), the cattle will be penned and hayed in an area adjacent to the applicant's barn. During the spring, the cattle would graze other areas of the property, but not the private park area.

The applicant also proposes an indoor/outdoor penned chicken operation on the property, to be located within the existing barn area. The chicken operation will not occur in the area set aside for park use.

Since these farm uses are not "existing" on the property, Staff finds there is no requirement under this criterion that the private park be harmonious with those farm uses. However, Staff finds that the private park use will be separated spatially and/or temporally from contemplated farm use of the property and that the private park would not preclude or significantly interfere with the contemplated farm use.

Wildlife Management Plan

The Wildlife Management Plan (WMP) approved under (MA-01-9/CU-00-65) includes required actions on the part of the land owner as part of the dwelling location approval. To the extent that the proposed park use could somehow preclude or significantly interfere with the land owner's ability to complete those required actions, the private park proposal would not relate harmoniously with the residential use of the subject property.

Under DCC 18.128.015(A)(1) below, staff finds that the proposed private park is compatible with both the 2001 WMP and will likely be compatible with the proposed modification of the WMP that has not yet received final land use approval. Staff finds that those findings also demonstrate that the proposed private park would relate harmoniously to the existing dwelling and its wildlife obligations, as required under this criterion, and incorporate those findings herein by reference.

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

FINDING: No new structures or topographical changes are included in this proposal. The existing structures and lawn area were developed in association with residential use of the property and are not part of this proposal. Staff finds that the approximately 1-acre parking area preserves the existing landscape to the greatest extent possible, considering development constraints (required parking needed to accommodate the proposed use). No removal of vegetation outside the “park site” is proposed for the park use.

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

FINDING: Transitions from public to private spaces occur at the driveway entering the property, the long vegetated drive to the park site, and in the existing dwelling, which will be partially used in support of the private park.

Safety – Waste Water

The Deschutes County Environmental Soils division has identified that an Authorization Notice is required prior to park use of the existing restrooms in the dwelling for park use. Septic system upgrades may be required. Staff includes a condition of approval requiring the applicant to provide documentation from the Deschutes County Environmental Soils Division that the septic system is adequate for the proposed park use, prior to the initiation of the use. In addition, Deschutes County Environmental Soils Division has recommended that portable toilets be provide for events at a rate of one toilet for every 50 – 100 persons at the event. Staff includes a condition of approval that, at minimum, one portable toilet be provided per 100 attendees) at park events.

Safety – Structural

Staff understands the Deschutes County Building Division comment, quoted above and incorporated herein by reference, to identify required electrical, fire safety, and perhaps structural requirements. As a condition of approval, the applicant shall provide written documentation from the Building Division that the on-site structures and electrical systems are suitable for the park use, prior to initiation of the use.

Safety- Fire

A January 27, 2015 email from Cloverdale Fire Department stated that the department has, “...no issues with allowing...” the proposed private park.

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

FINDING: The County Building Division will notify the applicant of any accessibility requirements.

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

FINDING: The site plan provides a single point of access to the site via the driveway from Holmes Road. Interior circulation includes a driveway circling the lawn area and accessing the barn, park vehicle parking area, and existing dwelling. Given the significant setback between the “park area”, property lines, and adjacent uses, Staff finds that there will be no conflict with off-site uses regarding access and circulation. Staff finds the proposed site plan will result in access and circulation that is harmonious with on- and off-site development.

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

FINDING: Storm water drainage will continue to be directed to undeveloped juniper scrub woodland. Staff finds this will prevent adverse impacts on neighboring properties, streets or surface and subsurface water quality.

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

FINDING: No new structures or facilities regulated under this criterion are proposed. The parking area will be screened by existing vegetation, minimizing adverse impacts on the site and neighboring properties.

- H. *All aboveground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.***

FINDING: No new aboveground utility installations are proposed.

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

FINDING: Specific zoning standards for the site have been addressed above.

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

FINDING: A condition of approval requires that any exterior lighting in association with this project comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the Deschutes County Code (DCC).

- K. Transportation access to the site shall be adequate for the use.**
- 1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.**
 - 2. Mitigation for transportation-related impacts shall be required.**
 - 3. Mitigation shall meet applicable County standards in DCC 17.16 and DCC 17.48, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.**

FINDING: The Deschutes County Road Department commented in response to this application, "Holmes Road is classified as a rural collector in the County maintenance system. Traffic volumes on this section of Holmes Road are less than 400 ADT. There will be no adverse impact to Holmes Road from this application." The County Transportation Planner concluded in his comment, quoted above and incorporated herein by reference, that no traffic study is required. Staff, therefore, finds that transportation access is adequate to the site.

2. Section 18.124.070. Required Minimum Standards.

B. Required Landscaped Areas.

- 1. The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:**
 - a. A minimum of 15 percent of the lot area shall be landscaped.**
 - b. All areas subject to the final site plan and not otherwise improved shall be landscaped.**

FINDING: Staff finds the proposed park is not a multi-family, commercial⁴, or industrial development and is not subject to the provisions of 18.124.070(B).

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

FINDING: The 95 parking spaces require 2,375 square feet of landscaping under this criterion. The proposed parking is wholly surrounded with natural landscaping⁵ and will comply with this criterion.

⁴ DCC 18.04.030 - "Commercial use" means the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals or wholesale distribution centers.

⁵ DCC 18.04.030 - "Landscaping" means trees, grass, bushes, shrubs, flowers, and garden areas, and incidental arrangements of fountains, patios, decks, street furniture and ornamental concrete or stonework and artificial plants, bushes or flowers.

- b. *In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscaped strip at least five feet in width.*
- c. *A landscaped strip separating a parking or loading area from a street shall contain:*
 - i. *Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.*
 - ii. *Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.*
 - iii. *Vegetative ground cover.*

FINDING: The proposed parking area is located over 400 feet from any property line and is separated from those lot lines by extensive natural and introduced landscaping.

- d. *Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.*
- e. *The landscaping in a parking area shall have a width of not less than five feet.*
- f. *Provision shall be made for watering planting areas where such care is required.*
- g. *Required landscaping shall be continuously maintained and kept alive and attractive.*
- h. *Maximum height of tree species shall be considered when planting under overhead utility lines.*

FINDING: The proposed parking is wholly surrounded with natural landscaping and will comply with this criterion.

C. Nonmotorized Access.

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

FINDING: As discussed above, staff finds that no bicycle parking is required for this use under DCC 18.116.031.

2. Pedestrian Access and Circulation:

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

FINDING: The proposed private park is not a new commercial, office, or multi-family residential development. This criterion does not apply.

- b. Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.**
- c. Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.**
- d. Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.**
- e. To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings**

FINDING: Staff finds that (b) through (e) apply to any use subject to site plan review. The applicant did not show pedestrian walkways at the proposed park. Staff follows the Hearings Officer decision in CU-14-7 where the Hearings Officer found that, "...these criteria have limited application to the applicants' proposal inasmuch as there is only one commercial use proposed for the subject property, and there will be a single building entrance for that use. Therefore, I find there is no need to apply these criteria to require particular pedestrian circulation or walkways on the property." Staff finds that there is no need to provide pedestrian walkways in this case as 1) there is only a single building entrance, 2) it is very unlikely that anyone would access the site on foot, and 3) there are no existing or planned transit facilities in the area.

D. Chapter 18.128, Conditional Use

- 1. Section 18.128.015. General standards governing conditional uses.

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

- A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:**

FINDING: Staff finds that these criteria require the applicant to demonstrate that the subject property is capable of being put to the proposed use. To the extent that another current or required use of the property could somehow preclude or significantly interfere with the proposed park use, the applicant is required to reconcile these competing uses.

1. *Site, design and operating characteristics of the use;*

FINDING: The applicant has proposed a private park on the subject property. Staff incorporates herein by reference the "Proposal" section, above, which describes the proposed park siting on the property, design of the park, and operating characteristics of the park.

Existing use of the subject property (the "site under consideration") consists of a residential and agricultural use. Existing structures include a dwelling, barn, and gazebo. The existing farm-related dwelling was approved in County File Nos. MA-01-9/CU-00-65 and that approval was granted under a Farm Management Plan (FMP) and Wildlife Management Plan (WMP). Staff finds that subject property would not be suitable for the proposed use if the private park proposal would preclude or significantly interfere with residential use of the property, agricultural use of the property, or compliance with the required WMP.

Residential Use

Under DCC 18.124.060(A), Staff found that the proposed private park use will only occur at the discretion of the applicant, is of limited duration, and involves no permanent changes to the residence. Therefore, the proposed private park use would not preclude or significantly interfere with residential use of the property.

Agricultural Use

Prior Approvals

Under DCC 18.124.060(A), Staff found that there is nothing in the dwelling approval (MA-01-9/CU-00-65) that requires the applicant to continue the prior owner's agricultural operations or to complete the future activities described in the FMP. Therefore, staff finds that the private park is not required to be compatible with those specific agricultural operations.

Current Farm Use

The current agricultural use of the property includes approximately 2 acres used to raise poultry for-profit and small-scale livestock grazing (limited to a single ewe at the time of application). Staff finds that these farm uses are conducted outside of the proposed private park area and that they would not be precluded or significantly interfered with by the private park use.

Future Farm Use

In the applicant's January 12, 2015 Incomplete Letter Response, the applicant described contemplated future farm use of the property. Since those farm uses are not a current or required use of the property, Staff finds there is no requirement under this criterion that the private park be compatible with those farm uses. However, Staff finds that the private park use will be separated spatially and/or temporally from the contemplated future farm use of the property and that the private park would not preclude or significantly interfere with the contemplated future farm use.

Wildlife Management Plan

Original Wildlife Management Plan

Staff finds that the Wildlife Management plan approved under (MA-01-9/CU-00-65) includes required actions on the part of the land owner as part of the dwelling location approval. To the extent that the proposed park use could somehow preclude or significantly interfere with the land owner's ability to complete those required actions, the private park proposal would be incompatible with the residential use of the subject property.

The subject property is located in a Wildlife Area Combining Zone designated as a Metolius Deer Winter Range. The site of the existing dwelling was approved under CU-0065/MA-01-9, which included the following findings under DCC 18.88.060(B)(1)⁶:

The applicant previously proposed to situate the homesite within 300 feet of an existing road identified as a "jeep" road. As part of the modified application, the applicant proposes to situate the homesite beyond 300 feet from a public road, private road or recorded easements for vehicular access existing as of August 5, 1992. The applicant's burden of proof statement provides the following in response to this criterion:

Applicant proposes to locate the dwelling site and human activity areas, outside the 300 foot area, fact is the jeep road area is in the center of the corridor where the wildlife travel and browse. The new dwelling site is proposed to be at the East and South edge of the plateau rimrock area. This location will provide the least impact on the wildlife habitat considering browse, forage, cover, access to water and migration corridors. The subject property has a unique topography in that there is a plateau atop a rimrock cliff along the East and South side. This is the least productive area for the natural bunch grass that covers the property. The remainder of the property will be used for cattle grazing and a hog operation/pinned area. The wildlife will have full access to the property in the same manner as they do now. As this location will not change their corridors or natural habits they have now and the past many years. Due to the fact that the home and human activities will be all on the rimrock area. And not located in the middle of their corridor. The proposed driveway from the jeep road will also provide a fire break road and this will benefit the wildlife as well as home owner and BLM properties. Applicant feels this dwelling location will provide the least possible impact on wildlife habitat, considering browse, forage cover, access to water and migration corridors. Applicant is in the process of purchasing Squaw Creek Irrigation water.

⁶ Section 18.88.060. Siting Standards.

B. The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:

1. Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; ...

On 3-19-01, conference with Steven George from ODFW, developing a management plan for Wildlife on my property. My desire to put the home and farm operation area away from the middle of the property to enable me to stay out of the corridor area used by the wildlife. We have agreed to a plan that works with cattle management and wildlife management. This property is large enough to handle one residence, a small cattle operation and hog farm, but still not hinder the natural habitats of any wildlife that is already established there or will come there. The plan outline to be as stated below:

1. Browsing area would not be disturbed by any building along the middle of the property, also along the road in and out. This keeps the corridor open.
2. Human activities and barn area and pinned [sic] areas will be located totally on the S.E. corner of the plateau near the rimrock, follow-all regulations for set-backs.
3. Applicant would plant a buffer zone of mixed trees to provide a buffer zone for the wildlife and the human activities. This would include, but not limited to Aspens, Birch, Ponderosa pines, Maples, and Dogwoods. Middle size shrubs would be included in the landscape buffer plan. Applicant would stay with a lot of the natural shrubs that Steven mentioned. The buffer would be on the south, west and north sides of the human activity area and farm operations area.
4. Management of this acreage would follow along the lines to keep it in its natural state. Cutting the many small juniper trees, to promote the natural growth of the sagebrush, bitter brush and bunch grasses.
5. Applicant is in the process of purchasing irrigation water from Squaw Creek Irrigation District, using this water to promote natural grasses to grow. Applicant is planting a plot of pine trees around 300 feet to make a larger buffer from the center of the property.
6. Steven George would like it, if the cattle could be moved to another area during the months of September through February each year. This would allow some growth for winter feeding needs for the wildlife. He asked how large a herd I would have, I state about 25 head at any one time. He liked the idea of a smaller herd. I agreed to taking the cattle to another grazing area in the in the fall and winter months. I want the grazing areas to not be over grazed either as it benefits my cattle operations to have that natural vegetation coming back each year. A farm plan is a better plan if it benefits all resources, private and natural.
7. Fencing is about to start and will be built according to regulations for wildlife friendly according to Section 18.88.070, Fencing standards Distance between the

ground and bottom strand or board is 15 inches. Height will not exceed 48 inches.

8. This property will have one family home on it and only one road to the home. There will be very little road usage on the property due to the type of farming operation present there. This works well due to the type of farming operation present there. This works well on this rocky type of land and yet it can still produce a profit and benefit the local community and merchants. By clearing out the small juniper trees this operation will also help the wildlife in the area. We all will benefit from this site location.

The record includes a letter from Steve George, District Wildlife Biologist with the Oregon Department of Fish and Wildlife, dated April 5, 2001, which states, "The applicant's plans, as outlined in her March 21 letter with attachments, will provide for equal or greater protection for wildlife with the following recommendation. I would like the following recommendation considered in addition to the referenced plan by the applicant. The natural vegetation growing on her property should be maintained as stated in number 5 of her plan. This should be expanded to only allow the thinning of young juniper, less than 10 years old. Bitterbrush and sagebrush would not be removed. Pruning of juniper would not be allowed."

Included as part of the applicant's plans "in her March 21st letter", as referenced in the letter from Steven George, is the applicant's plot plan submitted with this modified application. According to the applicant's plot plan, the proposed farm dwelling would be situated approximately 1,050 feet from the east property line, 112 feet from the south property line, 2,100 feet from the north property line and 1,591 feet from the west property line. This proposed homesite is beyond 300 feet from a public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992, however, based on ODFW's review and recommendation of the proposed homesite location, staff finds that the proposal can afford habitat values (i.e., browse, forage, cover, access to water) and migration corridors equal or greater protection though the proposed development pattern through compliance with the Wildlife Management Plan and the additional recommendation by ODFW referenced in his April 5, 2001 letter.

Staff finds that in order to be afforded "equal or greater protection," compliance with the Wildlife Habitat Plan (Included as Exhibit "A" of this decision), and the recommendations of the wildlife biologist with ODFW is necessary, thus, they will be made conditions of approval. Based on the above findings, and through compliance with conditions of approval, staff finds that this criterion can be satisfied.

The existing wildlife management plan was developed by the applicant's predecessor and, to date, several requirements in the 2001 WMP have not been completed. In addition, several requirements were identified by ODFW on a September 25, 2014 site visit as "not practical to implement". A review by ODFW and the applicant's biologist, Ray Romero, has identified the shortcomings in both clarity of required actions and overall habitat enhancement value of the existing WMP.

On December 18, 2014 staff issued an administrative approval of a modification (247-14-000401-MC) to an existing conditional use decision (CU-00-65/ MA-01-9). A Wildlife Management Plan (WMP) was required because the dwelling was not located near a pre-existing road or driveway in the Metolius Winter Deer Range [see DCC 18.88.060 (B)(1)] in the Wildlife Area Combining Zone (WA). The modification wholly removed the Wildlife Management Plan (WMP) required under the previous decision and replaced it with six conditions of approval designed to protect and enhance deer habitat on the property. By Order 2014-046, dated December 29, 2014, the Board initiated review of this application under DCC 22.28.050 through a *de novo* hearing. On December 30, 2014, Central Oregon Landwatch filed a timely appeal of this application. The notice of appeal identifies six objections to the administrative decision. Since this modification is under appeal and has not received final local approval, Staff finds that the existing Wildlife Management Plan applies for the purposes of this decision.

Staff finds that, with the possible exclusion of 2001 WMP #8, the proposed park would not preclude or significantly interfere with the land owner's ability to complete the required actions of the 2001 WMP, as the required actions would occur on land outside of the developed private park site.

Item #8 of the 2001 WMP states, in part, "There will be very little road usage on the property due to the type of farming operation present there." The proposed park use, with up to 250 guests on 18 days would not constitute "very little road usage". However, the events would occur between late May and early October. Based on information provided by the applicant's Wildlife Biologist, Ray Romero, and staff discussions with Corey Heath of ODFW, Staff finds that the operating period of the private park falls outside the period when deer would be using the mapped Metolius Winter Deer Range on the subject property. Use of the property, including the access road, during the park's off season would be limited in scope and only include residential and agricultural activities. Therefore, Staff finds that the proposed private park is not incompatible with the 2001 WMP.

Modified Wildlife Management Plan

Since the proposed modification of the Wildlife Management Plan (247-14-000401-MC), is under appeal and has not received final local approval, Staff finds that it does not presently impose any required actions that could result in incompatibilities with the proposed private park.

Should the modification of the Wildlife Management Plan receive final approval in the future, Staff is uncertain if the final conditions of that approval will include any incompatibilities with the proposed private park. Staff notes, however, that the modified WMP, to date, has focused on deer forage enhancement outside of the developed private park site. For this reason, Staff finds that is unlikely that the modified WMP, if approved, will include any incompatibilities with the proposed private park. To ensure that the proposed private park is not incompatible with a final WMP, modified or not, Staff imposes a condition of approval requiring the land owner to comply with the current final Wildlife Management Plan (WMP) for the subject property. Where the final WMP for the subject property includes required actions that conflict spatially or temporally with the private park operations, the required actions of that WMP shall take precedence and the operations of the private park shall be curtailed to the extent necessary to allow full compliance with the WMP. Where the final WMP for the subject property includes required actions and the WMP does not specify a completion date or timeline, those actions shall be completed prior to initiation of the private park use. Where the final WMP for the subject property includes required ongoing actions, the private park shall only operate while in compliance with those required ongoing actions.

The subject property will be suitable for the proposed private park, as conditioned, based on the characteristics of the site and the design and operating characteristics of the use.

2. Adequacy of transportation access to the site; and

FINDING: The Deschutes County Road Department commented in response to this application, "Holmes Road is classified as a rural collector in the County maintenance system. Traffic volumes on this section of Holmes Road are less than 400 ADT. There will be no adverse impact to Holmes Road from this application." The County Transportation Planner concluded in his comment, quoted above and incorporated herein by reference, that no traffic study is required. Staff, therefore, finds that transportation access is adequate to the site.

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

FINDING: The proposed park site is generally level and suitable topographically for park use. No changes to topography are proposed. The property is not subject to flooding and is served by the Cloverdale Fire Protection District. The site does not contain natural resources such as mineral resources or merchandisable tree species. The Hearings Officer found in CU-13-13/MA-13-3, "The subject property is located within a WA Zone and the Metolius Deer Winter Range, signifying it has natural resource value as wildlife habitat." Staff concurs. Staff finds that the proposed private park use could be incompatible with the wildlife habitat on the property if that use would adversely impact deer or the on-site habitat on which they depend.

Specifically, Staff finds that analysis under this criterion is limited to the direct and indirect impacts to deer and their on-site habitat from the private park use. The private park use will be limited to the existing developed park area and access driveway. No changes to the existing scrub juniper woodland habitat are required or proposed for operation of the private park. Therefore, staff finds that the park will have no direct or indirect impacts to the existing habitat values on the property.

Proposed use of the private park would occur between late May and early October. Based on information provided by the applicant's Wildlife Biologist, Ray Romero, and staff discussions with Corey Heath of ODFW, Staff finds that the operating period of the private park falls outside the period when deer would be using the mapped Metolius Winter Deer Range on the subject property. Therefore, Staff finds that the proposed private park use would not result in direct impacts to deer, as the deer would be not be on-site during the park's operating season. Staff found the park use would not impact on-site habitat, therefore, Staff finds that the private park use would not indirectly impact deer. For these reasons, staff finds that the proposed private park use is compatible with the natural resource values of the subject property.

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

FINDING: The subject property is surrounded by properties zoned EFU in both public and private ownership. To the north is an approximately 540-acre property engaged in cattle grazing and developed with a guest ranch (Long Hollow Ranch). Other land to the north along Holmes Road is generally engaged in farm use. To the south is a large undeveloped, publicly-owned

tract owned and managed by the US Bureau of Land Management (BLM) that consists of juniper woodland. Also to the south is an approximately 80-acre parcel engaged in farm use and developed with a single-family dwelling. Adjacent to and east of the subject property is a 77-acre parcel engaged in farm use and developed with a dwelling. Adjacent to the west are two 40-acre parcels, each of which is developed with a single-family dwelling. Further to the west are two approximately 100-acre parcels engaged in farm use. Staff, therefore, finds that projected uses on surrounding properties include agriculture, rural residential, and federally-owned open space.

Site, Design and Operating Characteristics of the Use

Staff finds that the proposed park use could be incompatible with nearby agriculture, rural residential, and open space uses where some externality of the park use would adversely impact those uses. Staff finds that potential adverse externalities include noise and traffic impacts. Staff notes that the park site is significantly screened from adjacent properties and finds that there is no evidence that visual impacts would adversely impact surrounding agriculture, rural residential, and open space uses. Staff has previously found that, at minimum, noise from amplified music will be reduced to a volume typical of conversational speech before reaching surrounding properties and that the applicant's test sound measurements, in combination with the topographic changes and vegetation, suggest much lower off-site volumes. In addition, a condition of approval requires park events, including all amplified music, to conclude by 10 p.m. Therefore, staff finds that the proposed park would be compatible with surrounding agriculture, rural residential, and open space uses based on the site, design, and operating characteristics of those uses.

Adequacy of Transportation Access to the Site

Staff has found, above, that Holmes Road has adequate capacity for the proposed park use. Staff finds that the proposed park use would not significantly adversely impact transportation access to surrounding agriculture, rural residential, and open space uses.

Natural and Physical Features of the Site, Including, but Not Limited to, General Topography, Natural Hazards and Natural Resource Values

Staff finds that the proposed private park use would not impact the topography, create new natural hazards, or exacerbate any existing natural hazard on surrounding properties. Surrounding properties do not contain natural resources such as mineral resources or merchandisable tree species. Property to the south and west falls within the Wildlife Area Combining Zone (WA) and the Metolius Deer Winter Range. The proposed private park use would not indirectly impact deer or their habitat off-site, as there would be no habitat changes off-site. Potential direct off-site impact to deer would be limited to noise, however, the proposed private park use would not result in direct impact to deer, as the deer would not be on surrounding properties during the park's operating season.

2. Section 1818.128.090, Medical Clinic, Veterinary Clinic, Club, Lodge, Fraternal Organization, Community Center, Grange Hall, Golf Course, Horse Stable and Horse Events Requiring Conditional Uses, Grounds and Buildings For Games or Sports, Country Club, Swimming, Boating, Tennis Clubs and Similar Activities, Government Structures and Land Uses, Parks, Playgrounds.

In considering the above, the Planning Director or Hearings Body may authorize the conditional use after it has been determined that the following will be provided:

A. Access from principal streets subject to Deschutes County Road Department standards.

FINDING: The subject property has access from Holmes Road, a designated rural collector road improved to county standards.

B. Off street parking subject to DCC 18.116.030.

FINDING: Relevant standards of DCC 18.116.030 are discussed in detail above. Those findings are incorporated herein by reference.

C. Building and site design provisions, including landscaping, that will effectively screen neighboring uses from noise, glare, odor and other adverse impacts.

FINDING: Staff has previously found that potential adverse externalities from the private park use include noise and traffic impacts. Staff notes that the park site is significantly screened from adjacent properties and finds that there is no evidence that visual impacts would adversely impact neighboring uses. Staff has previously found that, at minimum, noise from amplified music will be reduced to a volume typical of conversational speech before reaching surrounding properties and that the applicant's test sound measurements, in combination with the topographic changes and vegetation, suggest much lower off-site volumes. In addition, a condition of approval requires park events, including all amplified music, to conclude by 10 p.m. Therefore, staff finds that the proposed park would be compatible with surrounding agriculture, rural residential, and open space uses based on the site, design, and operating characteristics of those uses.

D. Playgrounds, recreation facilities and community centers in the Wildlife Area Combining Zone are subject to the provisions of DCC 18.88.

FINDING: In MA-13-3/CU-13-13, the Hearings Officer found the "playgrounds" and "recreation facilities" prohibited in the WA Zone protecting deer winter ranges are those owned and operated by government agencies and nonprofit organizations, and therefore the applicant's proposal is not subject to that prohibition. Other relevant standards of DCC 18.88 are discussed in detail above. Those findings are incorporated herein by reference.

IV. CONCLUSION:

The proposed conditional use application can meet the requirements of Title 18 of the Deschutes County Code.

V. DECISION:

APPROVAL, subject to the following conditions.

VI. CONDITIONS OF APPROVAL:

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.
2. The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use.
3. Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
4. All areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties..
5. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
6. Any exterior lighting in association with this project shall comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the Deschutes County Code (DCC).
7. Subsequent use of the property for which this permit is issued is conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.
8. All required parking shall be in place prior to initiation of the use.
9. The private park shall only be open to event participants one weekend day per week beginning on May 15 of each year and ending on October 15, not to exceed 18 days per calendar year. Each event shall last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event shall be enforced by the applicant. Any park use on the property by non-residents shall count as an "event".
10. The land owner shall comply with the current final Wildlife Management Plan (WMP) for the subject property. Where the final WMP for the subject property includes required actions that conflict spatially or temporally with the private park operations, the required actions of that WMP shall take precedence and the operations of the private park shall be curtailed to the extent necessary to allow full compliance with the WMP. Where the final WMP for the subject property includes required actions and the WMP does not specify a completion date or timeline, those actions shall be completed prior to initiation of the private park use. Where the final WMP for the subject property includes ongoing required actions, the private park shall only operate while in compliance with those required ongoing actions.

11. The applicant to provide documentation from the Deschutes County Environmental Soils Division that the septic system is adequate for the proposed park use, prior to the initiation of the use.
12. At minimum, one portable toilet shall be provided per 100 attendees (or fraction thereof) at park events.

VII. DURATION OF APPROVAL:

The applicant shall initiate the private park use within two (2) years of the date this decision becomes final, or obtain an extension under Title 22 of the County Code, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Will Groves, Senior Planner



Reviewed by: Peter Gutowsky, Planning Manager

Dated this 3rd day of February, 2015

Mailed this 3rd day of February, 2015

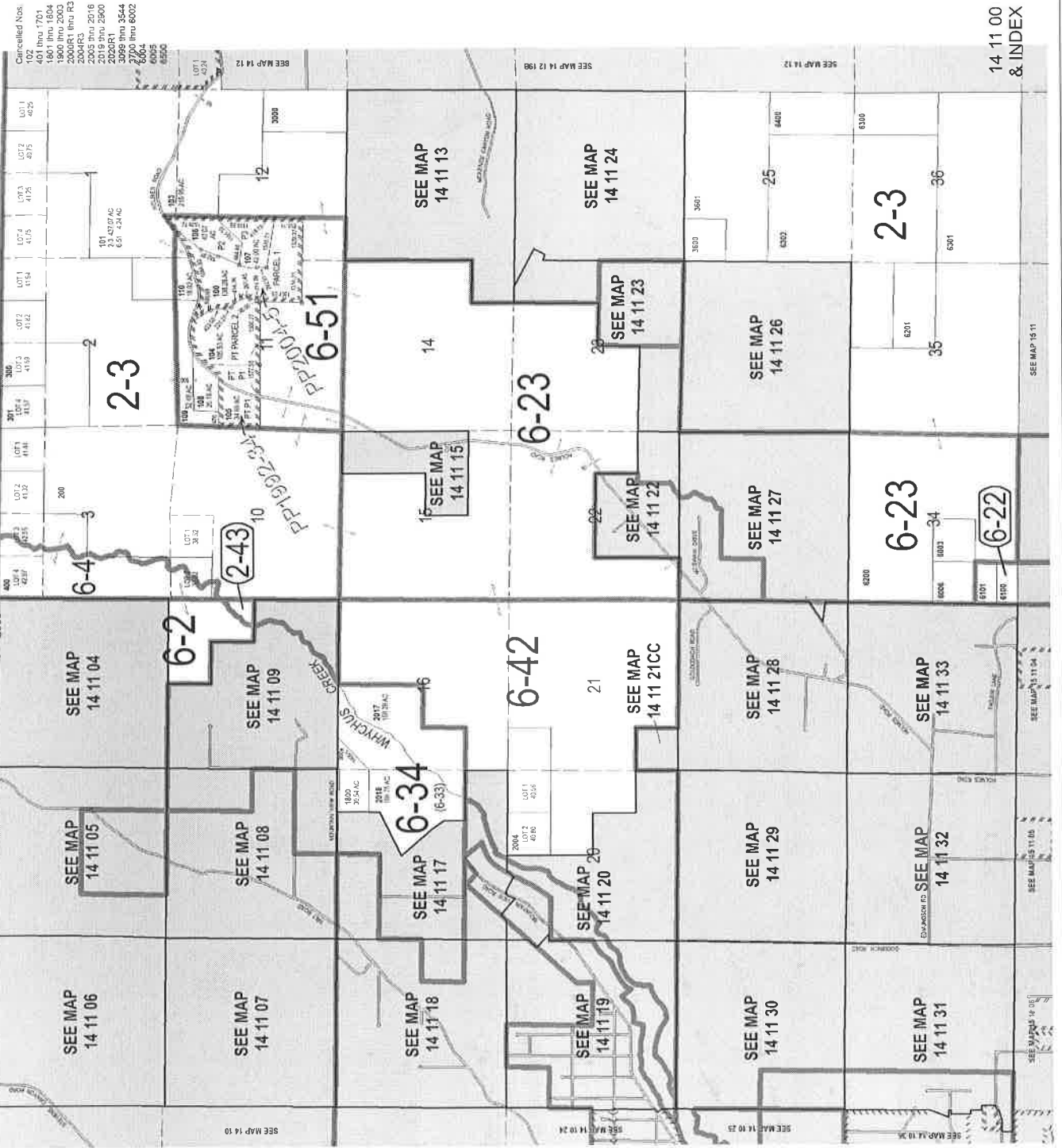
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY.

6/24/2014

T. 14S. R. 11E. W.M.
DESCHUTES COUNTY

JEFFERSON COUNTY

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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/>

NOTICE OF DECISION

The Deschutes County Planning Division has approved the land use application(s) described below:

FILE NUMBER: 247-14-000 228-CU and 229-SP

APPLICANT: John Shepherd
71120 Holmes Road
Sisters, Oregon 97759

PROPERTY OWNERS: John and Stephanie Shepherd
71120 Holmes Road
Sisters, Oregon 97759

APPLICANT'S ATTORNEY: Dave Hunnicutt
Oregonians in Action
P.O. Box 230637
Tigard, Oregon 97281

REQUEST: The applicant requests conditional approval to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

LOCATION: The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.

STAFF CONTACT: Will Groves, Senior Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance
Chapter 18.04, Title, Purpose and Definitions
Chapter 18.16, Exclusive Farm Use
Chapter 18.88, Wildlife Area Combining Zone
Chapter 18.116, Supplementary Provisions
Chapter 18.124, Site Plan Review
Chapter 18.128, Conditional Use

Title 22 of the Deschutes County Code, the Development Procedures Ordinance

DECISION: Staff finds that the application meets applicable criteria, and approval is being granted subject to the following conditions:

I. CONDITIONS OF APPROVAL:

1. Approval is based upon the submitted plan. Any substantial change to the approved plan will require a new application.
2. The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use.
3. Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
4. All areas used for standing and maneuvering of vehicles shall be paved or gravel, but not cinder, surfaces adequately maintained for all weather use and maintained in a manner which will not create dust problems for neighboring properties..
5. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
6. Any exterior lighting in association with this project shall comply with the Deschutes County Covered Outdoor Lighting Ordinance per Section 15.10 of Title 15 of the Deschutes County Code (DCC).
7. Subsequent use of the property for which this permit is issued is conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.
8. All required parking shall be in place prior to initiation of the use.
9. The private park shall only be open to event participants one weekend day per week beginning on May 15 of each year and ending on October 15, not to exceed 18 days per calendar year. Each event shall last no more than 8 hours and conclude by 10 p.m. A limit of no more than 250 guests per event shall be enforced by the applicant. Any park use on the property by non-residents shall count as an "event".
10. The land owner shall comply with the current final Wildlife Management Plan (WMP) for the subject property. Where the final WMP for the subject property includes required actions that conflict spatially or temporally with the private park operations, the required actions of that WMP shall take precedence and the operations of the private park shall be curtailed to the extent necessary to allow full compliance with the WMP. Where the final WMP for the subject property includes required actions and the WMP does not specify a completion date or timeline, those actions shall be completed prior to initiation

of the private park use. Where the final WMP for the subject property includes ongoing required actions, the private park shall only operate while in compliance with those required ongoing actions.

11. The applicant to provide documentation from the Deschutes County Environmental Soils Division that the septic system is adequate for the proposed park use, prior to the initiation of the use.
12. At minimum, one portable toilet shall be provided per 100 attendees (or fraction thereof) at park events.

This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

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

Dated this 3rd day of February, 2015

Mailed this 3rd day of February, 2015



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/>

CERTIFICATE OF MAILING

FILE NUMBER: 247-14-000228-CU / 229-SP

DOCUMENT/S MAILED: Findings and Decision
Notice of Decision

LOOKUP AREA: 750 Feet

MAP/TAX LOT NUMBER: Tax Lot 103 Assessor's Map 14-11

I certify that on the 3rd day of February, 2015, the attached notice(s)/report(s), dated February 3, 2015, was/were mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

Dated this 3rd day of February, 2015.

COMMUNITY DEVELOPMENT DEPARTMENT

By: Sher Buckner

John Shepherd 71120 Holmes Road Sisters, Oregon 97759	Dave Hunnicutt Oregonians in Action P.O. Box 230637 Tigard, Oregon 97281
Paul Dewey 1539 NW Vicksburg Ave Bend, OR 97701	Corey Heath Oregon Department Fish and Wildlife 61374 Parrell Road Bend OR 97702
11 Lookups	

ALBERT J BLAYLOCK INSURANCE TRUST	BLAYLOCK, BRANDON A TTEE	327 WHITE OAK SHADE RD	NEW CANAAN, CT 06840
BAKER, GARY T & DIXIE LEE		2015 SE COLUMBIA RIVER DR #320	VANCOUVER, WA 98661
BAKER, GARY T & DIXIE LEE		2015 SE COLUMBIA RIVER DR #320	VANCOUVER, WA 98661
ELISABETH B SPARKS REVOCABLE TRUST	SPARKS, ELISABETH B & STEPHEN M TTEES	8723 PERSIMMON TREE RD	POTOMAC, MD 20854
HOLGER HOLDINGS ELEVEN		4110 MISSION BLVD #200	SAN DIEGO, CA 92109
LAWRENCE, DAVID & CHRISTINE		RT 1 BOX 246	TERREBONNE, OR 97760
LAWRENCE, DAVID & CHRISTINE LHR LTD		70955 NW LOWER BRIDGE WAY	TERREBONNE, OR 97760
PITCHFORK-T RANCH LLC		71105 HOLMES RD	SISTERS, OR 97759
SHEPHERD, JOHN H & STEPHANIE J		71285 HOLMES RD	SISTERS, OR 97759
USA		71120 HOLMES RD	SISTERS, OR 97759



50 SW Bond St., Ste. 4 | Bend, OR 97702
Phone: (541) 647-2930
www.centraloregonlandwatch.org

March 9, 2015

Deschutes County Board of Commissioners
c/o Will Groves
Deschutes County Development Dept.
P.O. Box 6005
Bend, OR 97708

Re: Shepherd Private Park Application
File Nos. 247-14-000-228-CU and -229-SP

Dear Commissioners:

This letter is to provide follow-up comments and to respond to issues raised at the hearing on March 2. I also want to reiterate the request that I made at the hearing which was to include the Applicant's prior applications regarding and connected to the proposed private park application, including the application for a commercial event permit for weddings, the 2013 application for weddings on a two-acre private park, the modified 2013 application for a private park on 216 acres, the application for a non-farm dwelling, the records concerning Code complaints and violations regarding weddings, and the tax proceedings regarding agricultural use of the land.

The proposed use does not qualify as a private park.

State Law

As held in the Oregon Court of Appeals case of *Cherry Grove*, exceptions allowing additional uses on EFU land should be construed narrowly. Accordingly, the allowance of private parks in 215.283(2)(c) and DCC 18.16.031(E) should be construed narrowly.

LUBA in *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993), determined that "private parks" encompass a paintball park, reasoning that such "recreation" uses qualify the proposed use as a private park. We believe this LUBA decision is wrong in allowing such broad and impactful uses in the EFU zone where there is no legislative history indicating that anything other than quiet and non-commercial uses of a private park were intended. We do not make this argument here in the expectation that the County Board can interpret state law in any way different than LUBA, but only wish to preserve the issue.



But even if LUBA is correct in its interpretation of recreation, the proposed use in this case of an event center is far beyond what has been allowed by LUBA. Unlike that LUBA case, what is proposed here is not recreation but instead a commercial event center (mostly for weddings) which merely could involve some recreational activities.

County Code

Beyond addressing whether the proposed use meets the standards of state law, the County is also to consider whether the proposed use qualifies under the County Code provisions of DCC 18.16.031(E). As held by the Supreme Court in the *Siporen* case, a county is entitled to deference in interpretation of its own code. A county may also have more restrictive standards than in state law for conditional uses on EFU land.

It would be appropriate for the County to narrowly construe its own Code on this matter where it has established an extensive system already regulating weddings and other events. DCC 18.16.042. The private park being pursued here would substantially undermine that system, allowing wedding event operations without them having to meet all the required criteria in DCC 18.16.042.

At the hearing, Mr. Hunnicutt asserted that I was wrong in arguing that the events legislation was to be the exclusive means for allowing wedding events, and he pointed out a provision in the state law that specified it was not to be exclusive. He has misstated what I argued. My point was that the County could construe its Code to hold that its event venue provisions are the exclusive means for allowing such events on EFU land. Again, the County can be more restrictive than state law. Unlike the state law, the County in adopting its events legislation did not include a provision stating that it was not exclusive.

Reliance on the Hearings Officer's determination regarding weddings as recreation is inappropriate.

The Applicant at the hearing repeatedly referred to the Hearings Officer's earlier determination that weddings would be allowable in a private park because of associated recreation. It is inappropriate for the Applicant to rely on that determination where it was made in the context of a 216-acre park with proposed recreation activities far outside the context of a wedding. While weddings may have been a minor and secondary use to the recreation uses on a 216-acre park, they are central to this now proposed 1.5-acre private park. I also want to emphasize again that the Hearings Officer denied the application for a private park because of its failure to analyze the impact on surrounding lands and the failure to show that it was located on the least suitable part of the property. The Hearings Officer also pointed out if weddings would be allowed on that 216-acre park that there would be a need for the Applicant to keep a monthly log in order for the County to determine that it was a minor and secondary use of the private park.

The Record is clear that what is contemplated here is a wedding event center, not a recreation park.

The factual record is overwhelming that what we are dealing with in this application is a wedding event center, not recreation. As pointed out by the Hearings Officer in her decision, this is



evidenced by the fact that the Applicant has already been doing weddings for years. These wedding events were not permitted and the Applicant has been subject to Code enforcement actions. The intent is further evidenced by the earlier application for a commercial event permit for weddings and then solely for weddings on a 2-acre private park. After the involvement of Oregonians in Action, the application was modified to the 216-acre private park with identification of various "recreation" activities. The evolution of these applications is described in the Hearings Officer's decision at page 10.

The proposal for tent and RV camping should be rejected.

The Staff at the hearing suggested that the proposal for tent and RV camping associated with these events was no longer being considered. LandWatch has not seen in the Record where the Applicant has actually withdrawn this part of the application. At the very least, neither the Applicant nor the Staff presented any support for allowing these uses.

The proposed use of the farm dwelling for the events should be denied.

There is no basis cited by the Applicant or Staff for allowing the proposed use of the farm dwelling's bathroom, bedrooms (for clothes changing), kitchen and deck as part of this event venue/private park. What is described sounds like a home occupation is being proposed, but there has been no application for that use.

The proposed use has not been shown to be consistent with the Farm Management Plan.

There has not been compliance with the Farm Management Plan.

The Applicant at the hearing repeatedly argued that they are in compliance with the Farm Management Plan and will comply with it. That is contrary to the actual evidence and admissions in the Record, including Mr. Shepherd's representations in a county tax proceeding (attached) that he was not appealing disqualification of his farm deferral, but rather of his "wasteland" status of the "un-farmable" 213 acres of land to wasteland and the January 12, 2015, letter of Mr. Hunnicutt, at page 2, acknowledging that the Applicant was not following the Farm Management Plan. At the hearing, the Applicant kept referring to what they intended to do in the future, but there has been no amendment to the Farm Management Plan and what is applicable is the Farm Management Plan currently in place. All of the stated plans for irrigation and getting cattle and putting them elsewhere on the property are pure speculation at this point and there is no Farm Management Plan or other evidence substantiating such use. Selling a few eggs also does not constitute a commercial scale farm operation which is required for a farm dwelling.

The Farm Management Plan is still applicable.

The Applicant has argued that the Farm Management Plan ("FMP") is no longer applicable and was not meant to be a permanent condition of approval. The Applicant argues that the Code merely calls for the property to be "currently" employed for farm use and that once a building permit is issued, such farm use and the FMP are no longer relevant. The Applicant also argued that it would not make sense otherwise since the only solution would be for the County to make people tear down



their farm dwellings when they no longer complied with the farm dwelling criteria. As I explained at the hearing and as the Hearings Officer explained in her decision, that is not the case. What would be required is that a party would then file for a non-farm dwelling as Mr. Shepherd at one time did.

Mr. Hunnicutt argued that LUBA in the case of *ONDA v. Harney County*, 65 Or LUBA 246, 261 (2012), held that it was not required for a farm dwelling that there be continued farm use. As I explained, the case actually said that a condition of approval requiring continued farm use was not necessary since it was already a requirement that the use must continue at a commercial scale and that the farm dwelling be occupied principally by someone engaged in agriculture at a commercial scale. None of that is happening here.

Mr. Hunnicutt has also argued that the Farm Management Plan is not an approval criterion and under the Code the private park cannot be denied because conditions of approval of another application are not being followed. That argument is not applicable here where they are proposing to use the farm dwelling, there needs to be proof that the proposed use is not going to be affecting the Farm Management Plan and there needs to be proof that the site is suitable for the intended use.

The proposed site for the private park is not located on the least suitable site.

Mr. Hunnicutt argued at the hearing that the consideration of whether the proposed use is located on the least suitable site under DCC 18.36.040(A)(3) is not applicable to private parks under DCC 18.16.031 and is only applicable to uses under DCC 18.36.030. That is contrary to the Hearings Officer's decision, at pages 14-16 which did apply the criteria of DCC 18.36.040. Though DCC 18.16.040 only refers to DCC 18.16.030, that appears to be a clerical error or an accidental omission of DCC 18.16.031 since DCC 18.16.031 itself states that its uses are subject to DCC 18.16.040.

Mr. Hunnicutt's proposed interpretation would be a major policy decision by Deschutes County, exempting a host of uses listed in DCC 18.16.031 from this siting requirement of a use being sited on the least suitable lands for farm use. It would also create an illogical inconsistency between creation of a private park and an expansion of a private park. It would mean that an expansion of a private park under DCC 18.16.030 would be subject to this siting requirement, but the creation of a private park in the first place under DCC 18.16.031 would not be subject to it. If there is to be a difference in siting standards between creating a private park and expanding it (and none come to mind), you would think that the more impactful establishment of the new use in the first place would have to meet the stricter siting standard of being on the least suitable site rather than just an expansion of the use.

As we pointed out at the hearing, there is inadequate evidence that the proposed site is located on the least suitable site where there has not been a thorough comparative analysis of different sites on the property. Nothing has changed since the Hearings Officer found that it had not been established that this is the least suitable site. There is also no basis for relying on any soils analysis other than NRCS.



There is inadequate evidence that the private park will not force a significant change on surrounding farm use.

There is no assessment of noise or traffic impacts on farm animals or operations. The applicant's analyses are oriented to impacts of noise on people and on impacts on road capacity.

The Applicant has not established that the private park is consistent with the property's Wildlife Management Plan.

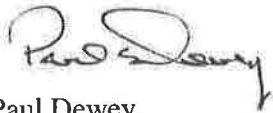
A provision of the existing Wildlife Management Plan is: "There will be very little road usage on the property due to the type of farming operation present there." Allowing events for up to 250 people and the associated traffic is not consistent with the Wildlife Management Plan that allowed the siting of the dwelling (now proposed for the wedding events) so far from existing roads. The reason for the county rule requiring the siting of new dwellings within 300 feet of existing roads is to prevent exactly this problem of new substantial traffic being introduced into wildlife zones.

There is inadequate evidence of adequate parking and an adequate parking surface.

At the hearing, Mr. Shepherd defended his inadequate parking provisions on the basis that his past (unpermitted) events attracted far less than the 250 people his current application is based on. If he is seeking a permit for up to 250 people, he needs to provide parking for that amount.

Thank you for your consideration.

Very truly yours,

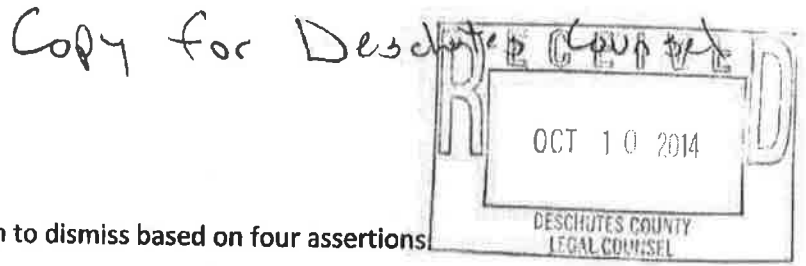


Paul Dewey,
Executive Director

50 SW Bond St., Ste. 4 | Bend, OR 97702
Phone: (541) 647-2930
www.centraloregonlandwatch.org



Regarding case #14033N



Motion for appeal to continue to hearing

Deschutes County Counsel Laherty made a motion to dismiss based on four assertions:

1. His foremost assertion was that I, as plaintiff, was not aggrieved and therefore lacked standing. This is not true. Prior to the 2014 disqualification by the County Assessor, the 213 acres of land (out of 216) had in 2013 enjoyed "wasteland" status and therefore was exempt from both taxation and the requirement to work the land. On May 23, 2014, the Assessor disqualified this 213. (see exhibit #1) They stated that my "potential additional taxes for this disqualification are \$18,861.41", money I could not afford. This disqualification and threat of past taxes forced me to take two simultaneous actions: 1) to prove up my land at considerable expense and 2) to appeal their disqualification of my wasteland. So, am I aggrieved?

Webster's definition of "aggrieved" is "1. Troubled or distressed in spirit. 2a. Suffering from an infringement or denial of legal rights. B. showing or expressing grief, injury, or offense.

All of these definitions of "aggrieved" apply to me. Not only has this disqualification caused me "trouble and distress" but it has "infringed and denied me the legal right" I enjoyed before, the right to not farm land that is legally considered un-farmable. And, most importantly, the County's disqualification has caused me "injury" in that I have been forced to and will continue to be required to spend considerable money to acquire irrigation water rights, to repair and maintain fences, to install irrigation and to purchase and maintain livestock. These costs and injuries would not have occurred if the County assessor had not disqualified 213 acres of rocky land that had previously enjoyed "wasteland" status.

As I stated in my initial appeal, "I further contend that their actions created stress, hardship and unnecessary expense as I was forced to fence, irrigate and graze wasteland that is not economically grazeable." (See original "Summary of John Shepherd's tax appeal")

2. Mr. Laherty's second assertion was "*Plaintiff failed to respond to the April 18, 2014 Notice and on May 23, 2014 the Assessor sent Plaintiff notice advising him that the Property had been disqualified from far use tax deferral.*" (page 2, line 16-18 of motion to dismiss) This also is untrue. On May 10th, I emailed Deschutes County Tax Assessors office an email titled "Defense of Farm Deferral". (see exhibit #2) I included evidence refuting their claim that no farm activity was occurring, including my schedule F. Thus began a series of emails. So, again, Mr. Laherty is wrong in his motion to dismiss.
3. Mr. Laherty further asserts in his motion to dismiss "Based upon the documents submitted by Plaintiff in the County land use proceeding and the results of the Assessor's Office's site inspection, the Deschutes County Assessor determined that the Property was not in "farm use" as necessary to support a farm tax deferral." (page 2, line 10-13, emphasis mine). This is not what the Assessor's office told me, however. In a May 13, 2014 email, they said "The exclusive farm use deferral special assessment review of your property is a response to your comment in the 3/29/14 Bulletin article about your

property not being suitable for farming.” (please see exhibit #3.) So, the Assessor’s own words contradict Mr. Laherty’s assertion.

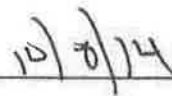
4. Furthermore, Mr. Laherty asserts **“Plaintiff seeks to appeal the Deschutes County Assessor’s May 23, 2014 decision to disqualify the Property from exclusive farm use tax deferral.”** (page 3, line 11) Again, Mr. Laherty is wrong. I am **not appealing the disqualification of my farm deferral.** In my initial appeal, I clearly stated my request: **“I therefore ask that their decision disqualifying my wasteland be reversed...”** (See original **“Summary of John Shepherd’s tax appeal”**, concluding sentence) There is a very important legal distinction here. My request is that the Court consider whether the written definition of “wasteland” should apply, and in so doing reinstate the wasteland status, or whether some unwritten “intent” of the statute should apply, as the Assessor contends.

Finally, the Assessor’s office themselves stated that I could appeal their interpretation of the wasteland statute. On June 10th, 2014, in an email, they stated, **“It is the Deschutes County Assessor’s office interpretation of the wasteland statute that incidentals may exist on a property but the intent of the statute is not meant to be applied to the vast majority of a property. If you disagree, you have the right to appeal.”** (See exhibit #4) This is the seminal issue. So, do I have the right to appeal it or don’t I?

The remedy I am seeking is that the **“wasteland”** status of the un-farmable portion of my property be restored, thereby relieving me of the perpetual expense and burden to work land that is, by definition, unprofitable to work. I am seeking that my legal rights be protected and that the letter of the law OAR 308A.056 be upheld.



John Shepherd-plaintiff



Date



Exhibit #1

Assessor's Office
Scot Langton, Assessor

May 23, 2014

P.O. Box 8005 • Bend, OR 97701
1300 NW Wall St, Suite 204 • Bend, OR 97701-196C
(541) 388-6508 • Fax (541) 382-1692
www.co.deschutes.or.us

SHEPHERD, JOHN H & STEPHANIE J
71120 HOLMES RD
SISTERS, OR 97759

ACCOUNT NUMBER: 160620 MAP & TAX LOT: 141100-00-00103
CODE: 2-003 ZONE: EFU DISQUALIFIED ACREAGE: 212.95 of 215.95

In compliance with ORS 308A.718 and 308A.724, this is official notification that the special assessment of 212.95 acres of EFU land on the above real property account(s) has been disqualified by the Assessor for the following reason.

- ___ Currently farmland is lying idle or is no longer in a qualifying use and has been disqualified from the following program:
- **Exclusive Farm Use, ORS 308A.113(1)(a)**

The potential additional taxes for farm use disqualifications will be deferred under ORS 308A.706(1)(a) when farmland becomes idle and does not change to a different special assessment. In the future, if this land changes to an incompatible use the deferred additional taxes will become collectable. Uses that are incompatible with returning the land to farm use are; such as using the land for residential, commercial, industrial purposes, or any other use that is incompatible with farm use. Any acres deferred under ORS 308A.706(1)(a) will be no longer specially assessed and will be assessed based on market value as calculated under ORS 308.156.

You may also change to a different special assessment and the potential additional taxes will be deferred under ORS 308A.706(1)(d). Land will receive special assessment for any acres (or portion) that can meet the program qualification requirements of a different special assessment. Any acres that remain no longer specially assessed will be assessed based on market value as calculated under ORS 308.156.

(See "Change of Special Assessment" section of this disqualification notice)

Gum 11

Exhibit # 2

Defense of farm deferral

John Shepherd <shepherdsfield@gmail.com>
To: erics@deschutes.org, assessor@deschutes.org

Sat, May 10, 2014 at 9:43 AM

Dear Mr. Sexton and Mr. Langton,

I am writing in response to your recent letter threatening to revoke my Farm Deferral status. Pardon me if I sound paranoid, but in view of the County's on going efforts to shut down my wedding venue and my church, I'm beginning to wonder if there is a conspiracy going on. To begin with, would you please answer the following three questions in detail.

1. Your letter states "It has comes to the assessor's office attention that no farm use is being conducted on your property." First, this conclusion wrong. Second, please explain how this came to your attention. Please also explain why you state this as a fact and not as a question. This seems like a case of witness, judge, jury and executioner all rolled into one. One would think that you would be interested in my response before you reached this conclusion. I'm attaching my 2013 sch F. From the flock of hens that we still have, last year we sold some of our eggs at the Sisters Farmer's Market and some to wedding guests. In addition to that, our regular egg customers include Ann S., Jan M, Ray R., Jimena S., and Bill B. I'm also attaching a photo of our stock of new egg cartons and the sign we use to see eggs. So, as you can see, your assertion is wrong.

2. Your letter stated: "Therefore, notice is given that the mentioned property has failed to continue to qualify because: -Proof/Evidence that the land is used for farm use." Are you claiming you have proof? If so, what proof? Or are you requesting proof to the contrary? Please explain. Your wording is confused.

3. Last year, at this same time, 5/9/13, we went through this whole matter. I emailed you photos of my poultry operation and a copy of my 2012 Sch F. I also sent photos of the waste land on which my property sits, as well as counsel from Gregory Plass with the State of Oregon, including detailed calculations he gave me on how to determine waste land. I explained, as per Mr. Plass' terms and definitions, that the majority of our land is "waste land" and therefore exempt. Your office never responded. Has something changed between then and now that you are raising this issue again? If so, please explain those changes.

I am willing to consider re qualifying this acreage as Wildlife Habitat but, years ago, when I had a State agent come out to discuss this option, his repeated response to my questions was "I will not do or say anything to help you." He probably repeated this mantra 10 times. I just wanted to know the ramifications of such a change to any future effort to partition the property. If there is someone else that I could speak with about this option, who would actually answer my questions, I'd be happy to have this discussion.

I look forward to your detailed written reply as a step forward in resolving this matter.

Sincerely,
John Shepherd acct #160620

2 attachments

GEDC0301.JPG
3560K



Exhibit #3

Defense of farm deferral

Eric Sexton <Eric.Sexton@deschutes.org>
To: John Shepherd <shepherdsfield@gmail.com>

Tue, May 13, 2014 at 10:31 AM

Mr. Shepherd,

Thank you for the reply.

The exclusive farm use deferral special assessment review of your property is a response to your comment in the 3/29/14 Bulletin article about your property not being suitable for farming.

The letter itself is a format provided by the Oregon Department of Revenue and is required to be sent per statute. It is requesting proof/evidence from the property owner to show cause why the property or portion of the property should not be disqualified from the exclusive farm use deferral special assessment program.

We would like to suggest an in person meeting with myself, our Assessor, and you to discuss this issue further and what options may exist. Please let us know if you are interested and we can set up a time and date to meet in the Assessor's office.

Inquires about participating in the special assessment tax deferral Wildlife Habitat Conservation Easement Program should be directed to Nancy Breuner at the Oregon Department of Fish and Wildlife, 541-388-6363.

Call or write with any questions.

Eric Sexton

Deschutes County Assessors Office

Property Appraiser

541-388-6692

erics@deschutes.org

GM

Exhibit 4

Response to farm disqualification questions - Account#160620

Eric Sexton <Eric.Sexton@deschutes.org>
To: John Shepherd <shepherdsfield@gmail.com>

Tue, Jun 10, 2014 at 2:27

Mr. Shepherd,

It is the Deschutes County Assessor's Office interpretation of the wasteland statute that incidentals may exist on a property but the intent of the statute is not meant to be applied to the vast majority of a property. If you disagree, you have the right to appeal.

Link to appeal form: <http://courts.oregon.gov/Tax/Pages/forms.aspx>

Call or write with any questions.

Eric Sexton

Deschutes County Assessors Office

Property Appraiser

541-388-6692

erics@deschutes.org

From: John Shepherd [mailto:shepherdsfield@gmail.com]
Sent: Monday, June 09, 2014 11:15 AM
To: Eric Sexton
Cc: Scot Langton
Subject: Re: Response to farm disqualification questions - Account#160620

[Quoted text hidden]

William Groves

From: John Shepherd <shepherdsfield@gmail.com>
Sent: Monday, March 09, 2015 9:50 AM
To: William Groves
Cc: Dave Hunnicut
Subject: two documents to add to the Shepherdsfield application record
Attachments: IMG_0001.jpg; response to final objections.docx

Good morning, Will.

please find attached my answers to the oral objections raised by Mr. Dewey and Ms. Gould. Please include this in the record and arrange for it to be read by the Commissioners.

Also, did you see the Saturday staff editorial in the Bulletin? It was 100% in favor of our park. Thanks to your thorough work and our persistence, we seem to have the public behind us. See attached. Please print this out and include it in the record as well.

Thanks,
John

Applicants answers to objections raised by Dewey and Gould

Most of the objections raised by Mr. Dewey and Ms. Gould at the hearing were merely incidental accusations meant to derail the application and meant to bury us. Few, if any, are based on central issues. Each time I have applied for a permit, they have opposed it, often on silly technicalities, and then, when they succeed in denying me a permit, they blame me for operating without a permit. For example, when I applied for a 216 acre park, Dewey objected that the park was too big. Now, when I reduced the size to a 2 acre park, he objects that it is too small. Clearly, as is his nature, he throws every objection against the wall, hoping that one will stick, hoping to wear down his opponent under the sheer number of objections. This is how he has hounded the City of Bend regarding their pipeline application. I will however, address many of his objections below.

1. Mr. Dewey and Ms. Gould questioned whether the park was located on the least farmable ground. Wildlife biologist Ray Romero addressed that in his letter and stated:

Response #4 - According to the Natural Resources Conservation Service maps of the subject area, none of the soil on the property is considered high value soil. It is categorized as either 6E or 7E, unsuitable for agriculture. The soil on the slopes has better potential for agriculture, if irrigated, than the soil on the plateau where the venue is located. Therefore, the venue is located in an area least suited for agriculture.

2. Paul Dewey suggested that our brides should just get married at local resorts. For our brides, these are too expensive, usually in the \$20,000-\$50,000 range, compared to our \$2000 range. From experience, many of these brides would end up holding their weddings on the farms or acreage of friends or family. Yet, these ad hoc venues are less suitable. They do not have ample, approved, off street parking, approved neighbor buffers, approved facilities, adequate size, appropriate insurance, professional supervision, etc. So, the unintended consequence of Mr. Dewey's demand would be more potential trouble, not less.

Here is an example of a letter I received from a bride who could not wait any longer for a confirmation from the County:

Hi John,

Just wanted to let you know that we have decided to have our wedding at a friend's farm, so you can take us off your calendar. I hope that you get the approval that you deserve, and maybe another bride can have our day.

Best wishes,

Carrie Sether

3. Mr. Dewey stated that when he was married years ago, weddings were not a recreational event. Well, times have changed. Brides today want a wedding party as much as they want a ceremony. This is especially true of brides who choose an outdoor venue. They come expecting 6-8 hours of recreation. If they just wanted a ceremony, they would get married in a church. Furthermore, Karen Greene ruled that, as long as the ceremony is incidental and subordinate to the overall recreational event, wedding ceremonies are allowed. If Bend City parks and Deschutes County parks allow weddings, then private parks should allow weddings too.
4. Mr. Dewey stated that we applied for a non-farm dwelling. He is mistaken. The previous land owner may have many years ago, but we never have.
5. Mr. Dewey says that this park will set a dangerous precedent. First, the law specifically and deliberately allows parks on non-high value EFU land. The legislature set the precedent already. If my secluded 216 acres do not qualify for a park, what would? Second, single purpose parks have already been approved in Deschutes County, namely, the Bend Trap Club and a paint ball arena. If shooting guns is park-like, then certainly dancing, dining and outdoor recreation is too. Furthermore, virtually all of the Bend City parks and two of the County parks allow weddings. So, allowing wedding events on a park sets no precedent. Dewey also said it is a "contortion" to allow a park for the sole purpose of events. Well, when an event is a gathering for a specific recreational purpose, such as a summer ball, a family reunion or a wedding, it is well within the definition of a park to be the setting for such gatherings. These recreational events are no "contortion" of the park definition. In fact, Karen Greene ruled that wedding receptions are recreational in nature and thus suited for park use.
6. Mr. Dewey and Ms. Gould expressed concern about traffic congestion. County studies have shown that Holmes Road experiences about 360 trips per day, even though it has a capacity of 6000-9000 cars. I don't think an additional 20-60 cars will create a traffic problem. In fact, since guests leave at night, they will be lucky to even pass a car on their drive home.
7. Dewey and Gould expressed concerns that an event, with setup and cleanup, could extend into Friday or Sunday. First, as Mr. Groves pointed out, Agri-tourism events allow setup and cleanup periods, beyond the event day. Second, there is a clear distinction between an event and the subsequent setup/clean up. The setup/clean up involves very few people and falls into the "maintenance" aspect of the park, not the event aspect. All parks require and allow maintenance. Furthermore, the CUP approval specifically limits the hours of the event from between 2 PM and 10 PM.
8. Ms. Gould raised numerous objections that I might turn the park into a motocross arena or some other activity. However, my application specifically enumerates the activities that will take place: dining, dancing, music, talking, badminton, volleyball, strolling, talking, etc. All these activities are equal to what other parks do. And, for the record, I have no intention to ever allow motocross or shooting on the property. (Shotgun weddings excepted. Lol.)
9. A concern was raised that we comply with all of the code requirements regarding sanitation, safety and transportation. While I realize that our opponents' true concern isn't about code compliance but just about blocking the permit, Mr. Groves clearly pointed out that our permit is conditioned upon first complying with all of the concerns of the various county departments. We will not be allowed to begin operations until these department concerns are approved in writing or will have certain areas/aspects excluded from use until approved.

10. Mr. Dewey suggested that our activity be better addressed as a "home occupation". In that virtually all of the activity occurs outdoors, and is recreational in nature, operating under the "park" provision of the law is most appropriate.
11. Mr. Dewey worried that I have neglected my farm use. Not only have I maintained my farm use, and have passed two recent audits by the Deschutes County Tax Assessor's office, but I am expanding my farm use. I have recently purchased water rights from Three Sisters Irrigation District. I have committed to purchase six head of cattle in two weeks. I have recently built a holding pen and am building a livestock shed. I am working hard to balance my farming obligations with my Wildlife Management Plan obligations. This is a difficult task on EFU land that is sited on a rocky plateau.
12. Mr. Dewey and Ms. Gould expressed concern that our kitchen was being used for cooking and is thus a commercial kitchen. As discussed in our application, cooking is performed off site by the caterers and merely assembled and served here. Occasionally, a licensed caterer using an approved appliance will barbeque the meat outdoors. On rare occasion, the food is prepared and served outdoors by the families, as would be permitted in a public park. But at no times is our kitchen used to cook the food for the event. The same can be said about water. As discussed in the CUP, either the caterer or the venue guests provide their own bottled water. Our well is not used for drinking water.
13. Ms. Gould expressed concern that we would have adequate parking. Based on our average attendance of 120 guests and Mr. Groves calculation of 1 space per 4 guests, we would only need, on average 30 spaces. However, we will have more than twice that number. Furthermore, we have five paved spaces immediately adjacent to the house in case of ADA parking need.
14. Ms. Gould repeatedly questioned how our permit conditions would be enforced, such as curfew and noise. The Code Enforcement Department will have the responsibility to enforce this, as they do with all county code concerns. We will not be exempt.
15. Ms. Gould expressed concerns that we provide bicycle parking facilities. As Mr. Groves discussed, people rarely ride bicycles to weddings, especially those that are many miles from town. However, if someone does ride a bicycle, there are plenty of places to park it.
16. Ms. Gould stated that our land is "high value" farm land in that it grows Juniper trees, which, she says, are of high value. The Oregon Department of Agriculture disagrees. In fact, there are numerous gov't programs that pay to cut down Juniper trees. Our Wildlife Management Plan, written with cooperation of ODFW, specifically calls for the removal of Juniper trees in order to restore native habitat.
17. Ms. Gould suggested that our venue would be better addressed as a mass gathering. I believe that mass gatherings are for groups in excess of 500 and for purposes of public speaking and political rallies, not recreational receptions.
18. Ms. Gould questioned how the fire department would view our venue in general and our house use in particular. I called our district office about this and spoke with the Captain of the Cloverdale Fire District. He said that he was asked three times about our venue by the County staff and that all three times he told them he had no concerns. Furthermore, he told me that as long as there is no new construction and that the house isn't being remodeled or repurposed (such as a commercial kitchen), that there is no need for fire district review. He specifically stated that the public use of the bathrooms and the bridal party use of the bedrooms for getting dressed is not a repurposing and is therefore of no concern.

19. Ms. Gould expressed concerns that the County “protect the livability” of Central Oregon. First, the right of land owners to use their property is a part of Central Oregon livability. Second, there is a severe scarcity of affordable outdoor event venues. This scarcity harms the livability for Deschutes County residents when they can’t find a location for their event. Just as housing scarcity has created an affordable housing crisis, so has venue scarcity has created an affordable venue crisis. Third, our proposed use involves only 1% of the property, 1% of the time. And, due to the size of the property and its remote location, our neighbors are not affected as well. This was testified to by Mr. Simpson, one of our neighbors. In fact, over the last several wedding seasons, none of our neighbors has issued a single complaint. I am confident this limited venue use will not adversely affect the livability of anyone involved. Rather, it contributes to local livability both through the recreation of our citizens and through the economic activity it creates.
20. Finally, in answer to Mr. Russell’s (transportation) concerns that allowing cinder would set a precedent for parking material, the DCC code already allows the hearing body to make allowances when justified. So there would be no precedent. I believe that this “allowance” provision was put in place specifically for exceptional situations like mine, that don’t cause dust problems (due to isolation and minimal traffic) and don’t require all weather surfacing (due to summer only use.) Again, if designated parking for Deschutes County Fair guests is grassy dirt, then I should be able to provide cinder. And if the County doesn’t pave high speed and dangerous roads like Buckhorn due to cost considerations, then it seems only reasonable that I should be given the same cost consideration on a project that will only serve 18 cars per year per space.

EDITORIALS

Weddings should be allowed on land near Sisters

Holding weddings on John Shepherd's property near Sisters is not going to be a great undoing of Oregon's land use system. It's an opportunity to show how the system can be flexible enough to allow reasonable uses.

The pastor has been working for years to make the business he operates on his property legal. He's faced fines from the county. He got a warning when he was holding church services.

He just wants permission to hold one wedding or other similar event a week. It will be on Saturday or Sunday between 2 and 10 p.m. He is asking for permission to hold 18 a year.

He's got 216 acres. And the solution the Deschutes County Commission is zeroing in on is to designate a 1.6-acre piece of the property as a private park.

He initially sought a designation for a private park for his entire property. That was rejected in 2013 by a hearings officer, because it seemed to conflict with the possibility of any agricultural use and winter deer range. So the request was narrowed to the 1.6 acres.

Can the road handle the traffic? Yes, the county says.

Is there adequate parking, on-site? That seems resolved.

What about noise? The county's analysis concludes it shouldn't be too bad for the nearest neighbors.

What do his neighbors think? One neighbor recently testified on Shepherd's behalf. We are not aware that his other neighbors oppose his plan.

So what is the problem? The county has been trying to sort out if weddings fit into the law under a private park. Previous decisions have emphasized the recreational activities that would take place in private parks.

The county staff believes weddings and the ensuing activities should qualify. We agree. The actual ceremony at a wedding is brief. Then comes the assorted recreational activities.

It is Shepherd's property. In general, he should be able to do what he wants on it. But he can't do anything he wants.

Oregon's land use laws should be flexible enough to accommodate his reasonable proposal or they need to be changed.



RECEIVED

BY: _____

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Phone: (541) 447-2930

www.centraloregonlandwatch.org

DELIVERED BY: _____

March 16, 2015

Deschutes County Board of Commissioners
c/o Will Groves
Deschutes County Development Dept.
P.O. Box 6005
Bend, OR 97708

Re: Shepherd Private Park Application
File Nos. 247-14-000-228-CU and -229-SP

Dear Commissioners:

This letter of Central Oregon LandWatch is to provide a short response to Mr. Shepherd's post-hearing submittal and to respond to Staff's March 9 email on the scope of the Record.

As an initial matter, Mr. Shepherd's accusation that opponents to his project are being inconsistent in seeking denials of his permits and then blaming him for operating without a permit does not make sense. Obviously, if he does not have a permit, then he should not operate. Also, where he has been denied a permit, it is the County, not opponents, that has denied the permits, and Mr. Shepherd had the option of appealing previous County decisions ruling against his applications.

Mr. Shepherd is also incorrect in describing the opposition of Central Oregon LandWatch as being that the earlier application was for a park too big and that the current application is for a park too small. Our opposition has been that the Mr. Shepherd's applications have not satisfied the Code criteria.

We have also not argued, contrary to Mr. Shepherd's misrepresentation, that weddings should occur "at local resorts." We only mentioned that the County has an established event ordinance that ensures ample facilities and regulation.

I mentioned an application for a non-farm dwelling (it was actually a deposit for a non-farm dwelling application) because Hearings Officer Green mentioned it at page 4 of her Decision and to give an example of how the problem of a farm dwelling can be dealt with where the property is being used in a way no longer consistent with the approval of a farm dwelling.

Again, contrary to the description of Mr. Shepherd, this event venue is not like a single purpose park like a paintball park. This is a 1.6-acre event venue.



Also, Mr. Shepherd attempts to reject our suggestion that he needs to seek a home occupation permit by arguing that most of the proposed use would be outside. However, as Hearings Officer Green observed, at page 20, note 5, of her Decision:

“Mr. Hunnicutt states the applicant does not intend to change the use of the existing dwelling. However, the dwelling was approved as a farm-related dwelling, and the applicant has stated the dwelling would be used for weddings, which appears to be a change of use.”

It would also be a change of use for the gazebo to be used as part of this wedding event venue, as made clear in the County’s March 19, 2013, approval of the gazebo which limits its use to residential accessory use and explicitly bans commercial or event or home occupation use.


Finally, not only has the approved Farm Management Plan for the property not been followed, but the required occupation of the farm dwelling by someone principally engaged in farm use at a commercial scale has clearly not occurred.

In response to our request at the hearing that documents from earlier applications be included, the Planning Department notified us on March 9 that it is necessary for us to specifically submit any additional documents we wish to be included in the Record. They are attached and include:

- A) CU0065
 - 1. 6/5/00 Application—12 pages
 - 2. 7/20/00 Incomplete Letter—4 pages
 - 3. 3/21/01 Modification of Farm Plan—4 pages
 - 4. 10/22/01 Hearings Officer Decision—11 pages
- B) AGO 263
 - 1. 10/8/02 Application for Agriculture Building Exemption—4 pages
- C) LUP121
 - 1. 5/22/12 LUP Application—7 pages
 - 2. 6/8/12 Incomplete Letter—3 pages
- D) Code Enforcement Files
 - 1. 1/3/13 C12-269—73 pages
 - 2. 1/3/13 C12-270—3 pages
- E) Gazebo
 - 1. 3/11/13 Statement of Intended Use—3 pages
 - 2. 3/13/13 Correspondence re Gazebo—4 pages
 - 3. 3/19/13 LUCS for Building Permit—9 pages
- F) CU1313
 - 1. 11/1/13 LandWatch Letter and Exhibits—12 pages
 - 2. 3/26/14 Fee Waiver Request—4 pages



Very truly yours,



**Paul Dewey,
Executive Director**

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I N A C T I O N
L e g a l C e n t e r

MAR 26 2015

March 23, 2015

DELIVERED BY:

Deschutes County Community Development Department
P.O. Box 6005
Bend, OR 97708
ATTN: Will Groves

Re: Shepherd Private Park Application
File Nos. 247-14-000-228-CU and -229-SP

Dear Mr. Groves:

On behalf of my client, John Shepherd, this letter serves as a final argument in support of the above-numbered applications. Please enter it into the record.

For the reasons stated in the staff report, as supported by the evidence in the record and the case law interpreting what constitutes a "private park" for purposes of ORS 215.283, it is clear that what Mr. Shepherd proposes is a "private park." As demonstrated during the course of these proceedings, the activities that will occur over the course of the requested 18 events per year are almost exclusively recreational in nature.

Efforts by opponents of the application to label the proposed use as a "commercial event center" or "destination resort" are silly, and are an attempt to portray the use as something big and scary, with enormous impacts on the surrounding area and farm operations. There will be no new construction as a result of this application, and no overnight accommodations. There will be 18 events held annually, one per weekend during the late spring to early fall. Guests will be capped at 250, and most events are usually much smaller. These uses are exactly the kind you will find in any public park on a weekend during the summer.

The neighbors have all been notified, and not one neighbor has testified in opposition to the proposal. Not one. Ms. Gould indicated that if this use was next door to her property, she would move. That sentiment is not shared by any of Mr. Shepherd's neighbors. Holmes Road has plenty of road capacity, the noise emitted during the events will have no impact on farm activities as it is virtually imperceptible from the boundaries of the property, and the record demonstrates that there will be no other impacts on neighbors or their farming operations. In short, this is a private park use with extremely minor impacts on the land, much smaller than the other private parks which LUBA has affirmed.

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Mr. Dewey asserts that it is inappropriate to rely on the County Hearings Officer's determination of what constitutes a private park, as that determination was written for Mr. Shepherd's previously proposal to use the entire 216 acre parcel as a private park, which use would occur every day during the summer. Mr. Dewey is certainly correct that the Board is not bound by the Hearings Officer's decision, but the Hearings Officer was clear in finding that the wedding receptions themselves constituted recreational activities that would typically be found in a private park, and that as long as the reception constituted the majority of the time spent during each event, the fact that there would also be a wedding ceremony was not enough to convert the weekend events to something other than a private park. That logic makes sense, and the Board may rely upon it, particularly since the undisputed evidence shows that not all of the events will include wedding ceremonies.

Mr. Dewey is also correct that the Hearings Officer denied the Shepherd's previous application because she believed he had failed to demonstrate the impact of the proposed use of the entire 216 acre parcel on surrounding land. But this is a much smaller proposal, both in amount of use and size of property used. As such, the impacts will be much more minor, and the evidence demonstrates compliance with all of the requirements of both state and DCC provisions.

At the hearing and in written comments, there have been arguments concerning the use of the Shepherd's home during the events. Staff have addressed these issues in the staff report, and have recommended conditions of approval which require the applicant to limit use of the home and ensure that the home meets all building standards. This does not mean that the Shepherd's proposal is for a home occupation, as Mr. Dewey suggests – structures are found in parks across the country, and are utilized for park activities. Addressing building code issues through conditions of approval is allowed by county code, and is appropriate, as it keeps non-zoning decisions out of the land use process.

There has been discussion during the application about the need of Mr. Shepherd to comply with the farm management plan submitted by Ms. Woods during the farm dwelling approval application in 2000. Mr. Dewey asserts that Mr. Shepherd must comply with the farm management plan in order to gain approval for this private park application. That is simply incorrect, for the reasons stated in my previous correspondence.

Nothing in either state law or the DCC requires an applicant to continue to demonstrate that they comply with a farm management plan once the dwelling is approved and sited. As Mr. Groves correctly stated, the plan is a "snapshot" in time, showing that the property will be put into farm use. Once that is done, there is nothing that imposes an obligation upon the applicant or a subsequent owner to continue that farm use indefinitely, at the risk of losing their dwelling. It would create havoc on land use in Oregon and Deschutes County if the owner of a farm dwelling had to meet a certain annual standard in order to keep the home. Lenders would not lend, and owners would not build.

Mr. Dewey's claim that a property owner who failed to comply with the farm management plan could simply submit a new application for a non-farm dwelling is, putting it kindly, crazy. Imagine the impact in Deschutes County alone if code enforcement officers (or better yet, citizens who use the

enforcement authority granted by the DCC to act as private enforcement officers) were sent to comb through every single application for a farm dwelling in an EFU zone, check the conditions of approval, and demand evidence from the owner of the dwelling that the farm management plan was being complied with, under threat of having to submit a new land use application for a non-farm dwelling on a house that was already there. What if the non-farm dwelling application was denied? Does Mr. Dewey really believe that people should be forced to tear down their homes for failure to comply with a farm management plan? That's what he suggests.

The end result of Mr. Dewey's claim regarding compliance with a farm management plan is chaos and uncertainty, which is precisely why there is no evidence that what he claims is required is actually correct, and why your staff does not agree and does not monitor compliance with farm management plans. They simply are not applicable once the dwelling is constructed.

Finally, there has been argument about the location of the private park, and whether it is on the least suitable location for farm use on the property, as required by DCC 18.16.040. As we argued and as the staff found, the least suitable requirement of DCC 18.16.040 only applies, by its terms, to uses allowed by DCC 18.16.030, not uses allowed by DCC 18.16.031. A private park is a use authorized under DCC 18.16.031. Thus, the least suitable location requirement of DCC 18.16.040 is not applicable to this application. The county may (or may not) wish to amend the DCC to apply the least suitable requirements to uses authorized by DCC 18.16.031, but you cannot require compliance with a standard that is clearly not applicable in this case, no matter how much Mr. Dewey wishes you would do so.

Even if you were to require Mr. Shepherd to demonstrate that his proposed park is located on the least suitable portion of the property for farm use, he had submitted evidence to meet that standard.

In summary, for such a minor application on land that can only be referred to as "farmland" because of the fiction created by LCDC's Goal 3 definition of agricultural land, Mr. Shepherd's proposed use will create a positive impact for the county with no downside to anyone, human or animal. The fact that staff was required to create a staff report exceeding 30 pages for a land use that involves no new structures, few people, will occur only 18 days a year, and is not opposed by anyone who could possibly be impacted, however small, is a testament to the need to fix a very broken set of DCC and state land use laws, as the Bend Bulletin commented in its recent editorial in support of Mr. Shepherd's proposal. Nevertheless, Mr. Shepherd is bound by current law, and we have met all of the requirements for approval for his proposed use. We ask the Board to approve the application.

Very Truly Yours,



David J. Hunnicutt
Attorney for Applicant