



## Community Development Department

Planning Division Building Safety Division Environmental Health Division

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### STAFF REPORT

The Deschutes County Hearings Officer will hold a public hearing on May 21, 2015, 2014, at 6:30 p.m. in the Barnes and Sawyer Rooms of the Deschutes Services Center, 1300 NW Wall Street, Bend, to consider the following request:

**FILE NUMBERS:** 247-15-000194-CU / 195-TP

**SUBJECT:** The applicant requests approval of applications for a conditional use and tentative plan for a planned development (nineteen (19) residential lots) in the Rural Residential (RR-10) and Flood Plain (FP) zone, that is also within the Landscape Management Combining Zone.

**APPLICANT/OWNER:** Lower Bridge Road, LLC  
205 E. 11<sup>th</sup> Street, Suite 200  
Vancouver, WA 98660

**ATTORNEY:** Tia M. Lewis  
Schwabe, Williamson & Wyatt  
360 SW Bond Street, Suite 500  
Bend, OR 97702

**LOCATION:** The property is identified as Tax Lot 500 on Deschutes County Assessor's Map 14-12-15, and Tax Lots 1502, 1505, and 1600 on Map 14-12-0000 (index). Tax Lot 500 has an assigned property address of 704 NW 96th Ct., Terrebonne. Tax Lot 1502 has an assigned property address of 70300 NW Lower Bridge Way, Terrebonne. Tax Lot 1505 has an assigned property address of 10000 NW Lower Bridge Way, Terrebonne. Tax Lot 1606 has an assigned property address of 70350 NW Lower Bridge Way, Terrebonne.

**STAFF CONTACT:** Will Groves, Senior Planner, [William.Groves@deschutes.org](mailto:William.Groves@deschutes.org)

#### **STANDARDS AND APPLICABLE CRITERIA:**

Title 18 of the Deschutes County Code:

Chapter 18.16, Exclusive Farm Use (EFU) Zone

Chapter 18.52, Surface Mining (SM) Zone

Chapter 18.56, Surface Mining Impact Area Combining (SMIA) Zone

Chapter 18.60, Rural Residential (RR-10) Zone  
Chapter 18.84, Landscape Management (LM) Combining Zone  
Chapter 18.96, Flood Plain (FP)  
Chapter 18.116, Supplementary Provisions  
Chapter 18.128, Conditional Uses

Title 17 of the Deschutes County Code:

Chapter 17.16, Approval of Subdivision Tentative Plans and Master Development Plans  
Chapter 17.36, Design Standards  
Chapter 17.44, Park Development  
Chapter 17.48, Design and Construction Specifications

Oregon Administrative Rules (OAR)

OAR 660-004 (7)(e), Application of Goal 14 (Urbanization) to Rural Residential Areas

## II. **BASIC FINDINGS:**

**A. LOCATION:** The property is identified as Tax Lot 500 on Deschutes County Assessor's Map 14-12-15, and Tax Lots 1502, 1505, and 1600 on Map 14-12-0000 (index). Tax Lot 500 has an assigned property address of 704 NW 96th Ct., Terrebonne. Tax Lot 1502 has an assigned property address of 70300 NW Lower Bridge Way, Terrebonne. Tax Lot 1505 has an assigned property address of 10000 NW Lower Bridge Way, Terrebonne. Tax Lot 1606 has an assigned property address of 70350 NW Lower Bridge Way, Terrebonne.

**B. LOT OF RECORD:** The applicant did not include lot of record information with this application. Modern tax lots 500 and 1502 (east of Lower Bridge Way) are Parcel 3 of MP-80-96. Modern tax lots 1502 (west of Lower Bridge Way) and 1600 are the remainder of Parcel 2 of MP-80-96 left behind by the creation of modern tax lot 1501 under MP-90-74.

The application does not address portions of the legal lots outside of the PUD boundaries. Based on staff's lot of record analysis, the proposed subdivision would also create remainder areas of SM zoned land (presently on tax lot 1502) and EFU zoned land (presently on tax lot 1600). Staff believes these lands will be a lot or lots in the new subdivision and need to be reviewed as part of this Tentative Plat application. Staff is uncertain how the applicant proposes to configure these remainder lot(s). Staff recommends that the Hearings Officer request revised findings addressing the creation of the SM and EFU zoned lot(s).

**C. ZONING:** The subject property is primarily zoned RR-10, with a portion zoned FP along the east and north perimeter abutting the Deschutes River. The majority of the property is within the LM combining zone associated with the Deschutes River and SMIA associated with SM zoned lands to the west and north. The subject property is designated Rural Residential Exception Area by the Deschutes County Comprehensive Plan. There is a small portion of the property zoned EFU (10.4 acres) adjacent to and east of Lower Bridge Way, and just north of Teater Avenue.

Based on staff's lot of record analysis, the proposed subdivision would also create remainder areas of SM zoned land (presently on tax lot 1502) and EFU zoned land (presently on tax lot 1600). Staff is uncertain how the applicant proposes to configure these remainder lot(s). Staff recommends that the Hearings Officer request revised findings addressing the creation of the SM and EFU zoned lot(s).

- D. PROPOSAL:** The applicant requests approval of a conditional use permit and tentative plan for a planned development that includes nineteen (19) residential lots, one (1) private road tract, two (2) common area tracts and five (5) open space tracts. The residential lots range in size between 2.0 to 4.4 acres. The five (5) open space tracts, Tracts A, B, C, E and F comprise a total of 95.3 acres. The common area tracts D and G comprise 0.9 acres. No development on the lots or the common area tracts is proposed at this time.

Based on staff's lot of record analysis, the proposed subdivision would also create remainder areas of SM zoned land (presently on tax lot 1502) and EFU zoned land (presently on tax lot 1600). Staff is uncertain how the applicant proposes to configure these remainder lot(s). Staff recommends that the Hearings Officer request revised findings addressing the creation of the SM and EFU zoned lot(s) and a description of any proposed uses of these lots.

- E. SITE DESCRIPTION:** The subject property is approximately 157 acres<sup>1</sup> and has a varied topography with the majority consisting of a level area atop a bench with the perimeter abutting the Deschutes River (north and east) and NW Lower Bridge Way (west) sloping downward to these aforementioned features an estimated 60 to 80 feet. The subject property has been extensively mined and the current surface contains very little vegetative cover on the upper terrace with trees, shrubs and natural vegetation around the perimeter along the river canyon and the road. The subject parcel is geologically unique in that it has chalky white diatomite deposits with an overlay of native soils.

Areas of the property along the Deschutes River have extensive riparian habitat and mapped wetlands as shown on the Nation Wetlands Inventory (NWI) "Cline Falls" map.

The property has existing access from NW Lower Bridge Way.

- F. SURROUNDING LAND USES:** The surrounding zoning includes EFU-Lower Bridge Subzone (LB) to the north and south, EFU-Terrebonne Subzone (EFU-TE) to the east and further to the south, SM to the west, RR-10 to the east and southeast, and FP and LM associated with the Deschutes River to the north and east. The area surrounding the property is characterized by Rural Residential uses to the east and south, farm land to the north and a large inactive surface mine to the west (SM #461). Beyond the subject property to the west is a mix of large and small agricultural enterprises.
- G. PUBLIC COMMENTS:** Notice of this application was provided to all property owners within 250 feet of the subject property. No public comments were received, which staff incorporated herein by reference.
- H. REVIEW PERIOD:** These applications were submitted on April 10, 2015. The applications were deemed complete by the Planning Division on May 10, 2015. Notice of the public hearing was posted in the Bend Bulletin. The land use sign affidavit had not been returned to the County prior to the writing of this staff report.

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<sup>1</sup> Not including remainder areas of SM zoned land (presently on tax lot 1502) and EFU zoned land (presently on tax lot 1600).

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

Deschutes County Transportation Planner: I have reviewed the transmittal materials for 247-15-000194-CU/195-TP to create a 19-unit subdivision in the Rural Residential (RR-10) and Floodplain (FP) zones at 704 NW 96th Street and 10000 NW Lower Bridge Way, Terrebonne, aka 14-12-15, TL 500 and 14-12-00, TL 1505.

Staff agrees with the submitted traffic study's methodology and LOS conclusions. Planning and Road Department staff visited the site and are concerned about the sight visibility from the proposed access to both the north and south of Lower Bridge Way. There are slight vertical curves and vegetation in both directions and it appears the access will not meet sight distance requirements. The applicant might wish to consider whether to replace the direct access to Lower Bridge Way with a direct access onto Teater at the south edge of the property, thus funneling site traffic to the existing Lower Bridge Way/Teater Avenue intersection.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$3,758 per p.m. peak hour trip. BOCC 2013-020 sets an SDC rate for single-family homes at \$3,044 per unit. Therefore the applicable SDC is \$57,836 (19 X \$3,044). The current SDC rate per p.m peak hour trip will increase to \$3,852 per p.m. peak hour trip an increase of 2.5% on July 1, 2015.

Deschutes County Road Department: Lower Bridge Road is classified as a rural collector with an ADT of 551 (2011 count). Existing road width is 24 feet. Per DCC 17.36.040, "Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition." Based on this, Lower Bridge Road will have to be improved to a width of 28 feet along the length of this subdivision.

- Access onto Lower Bridge Road will have to meet AASHTO standards for sight distance. Staff from the Road Department has met with the applicants engineer and it appears that the necessary sight distance can be met at a location that was agreed upon in the field. Another option would be to move the access from Lower Bridge Way south to NW Teater Avenue which is classified as a rural local road if sight distance requirements can't be met on Lower Bridge Road.
- Roads within the subdivision will be built to the private road standards listed in DCC 17.48.180 F.2., Private Roads, which requires a paved road width of 28 feet.
- The applicant stated in the Burden of Proof that they will dedicate 60 feet of right of way along the subdivision boundary for Lower Bridge Way.

The applicant is to meet the following conditions if this land use application is approved:

1. Road design within the subdivision shall be in accordance with DCC #17.48.180, "Private Roads" and Table "A", DCC, private roads. Road will be constructed to a paved width of 28 feet.

2. Lower Bridge Way shall be widened to meet the minimum standards for a collector road along the frontage of the subdivision. That will involve widening the existing 24 foot width out to 28 foot width with 2 foot aggregate shoulders. The widened section shall be constructed with eight (8) inches of aggregate base and three (3) inches of HMAC.

Redmond Area Parks and Recreation District: Redmond Area Park and Recreation District owns Borden Beck Wildlife Preserve, a 26 acre wildlife preserve on Lower Bridge Road. Our property is directly across the Deschutes River from the proposed planned development of 19 residential lots. Borden Beck Wildlife Preserve is a sensitive nesting habitat for a variety of bird species. Some of the bird species that can be seen at the preserve are Osprey, Canyon Wren, Bank Swallow, American Dipper and Yellow-breasted Chat. It also is our understanding the area is a migratory path for other animals as well.

While RAPRD is supportive of planned growth I wanted to share information about our property and share a concern regarding the preservation of wildlife habitats. I also have a secondary concern regarding the decreased user experience of those who use the wildlife preserve for recreation because of the impact on the view shed.

RAPRD requests that as this application is being considered, the appropriate setbacks are enforced that will minimize the impact to the nearby wildlife habitat.

Oregon Department of Fish and Wildlife: The proposed nineteen-lot residential development is not located in a Wildlife Area Combining Zone. However, ODFW is concerned with potential impacts to the rimrock and cliffs adjacent to the Deschutes River. All nineteen lots include rimrock habitat. According to the 2006 Oregon Conservation Strategy, residential development at the edge of rims alters vegetation and disturbs nesting birds. To protect rimrock habitat, ODFW urges Deschutes County planners to implement the setback standards described in the County's Comprehensive Plan.

Also, per the Department's Fish and Wildlife Habitat Mitigation policy (OAR 635-415-0010:0025), ODFW is concerned that these development actions could result in the loss of habitats used by a variety of native mammals, birds and reptiles. In particular, rimrock and cliffs provide nesting sites for raptors, especially golden eagles, and roosting sites for bats. ODFW again urges the County to implement stringent setback standards, to protect these sensitive species.

ODFW will not respond to any wildlife damage complaints within this residential development.

Redmond Fire and Rescue: Redmond Fire and Rescue submitted a comment letter dated April 23, 2015 and this comment letter is incorporated herein by reference.

The following agencies did not respond or had no comments: Deschutes County Environmental Soils, Deschutes County Assessor, Deschutes County Surveyor, Property Address Coordinator, Redmond School District, Department of Environmental Quality, DOGAMI, and Oregon Health Division.

**J. LAND USE HISTORY:**

**CU-74-156** – This record contains plan information for a solid and liquid waste disposal site on the subject property. It appears that this application was approved, as solid and liquid waste storage occurred on a portion of property located west of Lower Bridge Way. A variety of wastes, including hazardous wastes were stored on the western portion of the site and subsequently removed. This is discussed more fully later in the findings.

**MP-80-96** – Created Parcel 2, comprised of modern tax lots 500 and 1502 east of Lower Bridge Way and Parcel 3, comprised of modern tax lots 1501 and 1502 east of Lower Bridge Way

**ZC-85-3** - A zone change from surface mining reserve to surface mining on tax lots 1501, 1502, 1600, and 704. Condition 3 of this decision required a reclamation plan.

**SP-85-23** – A site plan to allow surface mining, aggregate mining, and rock crushing on tax lots 1501, 1502, 1600, and 704. This decision included reclamation specifications attached as Exhibit C to the Hearings Officer Decision for SP-85-23, but materials are missing from the record, including any map of the subject area and the updated reclamation plan required by Condition 1. The applicant submitted testimony and evidence demonstrating the area covered by the reclamation requirements for SP-85-23 encompasses an 18-acre area just north of Lower Bridge Way and west of the site access road off Lower Bridge Way. Compliance with a County approved reclamation plan is made a condition of this approval as discussed further herein.

**ESEE Analysis #461** – On October 24, 1989 the Board of County Commissioners rezoned the remainder of the site (comprised of modern tax lots 1501, 1502, 1503, and 1507) to SM. This decision contains information about the quality and quantity of aggregate and mineral resources on the property.

**MP-90-74** – Divided modern tax lot 1507 from modern tax 1501.

**ZC-08-1/PA-08-1:** Approval of a plan amendment and zone change to change the comprehensive plan designation of a portion of the mine site from SM and EFU to Rural Residential Exception Area and to rezone the property from EFU-TE and SM to RR-10. The county approved the plan amendment and zone change applications on December 29, 2008. This decision approved rezoning of the "East Area" of the mine site which became effective on September 25, 2011, through the adoption of Ordinance Nos. 2011-014 and 2011-015 by the Deschutes County Board of Commissioners.

The "East Area" zone change refers to the area East of Lower Bridge Way and was specifically approved to include 160 acres to accommodate a future 20 lot cluster or planned development, with a maximum density of one unit per 7.5 acres. There was not enough land area actually located on the east side to make 160 acres so approximately 30 acres was included along the river canyon on the west side with the intent that the west side acreage would be maintained as a part of the open space for the development and not developed with dwellings. Upon surveying the property, it was discovered the acreage was less than originally thought and would support only 19 lots. Therefore, lot

19 is proposed at 4.4 acres to allow a partition<sup>2</sup> if additional open space acreage can be added in the future to meet density and open space requirements for an additional lot.

The “West Area” of the property was the subject of a Resolution of Intent to Rezone and has not yet been rezoned because the environmental prerequisites for rezoning established in the resolution have not yet been met. This decision also approved the removal of SM Site No. 461 from the County’s Goal 5 mineral and aggregate inventory on the basis that its mineral and aggregate resources had been fully extracted. Since the property has not been rezoned the “West Area” is still SM Site No. 461 on the County’s Goal 5 mineral and aggregate inventory<sup>3</sup>.

**MC-09-3/MA-10-5/MA-11-2:** A Deschutes County Hearings Officer approved a modification of the 1985 site plan approval (SP-85-23) to revise the surface mining reclamation requirements of Surface Mine No. 461. The subject property in this matter constitutes a small portion of the 412.6 acre tract subject to the approved modifications.

**E-14-6:** Granted a one-year extension of ZC-08-01/PA-08-1 extending the approval through April 8, 2015.

**E-15-247:** Request for additional one year extension to April 9, 2016 currently pending.

All of the above files are incorporated into this record by reference.

### **III. CONCLUSIONARY FINDINGS:**

#### **A. Title 18 of the Deschutes County Code, the Deschutes County Zoning Ordinance**

##### **Chapter 18.16, EXCLUSIVE FARM USE ZONES**

**FINDINGS:** The proposed subdivision includes an existing 10.4-acre area that is zoned Exclusive Farm Use, Lower Bridge Subzone. The applicant proposes to include this area in the open space area of the subdivision as part of “Tract B Open Space”. Staff is uncertain if the creation of a subdivision lot that includes EFU zoned acreage is an allowed use in the EFU zone. Staff is also uncertain if the creation of this lot is subject to any minimum acreage standards under the EFU zone. Staff requests the Hearings Officer make specific findings on these issues.

Staff also notes that the application materials do not address how the EFU zoned remainder of modern tax lot 1600 will be configured under this proposal. Staff recommends the Hearings

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<sup>2</sup> Per OAR 660-04, the minimum residential lot size for planned developments is 2.0 acres. Therefore, lot 19 could theoretically be partitioned in the future.

<sup>3</sup> **ZC-08-1 condition of approval #8.** Upon the applicant’s successful fulfillment of the above conditions and pursuant to DCC 18.136.030B, the County shall amend the County comprehensive plan text and map designation for the 410 acre area in accordance with this Decision from Surface Mine (SM) and Agriculture (AG) to Rural Residential Exception Area (RREA). Additionally, the County shall remove Surface Mining Site 461 from the County’s Goal 5 inventory of significant mineral and aggregate resource sites and shall amend the zoning map designation for the 410 acre area from Surface Mining (SM) and Exclusive Farm Use (EFU) to Rural Residential-10 (RR-10).

Officer confirm the proposed configuration of the EFU zoned land and confirm that it will comply with any relevant provisions of DCC 18.16 prior to approval of this application.

#### **Chapter 18.52, SURFACE MINING ZONE SM**

**a. Section 18.52.030. Uses Permitted Outright.**

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**FINDINGS:** The applicant has not proposed any use of the portion of tax lot 1502 located outside of the proposed development area. Staff recommends that the Hearings Officer request revised findings addressing any proposed use of this new Surface Mining zoned parcel.

**b. Section 18.52.060. Dimensional Standards.**

**In the SM Zone, no existing parcel shall be reduced in size and no additional parcels shall be created by partition, subdivision or otherwise.**

**FINDINGS:** The applicant did not address this criterion. Based on the available lot of record information, it appears this proposal would create a new surface mining zoned lot in the portion of tax lot 1502 outside of the proposed Planned Unit Development footprint. However, the acreage zoned SM in the existing legal lot was reduced by ZC-08-1. The creation of this lot would simply create a single lot that contains all remaining SM zoned acreage from the existing legal lot into a single new lot.

While a new lot is certainly being created and/or the existing legal lot is certainly being reduced in size, Staff believes that this proposal doesn't violate the intent of this provision. This is because this proposal does not divide or change the existing acreage under SM zoning. Staff requests that the Hearings Officer make specific finding on the impact of this criterion on the applicant's proposal.

#### **CHAPTER 18.56, SURFACE MINING IMPACT AREA COMBINING ZONE SMIA**

**FINDING:** The PUD development is located within a SMIA zone associated with the mining site to the west (#461) and north (#322). The applicant did not apply for SMIA site plan approval for future dwellings in this application. Staff believes that this criterion requires that SMIA review be performed concurrently with Tentative Plan review. Staff recommends the Hearings Officer not approve this application until a SMIA application, fee, and required burden-of-proof under DCC 18.56 have been submitted.

#### **CHAPTER 18.60, RURAL RESIDENTIAL ZONE RR 10**

1. Section 18.60.030, Conditional uses permitted.

**The following uses may be allowed subject to DCC 18.128:**

**E. Planned development.**

**FINDING:** The applicant proposes 19 lots to be created for single-family residential purposes. The common area and the six open space tracts will not contain dwellings. One dwelling per lot is permitted outright in the RR-10 zone. DCC 18.04.030 defines planned development as:



***"Planned development" means the development of an area of land at least 40 acres in size for a number of dwelling units, commercial or industrial uses, according to a plan which does not necessarily correspond in lot size, bulk or type of dwelling, density, lot coverage, or required open space to the standard regulations otherwise required by DCC Title 18, and usually featuring a clustering of residential units.***

The applicant proposes a planned development with residential lots, common area and open space tracts; commercial and industrial uses are not included. The subject property qualifies for approval of a Planned Development as it is over 40 acres in size. As depicted on the submitted Tentative Plan, applicant proposes to cluster residential lots along the north and eastern property lines, as allowed in a planned development. This design creates large open space tracts containing the riparian areas which can be managed and protected as well as a centrally located open space tract surrounding the residential lots. This design provides increased protection for the riparian areas with proposed covenants and easements to protect and manage the area for resource values; clusters the dwellings to reduce the areas needed for infrastructure service; and provides opportunities for shared recreational areas and amenities for the residents.

Staff finds that the portions of the PUD on RR-10 zoned lands are a conditional use in that zone. Relevant conditional use standards are addressed below.

3. Section 18.60.040, Yard and setback requirements.

**In an RR-10 Zone, the following yard and setbacks shall be maintained.**

- A. The front setback shall be a minimum of 20 feet from a property line fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way and 50 feet from an arterial right of way.**
- B. There shall be a minimum side yard of 10 feet for all uses, except on the street side of a corner lot the side yard shall be 20 feet.**
- C. The minimum rear yard shall be 20 feet.**
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.**
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

**FINDING:** Submitted with the application is a tentative plat drawing that shows all 19 single-family dwelling lots, the two common areas and the six larger open space tracts. The applicant does not propose to vary the County setback standards through the conditional use process for the planned development. Therefore, the proposed dwellings and any accessory structures that may be constructed on the proposed lots will meet the above minimum setbacks. The setbacks for any structures on these lots will be checked for conformance with the above standards at the time of building permit submittal.

4. Section 18.60.050, Stream Setback.

To permit better light, air, vision, stream or pollution control, protect fish and wildlife areas and to preserve the natural scenic amenities and vistas along streams and lakes, the following setback shall apply:

- A. All sewage disposal installations, such as septic tanks or septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

**FINDING:** While none of the development lots front on the Deschutes River, staff has interpreted these criteria to require these setbacks across other lots or parcels. Staff believes that the combination of the canyon topography and rimrock setbacks of DCC 18.84 (depending on the existing of rimrock on the lots) may impose greater setbacks on any residential development and sewage disposal systems. Regardless, staff recommends the hearings officer include these criteria as conditions of any approval.

5. Section 18.60.060, Dimensional standards.

In an RR-10 Zone, the following dimensional standards shall apply:

- A. **Lot Coverage.** The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.
- B. **Building Height.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

**FINDING:** At over two acres each, staff finds that the proposed lots will be residentially developable under the thirty percent lot coverage limitation. Actual lot coverage will be checked during building permit review. Staff recommends a condition of approval requiring that no building or structure be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

- C. **Minimum lot size shall be 10 acres, except planned and cluster developments shall be allowed an equivalent density of one unit per 7.5 acres. Planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five-acre minimum lot size or equivalent density. For parcels separated by new arterial rights of way, an exemption shall be granted pursuant to DCC 18.120.020.**

**FINDING:** The applicant proposes a density variation as allowed under this criterion by creating a planned development to cluster the residential lots and provide significant open space. The subject property is approximately 157 acres in size. Minus the 10.4 acres zoned EFU, the total development area is 146.6 acres. With 19 planned lots, the proposed density is one unit per 7.7 acres, which is less than the maximum allowed density of one unit per 7.5 acres. Staff notes that the applicant's density calculation includes RR-10 and FP zoned land but includes no EFU or SM zoned lands.

5. Section 18.60.070, Dimensional standards.

**The following limitations shall apply to uses allowed by DCC 18.60.030:**

- A. The Planning Director or Hearings Body may require establishment and maintenance of fire breaks, the use of fire resistant materials in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce fire hazards or prevent the spread of fire to surrounding areas.**

**FINDING:** The proposed lots will be developed with single-family dwellings, and also potentially with accessory structures. The upper portion of the property where residential construction will occur is void of trees, thus a significant fire break currently exists. Additionally, it is likely that many of the lots will be developed with irrigated lawns which serve as effective firebreaks. With the loss of vegetation due to historic mining activities on site, the risk of fire hazards has been greatly reduced. The use of fire resistant materials will be required in the design guidelines for the private covenants.

- B. The Planning Director or Hearings Body may limit changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation in order to prevent or minimize erosion or pollution.**

**FINDING:** Staff finds that changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation in the riparian habitat of the Deschutes River, NWI mapped wetlands, or on the adjacent canyon would likely result in erosion and increased sediment delivery to the Deschutes River. Staff recommends a condition of any approval that prohibits changes in the natural grade of land; or the alteration, removal or destruction of natural vegetation; or new structures below the existing terrace level, except where part of an ODFW approved habitat enhancement project. Staff notes that the "terrace level" varies somewhat across the site. Staff recommends the Hearings Officer request an exhibit identifying the break in topography between the generally level terrace and the steep slope down to the Deschutes River.

6. Section 18.60.080. Rimrock Setback.

**Setbacks from rimrock shall be as provided in DCC 18.116.160.**

**FINDING:** Staff notes that many of the proposed lots have no rimrock<sup>4</sup> as there is no rock face in excess of 45 degrees in the Deschutes River Canyon on these lots. Staff recommends the

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<sup>4</sup> DCC 18.04.030 - "Rimrock" means any ledge, outcropping or top or overlying stratum of rock, which forms a face in excess of 45 degrees, and which creates or is within the canyon of the following rivers and streams: (1) Deschutes River, (2) Crooked River, (3) Fall River (4) Little Deschutes River (5)

Hearings Officer requests an exhibit showing all rock faces in excess of 45 degrees on the subject property to understand the distribution of these rock outcroppings.

DCC 18.116.160 is titled "Rimrock Setbacks Outside of LM Combining Zone". The subject properties fall wholly within the Landscape Management Combining Zone associated with the Deschutes River. However, Staff recommends that the Hearings Officer find that the provisions of DCC 18.116.160 apply to those structures that are exempt from Landscape Management review, such as structures which do not require building permits. Staff believes that the title of the section does not impact the applicability of the criteria. Staff believes DCC 18.116.160 would not, however, redundantly apply to structures covered by DCC 18.84, as a case of specific code ruling over the general code.

Without this finding, staff is concerned a property owner could place a structure that did not require building permits (e.g. an accessory structure less than 200 square feet in size and less than 10 feet in height) immediately adjacent to rimrock or even projecting partially over rimrock. Alternatively, if the Hearings Officer finds that this criteria does not apply, staff recommends the Hearings Officer prohibit this sort of development under DCC 18.128.015.

#### **CHAPTER 18.84, LANDSCAPE MANAGEMENT COMBINING ZONE (LM)**

**FINDING:** The applicant did not apply for LM site plan approval for future dwellings in this application. Staff reviews these criteria to demonstrate that it is feasible to obtain LM site plan approval for these future dwellings. Staff recommends that the Hearings Officer require LM site plan approval for future dwellings or additions to dwellings as a condition of any approval of this application.

1. Section 18.84.020, Application of Provisions

**The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. This distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.**

**FINDINGS:** The proposed homesites are located within the landscape management corridor for the Deschutes River, and therefore the LM Zone provisions apply to the applicant's proposal.

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Spring River (6) Paulina Creek (7) Whychus Creek and (8) Tumalo Creek. For the purpose of DCC Title 18, the edge of the rimrock is the uppermost rock ledge or outcrop of rimrock.

2. Section 18.84.030, Uses Permitted Outright

**Uses permitted in the underlying zone with which the LM Zone is combined shall be permitted in the LM Zone, subject to the provisions in DCC 18.84.**

**FINDINGS:** The LM zone overlays RR-10, EFU, and FP zoned lands included in this proposal. Outright uses in those zones are discussed in their respective sections.

2. Section 18.84.040. Uses Permitted Conditionally.

**Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.**

**FINDINGS:** The LM zone overlays RR-10, EFU, and FP zoned lands included in this proposal. Conditional uses in those zones are discussed in their respective sections.

3. Section 18.84.050, Use Limitations

A. **Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.**

B. **Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.**

**FINDINGS:** The applicant did not apply for LM site plan approval for future dwellings in this application. Staff reviews these criteria to demonstrate that it is feasible to obtain LM site plan approval for these future dwellings. Staff recommends that the Hearings Officer require LM site plan approval for future dwellings or additions to dwellings as a condition of any approval of this application. Prior to specific development proposals, it is unclear if the future homes will be visible from the Deschutes River.

4. Section 18.84.060, Dimensional Standards.

**In an LM Zone, the minimum lot size shall be as established in the underlying zone with which the LM Zone is combined.**

**FINDINGS:** The applicant proposes to create new lots in the Landscape Management Combining zone. Minimum lot sizes are reviewed in this staff report under the relevant underlying zone.

5. Section 18.84.080, Design Review Standards.

The following standards will be used to evaluate the proposed site plan:

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.
- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.
- C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. This subsection shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.
- D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.84.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.
- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flagpoles or other projections from the roof of the structure. DCC 18.84.080 shall not apply to agricultural structures located at least 50 feet from a rimrock.
- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.
- G. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.
- H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the

development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged.

- I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.,) are permitted.
- J. A conservation easement as defined in DCC 18.04.030 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Whychus Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.

**FINDINGS:** The applicant did not apply for LM site plan approval for future dwellings in this application. Staff finds that it is feasible that future dwellings could comply with these criteria.

6. Section 18.84.090, Setbacks.

- A. Except as provided in DCC 18.84.090, minimum setbacks shall be those established in the underlying zone with which the LM Zone is combined.
- B. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road right-of-way unless the Planning Director or Hearings Body finds that:
  - 1. A location closer to the designated road would more effectively screen the building from the road; or protect a distant vista; or
  - 2. The depth of the lot makes a 100 foot setback not feasible; or
  - 3. Buildings on both lots abutting the subject lot have front yard setbacks of less than 100 feet and the adjacent buildings are within 100 feet of the lot line of the subject property, and the depth of the front yard is not less than the average depth of the front yards of the abutting lots.If the above findings are made, the Planning Director or Hearings Body may approve a less restrictive front yard setback which will be appropriate to carry out the purpose of the zone.
- C. River and Stream Setbacks. All new structures or additions to existing structures shall be set back 100 feet from the ordinary high water mark of designated streams and rivers or obtain a setback exception in accordance with DCC 18.120.030. For the purpose of DCC 18.84.090, decks are considered part of a structure and must conform with the setback requirement.

The placement of on site sewage disposal systems shall be subject to joint review by the Planning Director or Hearings Body and the Deschutes County Environmental Health Division. The placement of such systems shall minimize the impact on the vegetation along the river and shall allow a dwelling to be constructed on the site as far from the stream or lake as possible. Sand filter systems may be required as replacement systems when this will allow a dwelling to be located further from the stream or to meet the 100 foot setback requirement.

**FINDINGS:** The applicant proposes to create new lots in the Landscape Management Combining zone. Minimum lot sizes are reviewed in this staff report under the relevant underlying zone.

- D. **Rimrock Setback.** New structures (including decks or additions to existing structures) shall be set back 50 feet from the rimrock in an LM Zone. An exception to this setback may be granted pursuant to the provisions of DCC 18.84.090(E).
- E. **Rimrock Setback Exceptions.** An exception to the 50 foot rimrock setback may be granted by the Planning Director or Hearings Body, subject to the following standards and criteria:

...

**FINDINGS:** Staff notes that many of the proposed lots have no rimrock as there is no rock face in excess of 45 degrees in the Deschutes River Canyon on these lots. Staff recommends the Hearings Officer requests an exhibit showing all rock faces in excess of 45 degrees on the subject property to understand the distribution of these rock outcroppings.

Staff is concerned that development of some of the proposed lots will only be possible under a rimrock setback exception. Staff believes that new lots should not be created by a subdivision that will require a rimrock exception to develop when alternative layouts of the subdivision are possible. Additionally, staff is uncertain if it will be feasible for future homes to comply with exception criteria at the time of development. Staff recommends the Hearings Officer request a figure showing the developable area of each lot without a setback exception prior to finding that residential development of these lots is feasible.

Staff is particularly concerned that large dwellings (on the road-to-river axis) could qualify for setback exceptions under criterion (E)(1)(d). Staff recommends that the Hearings Officer finds that the creation of lots that would either necessitate or encourage exceptions to the rimrock setback standards would be disorderly under 17.16.100(A).

## **CHAPTER 18.96, FLOOD PLAIN ZONE FP**

### 1. Section 18.96.020, Designated Areas.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "Flood Insurance Study for Deschutes County, Oregon and Incorporated Areas" revised September 28, 2007, with accompanying Flood Insurance Rate Maps is hereby adopted by reference and incorporated herein by this reference. The Flood Insurance Study is on file at the Deschutes County Community Development Department.



**The Flood Plain Zone shall include all areas designated as "Special Flood Hazard Areas" by the Flood Insurance Study for Deschutes County. When base flood elevation data has not been provided in the Flood Insurance Study, the Planning Director will obtain, review and reasonably utilize any base flood elevation or floodway data available from federal, state or other sources, in determining the location of a flood plain or floodway.**

**FINDINGS:** The County Flood Plain (FP) zone includes all areas designated as "Special Flood Hazard Areas" on the Federal Flood Insurance Rate Maps (FIRM). Special Flood Hazard Areas are lands that would be inundated by a 100-year flood event, that are at or below the base flood elevation (BFE).

The Flood Insurance Rate Map (FIRM) for the section of the Deschutes River near this lot is Map No. 41017C0300E, revised September 28, 2007. The FIRM map indicates that portions of the land below the canyon rim are designated as "Special Flood Hazard Areas" on the Federal Flood Insurance Rate Maps (FIRM). Staff also notes that the riparian habitats along the Deschutes River contain mapped wetlands on the NWI "Cline Falls" map. All areas mapped as Flood Plain or wetlands will be located in open space lots with no proposed development.

2. Section 18.96.030, Uses Permitted Outright

**The following uses and their accessory uses are permitted outright**

...

**C. Open space.**

**FINDINGS:** All areas mapped as Flood Plain or wetlands will be located in open space lots with no proposed development.

3. Section 18.96.040, Conditional Uses Permitted.

**The following uses and their accessory uses may be allowed subject to applicable sections of this title:**

...

**H. Subdividing or partitioning of land, any portion of which is located in a flood plain, subject to the provisions of DCC Title 18 and DCC Title 17, the Subdivision/Partition Ordinance.**

**FINDINGS:** The applicant has proposed a planned unit subdivision which creates two subdivision lots, Tract C and E Open Space which include the floodplain acreage and some adjacent RR-10 zoned land from the parent legal lot. Staff believes that this action constitutes "subdividing ...land, any portion of which is located in a flood plain", which is a conditional use in the Flood Plain zone.

4. Section 18.96.060, Limitations on Conditional Uses.

**The following limitations shall apply to all uses allowed by DCC 18.96.040:**

**A. No new construction of a dwelling (including manufactured housing), accessory structure or farm use structure shall be allowed in the floodway of any river or stream except for replacement in conformance with the applicable provisions of DCC 18.96 of a**

dwelling lawfully in existence as of the effective date of Ordinance 88 030.

- B. No new construction of a dwelling (including manufactured housing), accessory structure or farm use structure shall be located in the flood plain unless it can be demonstrated by the applicant that no alternative exists on the subject property which would allow the structure to be placed outside of the flood plain.
- C. No subdivision or partition shall be allowed which creates the potential for additional residential dwellings in the flood plain.
- D. All necessary federal, state and local government agency permits shall be obtained.

**FINDINGS:** Staff believes, since no development actions are proposed in the Flood Plain zoned portion of the property, that the application would comply with these criteria.

5. Section 18.96.070, Application for Conditional Use.

All records of any application for a conditional use permit and all certification of elevations shall be maintained in the records of the Community Development Department for public inspection. An application for a conditional use permit in the Flood Plain Zone shall, at a minimum, contain the following information:

- A. A detailed explanation of why it is necessary to conduct the proposed use in the Flood Plain Zone. Where base flood elevation data is not available from the Flood Insurance Study or from another authoritative source, it shall be generated and submitted with the application for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).
- B. A site plan, drawn to scale and accompanied by drawings, sketches and descriptions which describe and illustrate the proposed use. This site plan shall include, at a minimum, existing and proposed site contours in relation to the base flood elevation, existing and proposed structures, drainage facilities, and an explanation of how erosion will be dealt with during and after construction of the use.
- C. The location of the property relative to the channel of the river or stream.
- D. The location of existing and proposed diking or abutments, if any.
- E. The elevation of the lowest habitable floor and of any basement floor for any dwelling unit or structure.
- F. The elevation to which the structure is to be floodproofed, if applicable.
- G. Elevations on the site plan shall be established by a licensed surveyor or engineer, and shall be in relation to mean sea level.
- H. Certification by a registered professional engineer or architect that the floodproofing methods for any structure meet the floodproofing criteria established by the Federal Emergency Management Agency and the applicable standards in DCC 18.96.
- I. All other elements or information which will assist in the evaluation of the proposed development and conformance with the applicable criteria.

**FINDINGS:** Staff believes, since no development actions are proposed in the Flood Plain zoned portion of the property, that the application would comply with these criteria. Staff notes that criterion (A) would appear to require a detailed flood study as base flood elevation data is not available from the Flood Insurance Study in this location and the proposed developments contains at least five acres. Staff understands that FEMA has a policy of not requiring this detailed study where, as is the case here, the FP portion of the property is wholly contained in an undevelopable open space parcel. Staff recommends, as a condition of any approval, that the Hearings Officer prohibit structural development in the FP zoned portion of the property until such time that a detailed study has been approved by FEMA.

6. Section 18.96.080, Criteria to Evaluate Conditional Uses..

**E. Subdivision and Partition Proposals.**

1. **All subdivision and partition proposals shall be consistent with the need to minimize flood damage.**
2. **All subdivision and partition proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.**
3. **All subdivision and partition proposals shall have adequate drainage provided to reduce exposure to flood damage.**

**FINDINGS:** Staff believes, since no development actions are proposed in the Flood Plain zoned portion of the property, that the application would comply with these criteria.

7. Section 18.96.090, Yard and Setback Requirements.

**In an FP Zone, the following yard and setback requirements shall be maintained:**

- A. **The front setback shall be a minimum of 20 feet from a property line fronting on a local street, 30 feet from a property line fronting on a collector and 50 feet from an arterial.**
- B. **There shall be a minimum side yard of 10 feet for all uses.**
- C. **The minimum rear yard shall be 20 feet.**
- D. **The setback from a north lot line shall meet the solar setback requirements in DCC 18.116.180.**
- E. **The minimum yard setback for a nonfarm use from the property line adjacent to a farm use not owned by the applicant shall be 100 feet.**
- F. **In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.**

**FINDINGS:** Staff believes, since no development actions are proposed in the Flood Plain zoned portion of the property, that the application would comply with these criteria.

8. Section 18.96.100. Stream Setback.

**To permit better light, air, vision, stream and pollution control, to protect fish and wildlife areas and to preserve the natural scenic amenities along streams and lakes, the following setbacks shall apply:**

- A. All sewage disposal installations such as septic tanks or septic drain fields shall be setback from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet, and the County Sanitarian finds that a closer location will not endanger public health or safety, a setback exception may be permitted to locate these facilities closer to the stream or lake, but in no case closer than 25 feet.
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles from the ordinary high water mark.

**FINDINGS:** Staff believes, since no development actions are proposed in the Flood Plain zoned portion of the property, that the application would comply with these criteria.

9. Section 18.96.110, Dimensional Standards..

**In an FP Zone, the following dimensional standards shall apply:**

- A. **Lot Coverage.** The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.
- B. **Building Height.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.

**FINDINGS:** Staff believes, since no development actions are proposed in the Flood Plain zoned portion of the property, that the application would comply with these criteria.

- C. **Minimum lot size shall be 10 acres for all areas which have received an exception to the Statewide Planning Goals for resource uses. Areas which have not received an exception to the Statewide Planning Goals shall have a minimum lot size of 80 acres.**

**FINDINGS:** The subject property is designated Rural Residential Exception Area on the County Comprehensive Plan. As discussed, it was the subject of a nonresource determination which is equivalent to a goal exception for purposes of the above standard in that a determination has been made that the statewide planning goals do not apply. Therefore, a 10 acre minimum lot size is applicable to this request. Tract C is 20.9 acres, and Tract E is 19.1 acres, both of which exceed the 10 acre minimum lot size.

However, staff is uncertain if these Open Space Tracts need to have either 1) some floodplain zoning and more than 10 acres overall, regardless of zoning, or 2) at least 10 acres of land zoned floodplain per lot in addition to any RR-10 acreage in the lot. Staff requests that the Hearings Officer make specific findings on this issue.

## CHAPTER 18.116., SUPPLEMENTARY PROVISIONS

1. Section 18.116.310, Traffic Impact Studies
  - A. For purposes of DCC 18.116.310, the transportation system includes public and private roads, intersections, sidewalks, bike facilities, trails, and transit systems.
  - B. The applicant shall meet with County staff in a pre-application conference to discuss study requirements, then generate the traffic study and submit it concurrently with the land use application.
  - C. Guidelines for Traffic Impact Studies
  - ...

**FINDINGS:** The applicant prepared a traffic impact study in accordance with these criteria. The Deschutes County Transportation Planner reviewed this study and responded:

Staff agrees with the submitted traffic study's methodology and LOS conclusions. Planning and Road Department staff visited the site and are concerned about the sight visibility from the proposed access to both the north and south of Lower Bridge Way. There are slight vertical curves and vegetation in both directions and it appears the access will not meet sight distance requirements. The applicant might wish to consider whether to replace the direct access to Lower Bridge Way with a direct access onto Teater at the south edge of the property, thus funneling site traffic to the existing Lower Bridge Way/Teater Avenue intersection.

Staff notes that subsequent discussions between the Road Department, Transportation Planner and applicant confirmed that sight distance at the proposed intersection is adequate.

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

**FINDINGS:** Staff finds that these criteria apply, as the proposed conditional uses are PUD and division of flood plain zoned lands. These uses are not an individual single family dwelling and, therefore, these criteria apply.

The applicant requests approval of a planned development (nineteen (19) residential lots) in the Rural Residential (RR-10) and Flood Plain (FP) zone. In the BOCC decision on PA-08-1/ZC-08-1 the Board found:

The subject property has a long, inconsistently documented mining history. Diatomite mining began on the property prior to the 1920s. Large scale

production began in 1936. The Great Lakes Carbon Company mined the property from 1944 to 1961. The mining history between 1966 and 1980 is unclear; however, it appears the diatomite extraction occurred primarily on the western portion of the site. The Oregon Department of Geology and Mineral Industries (DOGAMI) file for this site begins in 1980. That file indicates that multiple companies have mined the site, mostly for diatomite but also for aggregate. Although multiple mining permits were issued over the years, various companies were cited for violating environmental laws, mining permits, or operating without permits. **(Page 6)**

...

The record indicates that the subject property was historically used to mine and process diatomaceous earth. The record also indicates that the processing of diatomaceous earth can create cristobalite, classified by the International Agency for Research on Cancer as carcinogenic to humans. There is no evidence in the record that the property has been tested or evaluated for potential hazard from this carcinogen. The site has also been used for hazardous and radioactive waste disposal and has been subject to numerous violations of environmental quality regulations.

The Oregon Department of Human Services, Environmental Health Assessment Program (EHAP) stated that the existing EHAP evaluation of environmental conditions at the site only dealt with the present use of the property. EHAP recommended that the landowner obtain a letter of "No Apparent Public Health Hazard" from EHAP for the site prior to residential use. This would require additional environmental sampling and cleanup of any identified environmental concerns. EHAP has also found that airborne dust from any source can cause short-term respiratory irritation, but more information is needed to evaluate possible long-term effects at this site. EHAP considers inhalation of airborne dust emanating from this site to be an indeterminate health hazard.

The Oregon Department of Environmental Quality (DEQ) stated that the site has currently only been evaluated with respect to environmental safety for its current use as a mine and an industrial property. A rezone of the site from industrial to residential use would require a re-evaluation of the site for residential use. The re-evaluation of the site, applicable exposure routes, and pathways may result in some scenarios requiring deed restrictions, active cleanup and/or monitoring. Following a cleanup of any identified environmental concerns, DEQ could issue a "No Further Action Letter" (NFA) for residential use. **(Page 30)**

Diatomite dust. According to the applicant, the exposed diatomite on the western portion of the property is from fresh-water diatoms. The applicant supplied testimony and evidence that shows that fresh-water diatomite contains a smaller percentage of crystalline silica, the type of silica that has been identified as a health hazard if inhaled in quantity. The applicant argues that this type of diatomite poses no more risk than other dust in the area. The applicant also argues that before this site is redeveloped for residential uses, the diatomite will be graded and seeded to prevent dust from blowing from the site to neighboring properties. The neighbors expressed reservations about this assertion, arguing that the cost and feasibility of that type of reclamation is unlikely to be recouped as part of development on this site.

The evidence shows that blowing dust has been an issue for many years, although recent grading activities exacerbated the situation. The recent activities led the Department of Environmental Quality (DEQ) to issue a notice of violation. In response to the notice, the owners obtained a temporary water permit, purchased mitigation credits, installed a pivot and began using an existing well to water a portion of the site to minimize dust. The applicant is also proposing to implement best management practices to ensure that blowing dust during development is minimized. These measures are adequate to assure that local air quality is maintained.

Water quality/quantity. According to the evidence in the record, seven wells have been drilled on the site. These wells are proposed to be used for dust suppression, and may be converted to domestic wells in the future. The applicant proposes to develop individual, shared or group wells (serving up to three lots) as part of its residential development. The residents may use up to 15,000 gallons per day for domestic and yard irrigation (up to one-half acre) and remain exempt from water rights regulation. Similarly, wells developed to serve three or fewer dwellings are exempt from water quality standards. Neighbors expressed concerns regarding potential water contamination from past industrial uses, and also argue that the introduction of 17 or more new wells (assuming 72 dwelling units, and at least one well per three dwelling units minus the seven existing wells) could significantly affect their water quality and quantity.

The Board agrees with the Hearings Officer and finds that this goal does not directly address the availability (or quantity) of domestic water supplies. Rather, it is intended to assure that quality of air, water and land resources is maintained and improved. Here, the evidence (including evidence from testing of nearby community water wells) shows that existing water quality in the area is adequate, and that past activities on the site have not affected nearby well water quality. With respect to water quality at the site, the Board finds that the question can be better addressed at the time a development proposal is submitted for the site. At this point, the evidence shows that the proposed plan amendment/zone change will not have any effect on water quality.

Erosion/Fill. One of the neighbors expressed concerns regarding slope stability at the site, asserting that new grading may undermine the slope along the edges of the river bank. Other neighbors expressed concerns that the fill used for residential foundations be adequate for the purpose, noting that a school in Deschutes County is sinking, in part because the fill used by the contractor was not stable enough to accommodate the building. The evidence shows that diatomite mining occurred closer to the center of the site, and that the aggregate mining has ceased. There is no evidence that past mining has undermined slope stability along the river edge. The applicant has proposed to grade some of the taller diatomite mounds to reduce the areas susceptible to blowing dust. As for future development, land division and development standards impose setbacks from the edge of the bank. Deschutes County does not require grading permits and does not presently regulate fill to determine if it is suitable for residential use. As a condition of approval, if fill is brought onto the site, the applicant will be required identify the general location of the fill, and if the site is used for development, the applicant shall either certify that the fill is suitable for

development, or specifically declaim any knowledge of its suitability. The Board concludes that these measures are adequate to assure that development on the site will not adversely affect air, water or land quality.

Dumping/Environmental Issues. A portion of the site west of Lower Bridge Way was an approved waste facility in the mid-1970s, and consequently, sludge, radioactive materials as well as standard solid waste was brought to the site during that time. According to the applicant, the dumping grounds were limited to the central portion of the site, near the former lagoons, and included 55-gallon drums filled primarily with caustic sand. The site was subject to a DEQ-mandated clean up, which was completed by January 1985. The evidence shows that all of the materials located at the site prior to 1985 were removed to approved hazardous waste disposal sites, including Arlington and the Hanford Reservation. According to Maul Foster and Alongi, Inc., the applicant's environmental consultant, the standards used to evaluate the clean-up was based on one of two standards "clean up to the maximum extent practical" or "clean up to background conditions." Maul Foster and Alongi, Inc. representatives testified that these standards are higher than the current risk-based standards, which permit less comprehensive clean up where the site will be used for industrial purposes than is required for sites that will be redeveloped for residential uses. With respect to spills or activities that have occurred since that time, including disposal of mining solvents and industrial burning, the evidence shows that the violations have been addressed by meeting industrial use standards. The Board has included conditions, as discussed more fully herein, to ensure the property is clean enough to meet residential use standards. **(Page 17)**

Staff notes this analysis pertained to the mine site as a whole, which included the subject property and an additional 410 acres to the west of the subject property. Staff also notes that there is no record of hazardous and radioactive waste disposal on the portion of the mine site included in the PUD footprint. The Board findings relied heavily on ZC-08-1/PC-08-1 conditions of approval #1 and #2 for findings of compliance with rezoning criteria.

Staff believes that the proposed residential use of this property would be unsuitable if the site presented significant hazards from the former mining and/or industrial use of the property. Staff believes these hazards could include surface contamination, sub-surface contamination, groundwater contamination, and uncontrolled dust from surfaces with limited vegetation or surfaces disturbed by future actions. Staff understands the applicant is working with DEQ and DHS (Now under the Oregon Health Authority, "OHA") on a work plan for the site that may adequately address many of these concerns. In addition to the requirements imposed under ZC-08-1/PC-08-1, Staff believes the applicant must demonstrate, prior to any approval of this application that the site is suitable (or that it is feasible to demonstrate that the site is suitable prior to final plat approval) given the following concerns:

#### Surface Contamination

Surface contamination of the site could include presently exposed contaminated surfaces. Potential hazards could come from direct contact with contamination or migration of contamination to groundwater (discussed under groundwater, below). Staff is unaware of any evidence of surface contamination presently. Staff recommends the Hearings Officer request



additional information to determine that the site has been adequately investigated for surface contamination based on testimony from both DEQ and OHA.

Staff is concerned that surface contamination may be detected in the future. Staff believes the site is not suitable unless 1) this risk can be completely discounted by DEQ and OHA or 2) a plan, clear lines of responsibility, and funding source is available to deal with any future detection of contamination. Staff believes there needs to be a plan in place prior to this approval addressing how foreseeable future hazards will be resolved. The key elements of that plan should be included as conditions of any approval of this application. Those conditions should include the following information:

- Why is this measure being recommended and state the objective of the measure.
- What action or actions must be completed and how will it be implemented, including:
  - Identification of the measure.
  - Description of the steps necessary to complete the measure.
  - Identification of measurable performance standards by which the success of the action can be determined.
  - Provide for contingent mitigation if monitoring reveals that success standards are not satisfied.
- Who is responsible for implementing the actions required by the measure.
- Where is the action to take place.
- When must each action be implemented
- Who will monitor the actions and how and when monitoring will occur.

Staff recommends the Hearings Officer require that a funded, binding plan for foreseeable future hazards be in place prior to any approval of this application. Staff understands that this level of detail is not typically included in PUD reviews. However, given the former mining and industrial use of the site, staff believes an abundance of caution is vital. A finding that the site is suitable for residential use is not supported where plans for foreseeable hazards are not in place.

### Sub-Surface Contamination

Sub-surface contamination of the site could include sub-surface area contaminated or containing solid waste. Potential hazards could come from exposure of contaminated soils, exposure of solid waste during residential development, or migration of contamination to groundwater (discussed under groundwater, below). Staff is unaware of any evidence of sub-surface contamination presently. Staff recommends the Hearings Officer request additional information to determine that the site has been adequately investigated for sub-surface contamination based on additional testimony from both DEQ and OHA.

Staff is concerned that sub-surface contamination may be detected in the future. Staff believes the site is not suitable unless 1) this risk can be completely discounted by DEQ and OHA or 2) a plan, clear lines of responsibility, and funding source is available to deal with any future detection of contamination.

Staff recommends the Hearings Officer require that a funded, binding plan for foreseeable future hazards be in place prior to any approval of this application.

### Groundwater Contamination

Groundwater contamination of the site could include presently contaminated groundwater reaching residential wells or migration of soil contamination to groundwater. Contamination sources may be on the subject property, or the larger mine site to the west. New wells can change the flow rate and direction of flow of groundwater. Staff is unaware of any evidence of groundwater contamination presently. Staff recommends the Hearings Officer request additional information to determine that the site has been adequately investigated for groundwater contamination based on additional testimony from both DEQ and OHA.

Staff is concerned that groundwater contamination may be detected in the future. Staff believes the site is not suitable unless 1) this risk can be completely discounted by DEQ and OHA or 2) a plan, clear lines of responsibility, and funding source is available to deal with any future detection of contamination. Staff recommends the Hearings Officer require that a funded/bonded plan be in place prior to any approval of this application.

Staff recommends the Hearings Officer require that a funded, binding plan for foreseeable future hazards be in place prior to any approval of this application.

### Dust

Dust, regardless of contamination, can represent a significant respiratory hazard. Staff understands that the subject property and adjacent larger mining site to the west (Tax Lots 1501 and the SM zoned portions of 1502) has and continues to be a significant generator of dust. The diatomaceous earth prevalent on the subject property and adjacent SM zoned lands to the west has significant potential for the generation of dust. The record for ZC-08-1/PA-08-1 establishes that dust from processed diatomaceous earth, which may be present on the site, is of particular concern.

Staff recommends the Hearings Officer request additional information to determine that dust can be adequately controlled at the site during construction and residential use based on additional testimony from both DEQ and OHA. Staff believes the site is not suitable unless 1) this respiratory hazard from dust can be completely discounted by DEQ and OHA or 2) a plan, clear lines of responsibility, and funding source is available to deal with any future generation of significant dust.

Staff recommends the Hearings Officer require that a funded, binding plan for this foreseeable future hazard be in place prior to any approval of this application.

Staff is also concerned about dust from future mining use of the adjacent mining site to the west. Dust from this site would be delivered to the proposed PUD by the prevailing winds. This area is still zoned surface mining and staff assumes the site can and will be mined until such use is prohibited on the property. Staff believes the Hearings Officer would need to be able to answer the following questions prior to any finding that the new residential use would be suitable, given potential future uses of tax lot 1501 and 1502:

- 1) What earth/vegetation disturbance and mining is allowed on tax lots 1501 and 1502 without any further land use review? What limits, if any exist on potential

dust generation? The county does not have a grading ordinance and the site pre-dates DOGAMI requirements. Is there any evidence that massive earthmoving and dust production could not be conducted without recourse on the SM zoned property?

- 2) What new earth/vegetation disturbance and mining could be permitted on tax lots 1501 and 1502 under conditional use and/or site plan review? Would these review processes include sufficient safeguards to protect the PUD from dust, noise, and industrial emissions? Staff notes that the protections of the Surface Mining zone tend to be limited to only very close or immediately adjacent residences.

Staff believes that the subject property is not a suitable location for the PUD until such time that surface mining on the SM zoned portions of tax lots 1501 and 1502 is permanently prohibited and a binding dust management plan is in place for any grading or earthmoving on lots 1501 and 1502.

Staff recommends the Hearings Officer require that a funded, binding plan for this foreseeable future hazard be in place prior to any approval of this application.

#### Noise and Other Off-Site Impacts

Staff is uncertain what mining and industrial activities could be permitted on tax lots 1501 and 1502 outright, under conditional use review, and/or site plan review. Would the review processes, if any, include sufficient safeguards to protect the PUD from dust, noise, and industrial emissions? Staff notes that the protections of the Surface Mining zone tend to be limited to only very close or immediately adjacent residences. Staff believes that the subject site would not be a suitable location for a PUD if there is the potential for mining or industrial development of tax lots 1501 and 1502 that would not completely mitigate potential impacts to the proposed PUD.

Staff notes that division of land in the Flood Plan Zone is also a conditional use under DCC 18.96.040(H). Staff finds that there is nothing unsuitable about the site, design and operating characteristics of the use that would make it unsuitable for division of the flood plain zoned land into two open space lots.

## **2. Adequacy of transportation access to the site; and**

**FINDINGS:** The County Road Department commented:

Lower Bridge Road is classified as a rural collector with an ADT of 551 (2011 count). Existing road width is 24 feet. Per DCC 17.36.040, "Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition." Based on this, Lower Bridge Road will have to be improved to a width of 28 feet along the length of this subdivision.

- Access onto Lower Bridge Road will have to meet AASHTO standards for sight distance. Staff from the Road Department has met with the applicants engineer and it appears that the necessary sight distance can be met at a location that was agreed upon in the field. Another option would be to move the access from Lower

Bridge Way south to NW Teater Avenue which is classified as a rural local road if sight distance requirements can't be met on Lower Bridge Road.

- Roads within the subdivision will be built to the private road standards listed in DCC 17.48.180 F.2., Private Roads, which requires a paved road width of 28 feet.
- The applicant stated in the Burden of Proof that they will dedicate 60 feet of right of way along the subdivision boundary for Lower Bridge Way.

The applicant is to meet the following conditions if this land use application is approved:

1. Road design within the subdivision shall be in accordance with DCC #17.48.180, "Private Roads" and Table "A", DCC, private roads. Road will be constructed to a paved width of 28 feet.
2. Lower Bridge Way shall be widened to meet the minimum standards for a collector road along the frontage of the subdivision. That will involve widening the existing 24 foot width out to 28 foot width with 2 foot aggregate shoulders. The widened section shall be constructed with eight (8) inches of aggregate base and three (3) inches of HMAAC

Staff recommends the Hearing Officer include Road department conditions (1) and (2) as conditions of any approval of this application.

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

**FINDINGS:** The flood plain zoned portions of the property contain significant natural resources values including riparian habitat associated with the Deschutes River and mapped wetlands. The applicant has proposed to retain these areas in open space. Although the applicant has proposed CC&Rs restricting the use of the Open Space tracts, staff notes that the CC&Rs are not enforceable by the County. Staff recommends a condition of any approval prohibiting structures; earthmoving, or the alteration, removal or destruction of natural vegetation in mapped floodplains and wetlands outside of ODFW approved habitat enhancement projects.

Staff finds that changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation in the steep slopes of the Deschutes River canyon would likely result in erosion and increased sediment delivery to the Deschutes River. Staff recommends a condition of any approval that prohibits changes in the natural grade of land; or the alteration, removal or destruction of natural vegetation; or new structures below the existing terrace level, except as part of an ODFW approved habitat enhancement project. Staff notes that the "terrace level" varies somewhat across the site. Staff recommends the Hearings Officer request an exhibit identifying the break in topography between the generally level terrace and the steep slope down to the Deschutes River and that the condition refers to this exhibit.

The Oregon Department of Fish and Wildlife commented:

The proposed nineteen-lot residential development is not located in a Wildlife Area Combining Zone. However, ODFW is concerned with potential impacts to the rimrock and cliffs adjacent to the Deschutes River. All nineteen lots include rimrock habitat. According to the 2006 Oregon Conservation Strategy, residential development at the edge of rims alters vegetation and disturbs nesting birds. To protect rimrock habitat, ODFW urges Deschutes County planners to implement the setback standards described in the County's Comprehensive Plan.

Also, per the Department's Fish and Wildlife Habitat Mitigation policy (OAR 635-415-0010:0025), ODFW is concerned that these development actions could result in the loss of habitats used by a variety of native mammals, birds and reptiles. In particular, rimrock and cliffs provide nesting sites for raptors, especially golden eagles, and roosting sites for bats. ODFW again urges the County to implement stringent setback standards, to protect these sensitive species.

Staff believes this letter identifies additional natural resources that must be considered under this criterion. Staff believes the condition of approval, described above, prohibiting changes in the natural grade of land; or the alteration, removal or destruction of natural vegetation; or new structures below the existing "terrace level", together with rimrock setbacks will adequately address this issue.

**B. The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A).**

**FINDINGS:** Surrounding properties are in the following uses:

|                  |   |
|------------------|---|
| <b>West</b>      | (Tax Lots 1501 and 1502) Zoned SM. Presently inactive surface mine.   |
| <b>Northwest</b> | (Tax Lot 1400) Zoned EFU. Presently in juniper sage woodland with irrigated agriculture 2,000 feet northwest. |
| <b>East</b>      | Zoned FP. Deschutes River and associated riparian habitats.   |
| <b>Southwest</b> | Zoned EFU. In rural residential and irrigated agricultural use.   |
| <b>Southeast</b> | Zone RR-10. In rural residential use.   |

Staff also notes that across the Deschutes River are EFU zoned lands in rural residential use with some agriculture to the northeast. To the north across the River is a SM zoned parcel that appears to be in irrigated agricultural use.

Staff finds there is no evidence in the record that the development of the proposed PUD would adversely impact the operating characteristic or design of existing and projected uses on surrounding properties, with the exception of the SM zoned property to the west. Staff has found that the subject property is not a suitable site for a PUD if mining or industrial activity is conducted on the SM zoned lands, as the dust generation from unvegetated diatomaceous earth has proved to be uncontrollable in the past. Conversely, any preclusion of mining or industrial activity on the SM zoned land, if necessary to approve the PUD, would limit economic opportunities on the mining property.

There is no evidence that the proposed PUD would adversely impact access to surrounding existing uses or potential future uses allowed in their respective zones. Staff also finds that there is no evidence in the record that the PUD would adversely impact natural resources or increase the potential or public exposure to natural hazards on surrounding properties.

Staff is concerned that properties to the east may experience uncontrolled dust during development of the PUD. Staff recommends a condition of any approval as follows: The applicant/owner shall continuously utilize dust control measures to minimize dust generated by construction and development of the property. When wind and/or construction is visibly causing more than minor dust, within the boundaries of the PUD, the owner shall apply water to suppress that dust.

## **FLOOD PLAIN ZONE**

All areas below the canyon rim and, thus, all areas mapped as Flood Plain will be located in open space lots with no proposed development. Staff finds that the open space use of the Flood Plain zoned areas of the property will not adversely impact the operating characteristic or design of existing and projected uses on surrounding properties, access to surrounding properties, natural resources on surround properties, or increase the potential for or public exposure to natural hazards on surrounding properties.

- C. These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.**

**FINDINGS:** Staff has recommended a number of conditions of approval calculated to insure that these standards will be met.

2. Section 18.128.210, Planned Development.

- A. Such uses may be authorized as a conditional use only after consideration of the following factors:**
- 1. Proposed land use and densities.**

**FINDING:** The proposed land uses include 19 residential lots and associated open space tracts located on 157 acres. Of this, 10.4 acres zoned EFU are proposed in Open Space Tract B. The remainder of the development is located on RR-10 and FP zoned lands totaling 146.6 acres. The applicant did not include the sub-total acreages for RR-10 and FP but included a density calculation of one residential unit per 7.7 acres. Staff notes that the applicant's density calculation includes RR-10 and FP zoned land but includes no EFU or SM zoned lands.

The applicant states that Common Area Tract D is planned for a future community center or activity building, depending on owner input as the project develops. Staff notes that such a use is not part of this proposal and, as such is not an outright use under DCC 18.60.020(C). Conditional use and site plan approval would be required under DCC 18.60.030(A) and DCC 18.124.

**2. Building types and densities.**

**FINDING:** The building types on the proposed lots will be a new single-family dwelling on each of the proposed lots, along with the potential for accessory structures on the lots.

- 3. Circulation pattern, including bicycle and pedestrian circulation, and a demonstration of how those facilities connect to the County transportation facilities. Private developments with private roads shall provide bicycle and pedestrian facilities.**

**FINDING:** The subject property will be served by three private roads that will connect to Lower Bridge Way, a public road. The proposal also includes a dedication of NW Lower Bridge Way throughout the property. This road has historically been the subject of several attempts at dedication which have incorrect legal descriptions and did not follow proper process for dedication and acceptance of public roadways. The present dedication via the subdivision plat will clear title to NW Lower Bridge Way and properly dedicate it as a County road.

The proposed new roads (Roads C, D and E) will meet Title 17 (Table A) standards for private roads, including a 28-foot wide paved surface, with 2-foot gravel shoulders. Staff recommends the Hearings Officer include striping of the 4' striped shoulder bikeway in each direction for bicycle and pedestrian circulation as a condition of any approval.

4. **Bicycle and pedestrian connections shall be provided at the ends of cul-de-sacs, at mid-block, between subdivision plats, etc., wherever the addition of such a connection would reduce the walking or cycling distance to a connecting street by 400 feet and by at least 50 percent over other available routes. These connections shall have a 20-foot right of way, with at least a 10-foot wide useable surface, and should not be more than 100 feet long if possible.**

**FINDING:** The subject property has no public road other than NW Lower Bridge Way, to which the proposed private road is intended to connect. No additional bicycle and pedestrian connections are possible.

5. **Parks, playgrounds, open spaces.**

**FINDING:** There are no parks or playgrounds in the area, nor are they proposed by the applicant. Applicant proposes five (5) open space tracts consisting of a combined total acreage of 95.3. Common Area Tract D is planned for a future community center or activity building, depending on owner input as the project develops. Other than the underground cistern for fire protection, there are no current plans for Common Area Tract G located adjacent to and west of Road C.

6. **Existing natural features.**

**FINDING:** The natural features on the subject property include the Deschutes River, riparian habitats, Deschutes River canyon, existing vegetation and mountain views to the west of the property. The proposed development will retain most of the property in its natural condition, including all of the property within the open space tracts. The applicant has proposed that the open space tracts be enhanced through the introduction of vegetative species to stabilize the soil, decrease dust, aesthetic factors and promote wildlife habitat.

Staff has made findings regarding natural resources and natural features and recommended conditions of approval under DCC 18.128.015(A)(3), above. Staff incorporates these findings and recommended conditions of approval under this criterion by reference.

7. **Environmental, social, energy and economic impacts likely to result from the development, including impacts on public facilities such as schools, roads, water and sewage systems, fire protection, etc.**

**FINDING:** The environmental impact of the proposed subdivision will likely involve the removal of some insignificant vegetation for structures and the new road. Most of the existing vegetation will be preserved and substantial vegetation will be introduced over time as the lots are developed as very little vegetation exists on the upper terrace of the site. The vast majority of existing trees on the property are situated in the riparian area associated with the Deschutes River along the north and east property line and will be retained. Some resources, such as fuel for excavation and construction equipment, and lumber products for the construction of buildings, will be used for developing the proposed lots.

Environmental impacts could occur to residents of the PUD and nearby properties due to potential issues relating to the former mining/industrial use of the subject property and adjacent SM zoned lands to the west. Staff has made findings on these issues under DCC 18.128.015(A)(1) , above. Staff incorporates these findings and recommended conditions of approval under this criterion by reference.

Other environmental impacts could occur if the development adversely impacted the Deschutes River, associated riparian habitats, mapped wetlands, or the steep slopes of the Deschutes River canyon. Staff has made findings regarding natural resources and natural features and recommended conditions of approval under DCC 18.128.015(A)(3), above. Staff incorporates these findings and recommended conditions of approval under this criterion by reference.

The social impacts will include the potential for additional people living in this area, and having neighbors where none existed before. There may be minimal, brief, intermittent added noise to the area, such as passenger vehicles and lawn equipment, with the 19 potential single-family dwellings and associated occupants residing on the lots.

The economic impacts will include additional work being available for the construction of the utilities for the new lots, and work on the structures that may be located on the new lots. There would also be economic impacts on the utilities, as there would be 19 new users to the facilities. The new lots and development of the lots would be subject to local taxes, increasing the tax base. Additionally, building materials and other items needed to construct buildings on the proposed lots may be purchased locally. Staff also notes that the PUD may limit potential future mining and industrial uses on the SM zoned portion of tax lot 1502 and 1501.

The public schools in the area are all within the Redmond School District. The School District will likely be the primary recipient of any school age children living in the dwellings on the proposed lots. With up to nineteen (19) new dwellings, the impact on the school district would be minimal.

The Deschutes County Transportation Planner and Road Department have reviewed this application and submitted comments, incorporated herein by reference. Staff believes that, with the imposition of recommended Road Department conditions, no significant adverse impact to transportation infrastructure or capacity would occur.

Domestic water will be provided to each lot via new private wells. Two well logs have been submitted with the application. Sewage disposal will be handled through individual septic systems.



Staff recommends that the applicant be required, as a condition of any approval, to provide documentation that the final configuration of the PUD conforms to the requirements of the Redmond Fire Department, prior to final plat approval.

**8. Effect of the development on the rural character of the area.**

**FINDING:** The proposed development will add nineteen (19) new residential lots to the area. The area already has numerous lots and parcels that are zoned RR-10 and are developed, or eligible for development, with a dwelling and possible accessory structures.

As previously described in a response above, single-family rural residential development is relatively prevalent in the area, particularly to the east and southeast of the site. Many of the lots within Eagle Rock subdivision, adjacent and to the east, and Lower Bridge Estates to the southeast, are similar in size to the proposed lots and developed with single-family dwellings. Adequate transportation access is provided to the site via NW Lower Bridge Way and internal private roads will be developed to County Road standards. The proposed development will have little, if any, impact on the rural character of the area.

**9. Proposed ownership pattern.**

**FINDING:** The proposed internal roads and common and open space tracts will be owned and maintained by a homeowners association made up of the owners of the residential lots within the subdivision.

**10. Operation and maintenance proposal (i.e. homeowners association, condominium, etc.).**

**FINDING:** A homeowner's association will be formed for the maintenance of the private road, common areas and open spaces.

**11. Waste disposal facilities.**

**FINDING:** Individual septic systems will be necessary for the residential lots. Solid waste (garbage) will be handled by High Country Disposal. Alternatively, some residents may choose to haul waste to the closest landfill or transfer area.

**12. Water supply system.**

**FINDING:** Individual or shared "exempt" private wells will serve as the domestic water supply for each of the proposed for the nineteen (19) residential lots.

**13. Lighting.**

**FINDING:** No street lighting is proposed. Each owner may install exterior lights on their property that comply with the County's lighting ordinance. To ensure compatibility with surrounding uses, Staff finds that all exterior lighting must comply with the Deschutes County Covered Outdoor Lighting Ordinance per Sections 15.10 of Title 15 of the DCC, as a condition of approval. Staff recommends this requirement be included as a condition of any approval.

**14. General timetable of development.**

**FINDING:** The applicant stated that commencement of construction for the road improvements should occur within the 2-year timeframe for approval. However, if for some unforeseen reason the 2-year time period is not be enough time to complete the final plat, requests for extensions will be submitted in accordance with County Code.

**B. The conditional use may be granted upon the following findings:**

- 1. All subdivision restrictions contained in DCC Title 17, the Subdivision/Partition Ordinance, shall be met.**

**FINDING:** The standards under Title 17 are addressed below.

- 2. The proposed development conforms to the Comprehensive Plan.**

**FINDING:** The comprehensive plan does not provide approval criteria for this application as the land use regulations completely implement the goals and policies of the plan with the exception of the following rural residential comprehensive plan policies:

**Section 3.3 Rural Housing Policies**

**Goal 1 Maintain the rural character and safety of housing in unincorporated Deschutes County.**

**Policy 3.3.1 The minimum parcel size for new rural residential parcels shall be 10 acres.**

**Policy 3.3.4 Encourage new subdivisions to incorporate alternative development patterns, such as cluster development, that mitigate community and environmental impacts.**

The proposal is consistent with these policies in that the zoning is RR10, with a 10 acre minimum lot size except for cluster and planned developments. The applicant is incorporating an alternate development pattern to cluster the dwellings on smaller parcels thereby reducing the land area needed for infrastructure, preserving large tracts of open space and protecting the riparian and scenic resources of the area.

**Section 3.6 Public Facilities and Services Policies**

**Goal 1 Support the orderly, efficient and cost-effective siting of rural public facilities and services.**

**Policy 3.6.8 Coordinate with rural service districts and providers to ensure new development is reviewed with consideration of service districts and providers needs and capabilities.**

**Policy 3.6.9 New development shall address impacts on existing facilities and plans through the land use entitlement process.**

**Policy 3.6.14 Guide the location and design of rural development so as to minimize the public costs of facilities and services.**

The proposal is consistent with the above plan policies in that the applicant has coordinated with the Redmond Fire Department and local service providers to ensure there is capacity to serve the project and the design is consistent with Fire Protection Standards. The applicant has addressed the impacts to County roads and facilities through the prior zone change process and the present subdivision process. The present proposal minimizes the cost of infrastructure and services by clustering dwellings and reducing the area to be developed with structures.

The comprehensive plan is also implemented by the zoning ordinance provisions, and the development is being reviewed under applicable provisions within this application process.

**3. Any exceptions from the standards of the underlying district are warranted by the design and amenities incorporated in the development plan and program.**

**FINDING:** Except for the increased density allowed for a planned development, no exceptions from the standards of the underlying district, the RR-10 zone, are proposed. The development of the proposed residential parcels will be subject to the setbacks in the RR-10 zone under DCC 18.60.040, as well as the building height under DCC 18.60.060, and solar setback standard of DCC 18.116.180.

**4. The proposal is in harmony with the surrounding area or its potential future use.**

**FINDING:** Surrounding properties are in the following uses:

|                  |   |
|------------------|---|
| <b>West</b>      | (Tax Lots 1501 and 1502) Zoned SM. Presently inactive surface mine.   |
| <b>Northwest</b> | (Tax Lot 1400) Zoned EFU. Presently in juniper sage woodland with irrigated agriculture 2,000 feet northwest. |
| <b>East</b>      | Zoned FP. Deschutes River and associated riparian habitats.   |
| <b>Southwest</b> | Zoned EFU. In rural residential and irrigated agricultural use.   |
| <b>Southeast</b> | Zone RR-10. In rural residential use.   |

Staff also notes that across the Deschutes River are EFU zoned lands in rural residential use with some agriculture to the northeast. To the north across the River is a SM zoned parcel that appears to be in irrigated agricultural use.

Staff is concerned that properties to the east may experience uncontrolled dust during development of the PUD. Staff recommends a condition of any approval as follows: The applicant/owner shall continuously utilize dust control measures to minimize dust generated by construction and development of the property. When wind or construction is visibly causing more than minor dust, within the boundaries of the PUD, the owner shall apply water to suppress that dust.

Staff is also concerned about dust from future mining use of the adjacent mining site to the west. Dust from this site would be delivered to the proposed PUD by the prevailing winds. This area is still zoned surface mining and staff assumes the site can and will be mined until such use is prohibited on the property. Staff believes the Hearings Officer would need to be able to answer the following questions prior to any finding that the new residential use would be suitable, given potential future uses of tax lot 1501 and 1502:

- 1) What earth/vegetation disturbance and mining is allowed on tax lots 1501 and 1502 without any further land use review? What limits, if any exist on potential dust generation? The county does not have a grading ordinance and the site pre-dates DOGAMI requirements. Is there any evidence that massive earthmoving and dust production could not be conducted without recourse on the SM zoned property?
- 2) What new earth/vegetation disturbance and mining could be permitted on tax lots 1501 and 1502 under conditional use and/or site plan review? Would these review processes include sufficient safeguards to protect the PUD from dust, noise, and industrial emissions? Staff notes that the protections of the Surface Mining zone tend to be limited to only very close or immediately adjacent residences.

Staff believes that the subject property is not a suitable location for the PUD until such time that surface mining on the SM zoned portions of tax lots 1501 and 1502 is permanently prohibited and a binding dust management plan is in place for any grading or earthmoving on lots 1501 and 1502.

Conversely, the PUD may constrain otherwise allowable uses of SM zoned lands on tax lot 1502 and 1501. Staff recommends the Hearings Officer request additional information on this topic prior to any approval of this application.

**5. The system of ownership and the means of developing, preserving and maintaining open space is adequate.**

**FINDING:** As indicated in a foregoing finding, applicant proposes to establish a homeowners association for maintenance of the private road, common area and open space tracts. The responsibility for maintenance and ownership of the open space tracts, common area tracts and private road will rest with the homeowner's association.

**6. That sufficient financing exists to assure the proposed development will be substantially completed within four years of approval.**

**FINDING:** The applicant has stated that sufficient funding is available to complete the development as proposed within four years of approval. No evidence was submitted to support this assertion. Staff is uncertain what level of evidence is sufficient to document compliance with this criterion and staff requests the Hearings Officer make specific findings on this issue.

**7. Sixty-five percent of the land is to be maintained in open space.**

**FINDING:** The subject property is 157 acres, minus the 10.4 zoned EFU, for a total development area of 146.6, including lands zoned FP and RR-10. The 65% open space standard is met through inclusion of five open space tracts totaling 102.2 acres, which exceeds the 65% requirement. Staff notes that SM and EFU zoned lands are not included in the calculation of open space because PUD and subdivision are not an allowed use in these zones. Staff questions whether the acreage zoned flood plain can be counted as open space in the planned development.

Staff believes it is presently unclear what uses would be allowed or prohibited on the open space<sup>5</sup> tracts. While the CC&Rs provide some guidance, they are not County enforceable.

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<sup>5</sup> DCC 18.04.030 - "Open space" means lands used for agricultural or forest uses and any land area that would, if preserved and continued in its present use:

Staff has found that confusion regarding what uses might be allowed in PUD open spaces tracts is a common occurrence in developed PUDs. To avoid such confusion, staff recommends the Hearings Officer impose the following conditions of approval:

For any open space or common area provided as a part of the development, the owner shall submit proof of deed restrictions recorded in the County records. The deed restrictions shall preclude all future rights to construct a residential dwelling on the lot, parcel or tract designated as open space or common area for as long as the lot, parcel or tract remains outside an urban growth boundary. The deed shall also assure that the use of the open space shall be continued in the use allowed by the approved development plan, unless the whole development is brought inside an urban growth boundary.

Where the natural landscape has been altered or destroyed by a prior land use, such as surface mining, reclamation and enhancement of the open space area may be allowed if enhancement creates or improves wetlands, creates or improves wildlife habitat, restores native vegetation or provides for agricultural or forestry use of the property after reclamation. Land use approvals may be required for such projects in mapped wetlands, floodplains, and within the bed and bank of the Deschutes River.

Uses permitted in the open space area may include the management of natural resources, trail systems or other outdoor uses that are consistent with the character of the natural landscape.

Off-road motor vehicle use shall be prohibited in the open space area.

Staff recognizes that these requirements are adopted from criteria applicable to cluster developments, not planned unit developments. However, staff believes these conditions would ensure that the open space tracts are maintained in open space use.

**8. Adequate provision is made for the preservation of natural resources such as bodies of water, natural vegetation and special terrain features.**

**FINDING:** The Deschutes River abuts the subject property along the north and east property lines. Applicant has designed the development to include two open space tracts (Tracts "C" and "E") both of which include riparian vegetation abutting the river. The proposed private covenants will include language which prohibits activities within Tracts "C" and "E" that will damage the natural vegetation/riparian area associated with the river. Further, as previously described above, residential development of the property will occur on the upper terrace of the

- 
- A. Conserve and enhance natural or scenic resources;
  - B. Protect air, streams or water supply;
  - C. Promote conservation of soils, wetlands, beaches or marshes;
  - D. Conserve landscaped areas such as public or private golf courses, that reduce pollution and enhance the value of adjoining or neighboring property;
  - E. Enhance the value to the public of adjoining or neighboring parks, forests, wildlife preserves, nature reservations or other open space;
  - F. Enhance recreation opportunities;
  - G. Preserve historic, geological and archeological sites;
  - H. Promote orderly urban development; and
  - I. Minimize conflicts between farm and nonfarm uses.

property, well above the riparian area associated with the river. The only possible “special terrain feature” is that the majority of the site consists of a terrace or bench that sits higher in elevation than the Deschutes River to the north and east and NW Lower Bridge Way to the west. Applicant proposes to leave the terrace intact with only minor grading for development, as well as introduce vegetative species to stabilize the soil, decrease dust and promote wildlife habitat.

Under this criterion, adequate provision must be made for the preservation of the Deschutes River, associated riparian habitats, mapped wetlands, and the steep slopes of the Deschutes River canyon. Staff has made findings regarding natural resources and natural features and recommended conditions of approval under DCC 18.128.015(A)(3), above. Staff incorporates these findings and recommended conditions of approval under this criterion by reference.

- C. All applications for planned developments shall include the materials and information required for approval of a subdivision as specified in DCC Title 17, the Subdivision/Partition Ordinance and the materials and information required for approval of a conditional use as specified in DCC Title 18.**
  - 1. Approval for the conditional use application and the planned development application may be given simultaneously.**

**FINDING:** The applicant has submitted a tentative plat drawing and addressed the criteria of Title 17 in the burden of proof statement. The standards under Title 17 are addressed below. The decision will incorporate both applications, as allowed above.

- D. Dimensional Standards.**
  - 1. Setbacks and height limitations shall be as determined by the Planning Director or Hearings Body upon review of the evidence submitted.**

**FINDING:** The applicant proposes that the setback standards (DCC 18.60.040 and 050) and height limitation (DCC 18.60.060(B)) of the RR-10 zone apply to this planned development.

- 2. Densities shall not exceed that established in the underlying zone.**

**FINDING:** The subject property is approximately 157 acres in size, minus the 10.4 acres zoned EFU, the total development area is 146.6 acres. With 19 planned lots, the proposed density is one unit per 7.7 acres, which is less than the maximum allowed density of one unit per 7.5 acres. Staff notes that the applicant’s density calculation includes RR-10 and FP zoned land but includes no EFU or SM zoned lands.

- 3. The minimum lot area, width, frontage and yard requirements otherwise applying to individual buildings in the zone in which a planned development is proposed do not apply within a planned development. An equivalent overall density factor may be utilized in lieu of the appropriate minimum lot area.**

**FINDING:** The applicant did not respond to this criterion. This code makes it clear that the 10-acre minimum lot size of the RR-10 zone does not apply in planned developments. This code section also makes it clear that the lot width, frontage and yard requirements do not apply.

As discussed above, the applicant proposes that the setback standards (DCC 18.60.040 and 050) and height limitation (DCC 18.60.060(B)) of the RR-10 zone apply to this planned development.

The applicant utilizes an equivalent overall density factor in lieu of the appropriate minimum lot area.

**4. Minimum size for a planned development shall be 40 acres.**

**FINDING:** Staff finds that the above criterion refers to the required lot or parcel size for the parent parcel proposed for any planned development. The subject property is well over 40 acres in size.

- E. Any commercial use permitted outright in an area zoned as an unincorporated community as that term is defined herein will be allowed in a planned development, subject to the following conditions:**
- 1. Each use shall be wholly enclosed in a building.**
  - 2. The total area of such uses shall not exceed three percent of the total area of the planned development.**

**FINDING:** No commercial uses are proposed with these applications.

**ADMINISTRATIVE RULES**

**B. Oregon Administrative Rules, Chapter 660, Land Conservation and Development Commission**

- 1. Division 4, Goal 2 Exceptions Process**
  - a. OAR 660-004-0040, Application of Goal 14 to Rural Residential Areas**
    - (1) The purpose of this rule is to specify how Statewide Planning Goal 14, Urbanization, applies to rural lands in acknowledged exception areas planned for residential uses.**
    - (2) (a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Statewide Planning Goal 3 (Agricultural Lands), Goal 4 (Forest Lands), or both has been taken. Such lands are referred to in this as rural residential areas.**
      - (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before the effective date of Section (1) to (8) of this rule.**
      - (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:**
        - (A) land inside an acknowledged urban growth boundary;**

- (B) land inside an acknowledged unincorporated community boundary established pursuant to OAR Chapter 660, Division 022;
- (C) land in an acknowledged urban reserve area established pursuant to OAR Chapter 660, Division 021;
- (D) land in acknowledged destination resort established pursuant to applicable land use statutes and goals;
- (E) resource land, as defined in OAR 660-004-0005(2);
- (F) nonresource land, as defined in OAR 660-004-0005(3);
- (G) marginal land, as defined in ORS 197.247, 1991 Edition;
- (H) land planned and zoned primarily for rural industrial, commercial or public use.

**FINDINGS:** The proposed PUD footprint, with the exclusion of the 10.4-acre EFU zoned area is planned and zoned for residential uses is nonresource land as described in (F) above pursuant to the County's 2008 plan amendment/zone change decision (ZC-08-1/PA-08-1) as adopted in Ordinances 2011-014 and 2011-015. In that decision, the County specifically found the subject property did not have resource values and was not subject to the Statewide Planning Goals 3, 4 or 5. It was found to be nonresource land, and is therefore exempted from the applicability of the above rule.

#### **PA-08-1 and ZC-08-1 Conditions of Approval**

1. **Prior to final plat approval for any residential subdivision, the applicant shall obtain from the Department of Environmental Quality (DEQ) a "No Further Action" (NFA) determination or the equivalent for a residential use designation for the 160 acres.**

**FINDINGS:** Staff recommends the Hearing Officer include this requirement as a condition of any approval. Staff recommends that the Hearings Officer require the applicant to demonstrate that it is feasible to obtain such a letter prior to any approval.

2. **Prior to final plat approval for any residential subdivision, the applicant shall obtain from the Department of Human Services (DHS) a determination of "no apparent public health hazard" for a residential use designation for the 160 acres.**

**FINDINGS:** Staff recommends the Hearing Officer include this requirement as a condition of any approval. Staff recommends that the Hearings Officer require the applicant to demonstrate that it is feasible to obtain such a letter prior to any approval.

3. **Prior to or contemporaneously with final plat approval for any residential subdivision, the applicant shall record a conservation easement in substantially the form attached hereto as Exhibit C and covenant (by deed or plat) to restrict in perpetuity the use of the approximately 30-acre area to open space uses and preventing the construction of any residential structure.**



**FINDINGS:** Staff recommends the Hearing Officer include this requirement as a condition of any approval.

4. **The applicant shall not develop any area within a 100-yard radius of the historic Lynch and Roberts Store Advertisement sign. The applicant shall post markers to prevent trespass, prior to development of the site. Any Covenants, Conditions and Restrictions (CC&Rs) created as a part of a residential development of the subject property will contain obligations to protect the area within a 100-yard radius of the historic sign from development and trespass and to maintain the posted markers.**

**FINDINGS:** Staff recommends the Hearing Officer include this requirement as a condition of any approval.

5. **As part of any residential development approval for the site, the applicant shall include an informational section in its CC&Rs that detail the history of the site, including the remediation efforts taken by the applicant and its predecessors in interest.**

**FINDINGS:** Staff was unable to locate this section in the draft CC&Rs. Staff recommends the Hearings Officer review a draft version of this language to confirm that the level of detail presented is adequate. Staff also recommends the Hearing Officer include this requirement as a condition of any approval.

6. **If fill is brought onto the site, the applicant shall identify the general location of the fill, and if the site is used for development, the applicant shall either certify that the fill is suitable for development, or specifically declaim any knowledge of its suitability.**

**FINDINGS:** Staff recommends the Hearing Officer include this requirement as a condition of any approval.

7. **Prior to final plat approval for any residential subdivision, a conservation easement as defined in Section 18.04.030, "Conservation Easement" and specified in Section 18.116.220, shall be required.**

**FINDINGS:** Staff recommends the Hearing Officer include this requirement as a condition of any approval.

## **TITLE 17 OF THE DESCHUTES COUNTY CODE, THE SUBDIVISION/PARTITION ORDINANCE**

1. Section 17.16.100, Required Findings for Approval

**A tentative plan for a proposed subdivision shall not be approved unless the Planning Director or Hearings Body finds that the subdivision as proposed or modified will meet the requirements of DCC Title 17 and DCC Title 18 through 21, and is in compliance with the comprehensive plan. Such findings shall include, but not be limited to, the following:**

- A. **The subdivision contributes to orderly development and land use patterns in the area, and provides for the preservation of natural features and resources such as streams, lakes, natural vegetation, special terrain features, agricultural and forest lands and other natural resources.**

**FINDINGS:**

1. **Land Use Patterns.** Surrounding properties are in the following uses:

|                  |   |
|------------------|---|
| <b>West</b>      | (Tax Lots 1501 and 1502) Zoned SM. Presently inactive surface mine.   |
| <b>Northwest</b> | (Tax Lot 1400) Zoned EFU. Presently in juniper sage woodland with irrigated agriculture 2,000 feet northwest. |
| <b>East</b>      | Zoned FP. Deschutes River and associated riparian habitats.   |
| <b>Southwest</b> | Zoned EFU. In rural residential and irrigated agricultural use.   |
| <b>Southeast</b> | Zone RR-10. In rural residential use.   |

Staff also notes that across the Deschutes River are EFU zoned lands in rural residential use with some agriculture to the northeast. To the north across the River is a SM zoned parcel that appears to be in irrigated agricultural use.

The proposed development will be similar to, and will therefore be compatible with, the existing residential development pattern because it will include single-family dwellings and the infrastructure to support them. Staff has expressed concern regarding compatibility between the proposed PUD and the uncertain future use of the SM zoned portions of tax lots 1502 and 1501. Staff requests the Hearings Officer make specific findings on this issue.

2. **Orderly Development.** The applicant proposes that the development lots and dwellings will have access from three new private roads via the existing NW Lower Bridge Way, and the dwellings will be served by private wells, per-lot septic systems system, and utility services through extension of existing utility facilities serving the adjacent developments. Staff has expressed concern above, and incorporated by reference herein, regarding whether the proposed subdivision layout will require or encourage rimrock setback exceptions. Staff requests the hearings officer make specific findings on this issue.

3. **Preservation of Natural Features and Resources.** The natural features and resources on the subject property include the Deschutes River, riparian habitats, Deschutes River canyon, existing vegetation and mountain views to the west of the property. The proposed development will retain most of the property in its natural condition, including all of the property within the open space tracts. The applicant has proposed that the open space tracts be enhanced through the introduction of vegetative species to stabilize the soil, decrease dust, aesthetic factors and promote wildlife habitat.

Staff has made findings regarding natural resources and natural features and recommended conditions of approval under DCC 18.128.015(A)(3), above. Staff incorporates these findings and recommended conditions of approval under this criterion by reference.

**B. The subdivision will not create excessive demand on public facilities and services, and utilities required to serve the development.**

**FINDINGS:** Public facilities and services affected by the proposed subdivision include domestic water, sewer, roads, storm drainage, police and fire protection, and schools. Each of these facilities and services is addressed in the findings below.

1. **Domestic Water.** Water is proposed to be provided by private individual wells. Well logs demonstrating the depth and availability of water in the area were submitted as Exhibit D.
2. **Sewer.** The proposed lots will be developed with individual septic systems.
3. **Storm Drainage.** Staff recommends, as a condition of any approval, that the applicant be required to provide certification by a licensed professional engineer that drainage facilities have been designed and constructed in accordance with the current Central Oregon Stormwater Manual to receive and/or transport at least the design storm (as defined in the current Central Oregon Stormwater Manual) for all surface drainage water including stormwater coming to and/or passing through the development.
4. **Roads.** The County Road Department comment is quoted above and incorporated herein by reference. Staff recommends the Hearing Officer include Road Department conditions (1) and (2) as conditions of any approval of this application.
5. **Police.** The subject property is served by the Deschutes County Sheriff.
6. **Fire.** Redmond Fire and Rescue submitted a comment letter dated April 23, 2015 and this comment letter is incorporated herein by reference. Staff recommends that the applicant be required, as a condition of any approval, to provide documentation that the final configuration of the PUD conforms to the requirements of the Redmond Fire Department, prior to final plat approval.
7. **Schools.** The Redmond School District did not submit comments on the applicant's proposal as of the writing of the staff report. Staff is aware the district responds in a variety of ways to accommodate additional students who may move into new developments. The school district often requests that roads within the development have sidewalks to accommodate student pedestrians, and that the developer be required to provide the school district with a perpetual easement to allow school district vehicles to travel across private roads.

Staff recommends the Hearings Officer requires, as a condition of any approval, that the applicant record a perpetual easement allowing Redmond School District vehicles to travel across the new private roads, and a damage waiver binding on the owner of the private road that holds the School District harmless for any road damage caused by its vehicles traveling on the roads, prior to final plat approval.

**C. The tentative plan for the proposed subdivision meets the requirements of ORS 92.090.**

**FINDINGS:** The relevant provisions of ORS 92.090 and the proposal's compliance with those provisions are addressed in the findings below.

**(1) Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters.**

Staff recommends a condition of any approval requiring the applicant to obtain approval of the subdivision name from the Deschutes County Surveyor.

**(2) No tentative plan for a proposed subdivision and not tentative plan for a proposed partition shall be approved unless:**

**(a) The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other aspects unless the city or county determines it is in the public interest to modify the street or road pattern.**

The new private roads intersect NW Lower Bridge Way at a right angle. Staff believes that the new private roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other aspects.

**(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.**

Staff recommends the Hearings Officer include this provision as a condition of any approval.

**(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances and regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.**

This staff report identifies applicable zoning ordinances and evaluates compliance with those ordinances. Staff has identified a number of criteria where staff believes the applicant has not demonstrated compliance with the criteria or compliance with the criteria is in dispute. Staff recommends the Hearings Officer resolve these issues prior to any finding of compliance with this section.

- (3) **No plat of a proposed subdivision or partition shall be approved unless:**
- (a) **Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.**
  - (b) **Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.**
  - (c) **The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.**
  - (d) **The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.**
  - (e) **The subdivision or partition plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition plat.**
  - (f) **Explanations for all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.**

**FINDINGS:** The applicant proposes access for the subdivision lots from NW Lower Bridge Way, an existing public road, and three new private roads. Compliance with the zoning ordinance is addressed in the findings above. Paragraphs (d), (e) and (f) of this section establish requirements for final plat review and therefore are not applicable to the applicant's proposed tentative plan.

- (4) **Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:**
- (a) **A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;**

**FINDINGS:** Water is proposed to be provided by private individual wells. Well logs demonstrating the depth and availability of water in the area were submitted as Exhibit D.

- (5) **Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:**
- (a) **A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a**

**sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;**

**FINDINGS:** The proposed lots will be developed with individual septic systems. Staff recommends, as a condition of any approval, that the applicant be required to demonstrate septic feasibility on each of the proposed lots prior to final plat approval.

- (6) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.**

**FINDINGS:** This criterion is not applicable because the record indicates the subject property is not located within any irrigation district, drainage district, water control district, water improvement district or district improvement company.

- D. For subdivision or portions thereof proposed within a Surface Mining Impact Area (SMIA) zone under DCC Title 18, the subdivision creates lots on which noise or dust sensitive uses can be sited consistent with the requirements of DCC 18.56, as amended, as demonstrated by the site plan and accompanying information required under DCC 17.16.030.**

**FINDINGS:** Staff believes that this criterion requires that SMIA review be performed concurrently with Tentative Plan review. Staff recommends the Hearings Officer not approve this application until a SMIA application, fee, and required burden-of-proof under DCC 18.56 have been submitted.

- E. The subdivision name has been approved by the County Surveyor.**

**FINDINGS:** Staff recommends a condition of any approval requiring the applicant to obtain approval of the subdivision name from the Deschutes County Surveyor.

2. Section 17.16.105, Access to Subdivisions

**No proposed subdivision shall be approved unless it would be accessed by roads constructed to County standards and by roads accepted for maintenance responsibility by a unit of local or state government. This standard is met if the subdivision would have direct access to an improved collector or arterial, or in cases where the subdivision has no direct access to such a collector or arterial, by demonstrating that the road accessing the subdivision from a collector or arterial meets relevant County standards and has been accepted for maintenance purposes.**

**FINDINGS:** The proposed subdivision would have access from NW Lower Bridge Way, a rural collector. Staff recommends that the Hearings Officer require that the new private roads be constructed to private road standards, as a condition of any approval. The private roads will not be accepted for County maintenance purposes. Staff recommends that the applicant be required to record an agreement acceptable to the County Road Department and County Legal Counsel for the maintenance of the new private roads.

## **CHAPTER 17.36, DESIGN STANDARDS**

### 1. Section 17.36.020, Streets

- A. The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation system for all modes of transportation, including pedestrians, bicycles, and automobiles with intersection angles, grades, tangents, and curves appropriate for traffic to be carried, considering the terrain. The subdivision or partition shall provide for the continuation of the principal streets existing in the adjoining subdivision or partition or of their property projection when adjoining property which is not subdivided, and such streets shall be of a width not less than the minimum requirement for streets set forth in this chapter.**

**FINDINGS:** The Deschutes County Road Department and Transportation Planner have reviewed this application and provided comments, incorporated herein by reference. Staff recommends the Hearing Officer include Road Department conditions (1) and (2) as conditions of any approval of this application. The proposed new roads (Roads C, D and E) will meet Title 17 (Table A) standards for private roads, including a 28-foot wide paved surface, with 2-foot gravel shoulders. The proposed curve radius and grade will meet the above standards. Staff recommends the Hearings Officer include striping of the 4' striped shoulder bikeway in each direction as a condition of any approval.

All adjoining property is not eligible for further partitioning or subdivision. As conditioned, staff believes this application will comply with this criterion.

- B. Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned or cluster development, where roads can be privately owned. Planned developments shall include public streets where necessary to accommodate present and future through traffic.**

**FINDINGS:** The subject property is proposed as a PUD, where private roads are allowed. No public dedication of right-of way is necessary to accommodate through traffic.

### 3. Section 17.36.040, Existing Streets

**Whenever existing streets, adjacent to or within a tract, are of inadequate width to accommodate the increase in traffic expected from the subdivision or partition or by the County roadway network plan, additional rights of**

way shall be provided at the time of the land division by the applicant. During consideration of the tentative plan for the subdivision or partition, the Planning Director or Hearings Body, together with the Road Department Director, shall determine whether improvements to existing streets adjacent to or within the tract, are required. If so determined, such improvements shall be required as a condition of approval for the tentative plan. Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition.

**FINDINGS:** The width and location of the existing right of way for NW Lower Bridge Way is not clear based on prior attempts at dedications. The applicant proposes to dedicate NW Lower Bridge Way throughout the subdivision, at a width of 60 feet, resulting in total dedication acreage of 4.7 acres.

The Deschutes County Road Department commented:

Lower Bridge [Way] is classified as a rural collector with an ADT of 551 (2011 count). Existing road width is 24 feet. Per DCC 17.36.040, "Improvements to adjacent streets shall be required where traffic on such streets will be directly affected by the proposed subdivision or partition." Based on this, Lower Bridge [Way] will have to be improved to a width of 28 feet along the length of this subdivision.

...

The applicant is to meet the following conditions if this land use application is approved:

...

2. Lower Bridge Way shall be widened to meet the minimum standards for a collector road along the frontage of the subdivision. That will involve widening the existing 24 foot width out to 28 foot width with 2 foot aggregate shoulders. The widened section shall be constructed with eight (8) inches of aggregate base and three (3) inches of HMAAC.

Staff recommends the Hearing Officer include Road Department condition (2) as a condition of any approval of this application.

4. Section 17.36.050, Continuation of Streets

**Subdivision or partition streets which constitute the continuation of streets in contiguous territory shall be aligned so that their centerlines coincide.**

**FINDINGS:** The proposed subdivision has no streets which would constitute a continuation of other streets.

5. Section 17.36.060, Minimum Right of Way and Roadway Width

**The street right of way and roadway surfacing widths shall be in conformance with standards and specifications set forth in DCC 17.48.**



**Where DCC 17.48 refers to street standards found in a zoning ordinance, the standards in the zoning ordinance shall prevail.**

**FINDINGS:** The Deschutes County Road Department and Transportation Planner have reviewed this application and provided comments, incorporated herein by reference. Staff recommends the Hearing Officer include Road Department conditions (1) and (2) as conditions of any approval of this application. The proposed new roads (Roads C, D and E) will meet Title 17 (Table A) standards for private roads, including a 28-foot wide paved surface, with 2-foot gravel shoulders.

6. Section 17.36.070, Future Resubdivision

***Where a tract of land is divided into lots or parcels of an acre or more, the Hearings Body may require an arrangement of lots or parcels and streets such as to permit future resubdivision in conformity to the street requirements contained in this title.***

**FINDINGS:** The applicant proposes to create lots that are more than one acre in size. The tentative plat proposes nineteen (19) residential lots that are approximately two to four acres in size. No further subdivision of the subject property would be allowed under current zoning regulations.

7. Section 17.36.080, Future Extension of Streets

**When necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivision or partition.**

**FINDINGS:** Staff finds that all adjoining land is subdivided or partitioned to minimum zone lot sizes and will not foreseeably be further subdivided. The private streets internal to the development connect with NW Lower Bridge Way. No street extension to adjoining properties is proposed or required.

8. Section 17.36.100, Frontage roads

**If a land division abuts or contains an existing or proposed collector or arterial street, the Planning Director or Hearings Body may require frontage roads, reverse frontage lots or parcels with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic. All frontage roads shall comply with the applicable standards of Table A of DCC Title 17, unless specifications included in a particular zone provide other standards applicable to frontage roads.**

**FINDINGS:** Lower Bridge Way is a rural collector. Staff finds that no frontage road is needed to support the proposed subdivision.

9. Section 17.36.110, Streets adjacent to railroads, freeways and parkways

When the area to be divided adjoins or contains a railroad, freeway or parkway, provision may be required for a street approximately parallel to and on each side of such right of way at a distance suitable for use of the land between the street and railroad, freeway or parkway. In the case of a railroad, there shall be a land strip of not less than 25 feet in width adjacent and along the railroad right of way and residential property. If the intervening property between such parallel streets and a freeway or a parkway is less than 80 feet in width, such intervening property shall be dedicated to park or thoroughfare use. The intersections of such parallel streets, where they intersect with streets that cross a railroad, shall be determined with due consideration at cross streets of a minimum distance required for approach grades to a future grade separation and right of way widths of the cross street.

**FINDINGS:** The subject property is not adjacent to a railroad, freeway or parkway. This criterion is not applicable to the proposed development.

10. Section 17.36.120, Street Names

Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street in a nearby city or in the County. Street names and numbers shall conform to the established pattern in the County and shall require approval from the County Property Address Coordinator.

**FINDINGS:** Staff recommends that the Hearings Officer include this requirement as a condition of any approval.

11. Section 17.36.130, Sidewalks

\* \* \*

C. Sidewalk requirements for areas outside of urban areas are set forth in DCC 17.48.175. In the absence of a special requirement set forth by the Road Department Director under DCC 17.48.030, sidewalks and curbs are never required in rural areas outside unincorporated communities as that term is defined in DCC Title 18.

**FINDINGS:** These criteria are not applicable to the proposed development because the site is located outside of an acknowledged Urban Growth Boundary.

12. Section 17.36.140, Bicycle, Pedestrian and Transit Requirements

A. Pedestrian and Bicycle Circulation within Subdivision.

1. The tentative plan for a proposed subdivision shall provide for bicycle and pedestrian routes, facilities and improvements within the subdivision and to nearby existing or planned neighborhood activity centers, such as schools, shopping areas and parks in a manner that will:

- a. **Minimize such interference from automobile traffic that would discourage pedestrian or cycle travel for short trips;**
- b. **Provide a direct route of travel between destinations within the subdivision and existing or planned neighborhood activity centers, and**
- c. **Otherwise meet the needs of cyclists and pedestrians, considering the destination and length of trip.**

**FINDINGS:** Bicycle and pedestrian use will be accommodated on the proposed road, which is proposed at the 28-foot wide standard. Staff recommends the Hearings Officer include striping of the 4' striped shoulder bikeway in each direction as a condition of any approval.

**2. Subdivision Layout.**

- a. **Cul-de-sacs or dead-end streets shall be allowed only where, due to topographical or environmental constraints, the size and shape of the parcel, or a lack of through-street connections in the area, a street connection is determined by the Planning Director or Hearings Body to be infeasible or inappropriate. In such instances, where applicable and feasible, there shall be a bicycle and pedestrian connection connecting the ends of cul-de-sacs to streets or neighborhood activity centers on the opposite side of the block.**

**FINDINGS:** The applicant proposes three (3) cul-de-sacs to serve the proposed lots. The configuration and location of the parcel along the Deschutes River Canyon will prevent it from providing access to adjacent properties. There are no through street connections in the area and any through street connection across the subject property is not feasible.

- b. **Bicycle and pedestrian connections between streets shall be provided at mid-block where the addition of a connection would reduce the walking or cycling distance to an existing or planned neighborhood activity center by 400 feet and by at least 50 percent over other available routes.**

**FINDINGS:** Staff believes that no additional connection would reduce the walking or cycling distance to an existing or planned neighborhood activity center by 400 feet and by at least 50 percent over other available routes.

- c. **Local roads shall align and connect with themselves across collectors and arterials. Connections to existing or planned streets and undeveloped properties shall be provided at no greater than 400-foot intervals.**
- d. **Connections shall not be more than 400 feet long and shall be as straight as possible.**

**FINDINGS:** There is no grid system with typical blocks in the area. The proposed new private roads would not intersect with NW Lower Bridge Way, a rural collector. However, alignment across the collector is not applicable, as there are no roads on tax lot 1502 with which to align.

3. **Facilities and Improvements.**
  - a. **Bikeways may be provided by either a separate paved path or an on-street bike lane, consistent with the requirements of DCC Title 17.**
  - b. **Pedestrian access may be provided by sidewalks or a separate paved path, consistent with the requirements of DCC Title 17.**
  - c. **Connections shall have a 20-foot right of way, with at least a 10-foot usable surface.**

**FINDINGS:** The applicant has stated that bicycle and pedestrian use will be accommodated on the proposed road, which is proposed at the 28-foot wide standard. Staff recommends the Hearings Officer include striping of the 4' striped shoulder bikeway in each direction as a condition of any approval.

13. Section 17.36.150, Blocks

- A. **General. The length, width and shape of blocks shall accommodate the need for adequate building site size, street width and direct travel routes for pedestrians and cyclists through the subdivision and to nearby neighborhood activity centers, and shall be compatible with the limitations of the topography.**

**FINDINGS:** There is no grid system with typical blocks in the area.

- B. **Size. Within an urban growth boundary, no block shall be longer than 1,200 feet between street centerlines. In blocks over 800 feet in length, there shall be a cross connection consistent with the provisions of DCC 17.36.140.**

**FINDINGS:** This criterion is not applicable because the subject property is located outside of an urban growth boundary.

14. Section 17.36.160, Easements

- A. **Utility Easements. Easements shall be provided along property lines when necessary for the placement of overhead or underground utilities, and to provide the subdivision or partition with electric power, communication facilities, street lighting, sewer lines, water lines, gas lines or drainage. Such easements shall be labeled "Public Utility Easement" on the tentative and final plat; they shall be at least 12 feet in width and centered on lot lines where possible, except utility pole guyline easements along the rear of lots or parcels adjacent to unsubdivided land may be reduced to 10 feet in width.**

**FINDINGS:** The applicant has stated that all utility easements will be shown on the final plat and will comply with this criterion. Staff recommends that the applicant be required as a condition of any approval to satisfy the requirements of this criterion.

- B. Drainage. If a tract is traversed by a watercourse such as a drainageway, channel or stream, there shall be provided a stormwater easement or drainage right of way conforming substantially with the lines of the watercourse, or in such further width as will be adequate for the purpose. Streets or parkways parallel to major watercourses or drainageways may be required.**

**FINDINGS:** Staff believes the Deschutes River is a watercourse under this criterion. Staff recommends a condition of any approval requiring a stormwater easement or drainage right of way conforming substantially with the lines of the River. The proposed subdivision has streets generally parallel to the Deschutes River.

15. Section 17.36.170, Lots-Size and Shape

**The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of DCC Title 18 through 21.**

**FINDINGS:** The size, width and orientation of the proposed lots are appropriate for the proposed residential subdivision and are consistent with the lot or parcel size provisions of DCC Title 18 through 21, as described above

16. Section 17.36.180, Frontage

- A. Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet, except for lots or parcels fronting on the bulb of a cul-de-sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads. In the La Pine Neighborhood Planning Area Residential Center District, lot widths may be less than 50 feet in width, as specified in DCC 18.61, Table 2: La Pine Neighborhood Planning Area Zoning Standards. Road frontage standards in destination resorts shall be subject to review in the conceptual master plan.**
- B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.**

**FINDINGS:** The applicant proposes a planned development with lots fronting on private roads. With the exception of lot 7, the proposed lots conform to this standard. However, lot 7 does not have 30 feet of frontage on the proposed cul-de-sac bulb. It appears the applicant wishes to vary this standard, as allowed under the PUD standards. Staff recommends the Hearings request additional findings under 18.128.210(B)(3) prior to any findings of compliance with this criterion. All lots have at least 20 feet of frontage on the private streets. The side lot lines are generally at right angles to the proposed new streets.

17. Section 17.36.190, Through Lots.

**Lots or parcels with double frontage should be avoided except where they are essential to provide separation of residential development from major street or adjacent nonresidential activities to overcome specific disadvantages of topography and orientation. A planting screen easement of at least 10 feet in width and across which there shall be no right of access may be required along the lines of lots or parcels abutting such a traffic artery or other incompatible use.**

**FINDINGS:** No lots or parcels with double frontage are proposed.

18. Section 17.36.200, Corner Lots.

**Within an urban growth boundary, corner lots or parcels shall be a minimum of five feet more in width than other lots or parcels, and also shall have sufficient extra width to meet the additional side yard requirements of the zoning district in which they are located.**

**FINDINGS:** The subject property is not located in an urban growth boundary.

19. Section 17.36.210, Solar Access Performance.

- A. As much solar access as feasible shall be provided each lot or parcel in every new subdivision or partition, considering topography, development pattern and existing vegetation. The lot lines of lots or parcels, as far as feasible, shall be oriented to provide solar access at ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st. If it is not feasible to provide solar access to the southern building line, then solar access, if feasible, shall be provided at 10 feet above ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st, and three hours before and after the solar zenith from March 22nd to September 21st.**
- B. This solar access shall be protected by solar height restrictions on burdened properties for the benefit of lots or parcels receiving the solar access.**
- C. If the solar access for any lot or parcel, either at the southern building line or at 10 feet above the southern building line, required by this performance standard is not feasible, supporting information must be filed with the application.**

**FINDINGS:** Solar access will be available to all of the proposed lots, given the proposed lot size and generally level topography on the canyon terrace.

20. Section 17.36.220, Underground Facilities.

**Within an urban growth boundary, all permanent utility services to lots or parcels in a subdivision or partition shall be provided from underground facilities; provided, however, the Hearings Body may allow overhead**

utilities if the surrounding area is already served by overhead utilities and the proposed subdivision or partition would create less than 10 lots. The subdivision or partition shall be responsible for complying with requirements of DCC 17.36.220, and shall:

...

**FINDINGS:** The subject property is not located in an urban growth boundary.

21. Section 17.36.230, Grading of Building Sites.

**Grading of building sites shall conform to the following standards, unless physical conditions demonstrate the property of other standards:**

- A. **Cut slope ratios shall not exceed one foot vertically to one and one half feet horizontally.**
- B. **Fill slope ratios shall not exceed one foot vertically to two feet horizontally.**
- C. **The composition of soil for fill and the characteristics of lots and parcels made usable by fill shall be suitable for the purpose intended.**
- D. **When filling or grading is contemplated by the subdivider, he shall submit plans showing existing and finished grades for the approval of the Community Development Director. In reviewing these plans, the Community Development Director shall consider the need for drainage and effect of filling on adjacent property. Grading shall be finished in such a manner as not to create steep banks or unsightly areas to adjacent property.**

**FINDINGS:** The applicant did not address this criterion. Staff recommends the Hearings Officer include these requirements as conditions of any approval.

22. Section 17.36.250, Lighting.

**Within an urban growth boundary, the subdivider shall provide underground wiring to the County standards, and a base for any proposed ornamental street lights at locations approved by the affected utility company.**

**FINDINGS:** The subject property is not located in an urban growth boundary.

t. **Section 17.36.260, Fire Hazards**

**Whenever possible, a minimum of two points of access to the subdivision or partition shall be provided to provide assured access for emergency vehicles and ease resident evacuation.**

**FINDINGS:** Access to the lots is proposed from new private roads extending from NW Lower Bridge Way. The applicant has proposed a single point of access to NW Lower Bridge Way. Other connections to NW Lower Bridge Way are not feasible because of steep topography adjacent to NW Lower Bridge Way. Staff notes that a connection to Teater Avenue would provide a second point of access, but would provide no advantages regarding emergency access to the subdivision.

23. Section 17.36.270, Street Tree Planting.

**Street tree planting plans, if proposed, for a subdivision or partition, shall be submitted to the Planning Director and receive his approval before the planting is begun.**

**FINDINGS:** The applicant did not address this criterion. Staff is uncertain if street trees are included in this proposal and recommends the Hearings Officer require additional information from the applicant prior to any findings of compliance with this criterion.

24. Section 17.36.280, Water and Sewer Lines

**Where required by the applicable zoning ordinance, water and sewer lines shall be constructed to County and city standards and specifications. Required water mains and service lines shall be installed prior to the curbing and paving of new streets in all new subdivisions or partitions.**

**FINDINGS:** No water and sewer lines are proposed as part of the subdivision, and are not required for the proposed development.

24. Section 17.36.290. Individual Wells.

**In any subdivision or partition where individual wells are proposed, the applicant shall provide documentation of the depth and quantity of potable water available from a minimum of two wells within one mile of the proposed land division. Notwithstanding DCC 17.36.300, individual wells for subdivisions are allowed when parcels are larger than 10 acres.**

**FINDINGS:** The new lots will be served with individual wells on each lot. Submitted with the application are well logs for two wells in the area, showing completed well depths of 220 and 390 feet. An individual or shared well is a viable option for the proposed new lots.

25. Section 17.36.300, Public Water System

**In any subdivision or partition where a public water system is required or proposed, plans for the water system shall be submitted and approved by the appropriate state or federal agency. A community water system shall be required where lot or parcel sizes are less than one acre or where potable water sources are at depths greater than 500 feet, excepting land partitions. Except as provided for in DCC 17.24.120 and 17.24.130, a required water system shall be constructed and operational, with lines extended to the lot line of each and every lot depicted in the proposed subdivision or partition plat, prior to final approval.**

**FINDINGS:** A public water system is neither required nor proposed.



## CHAPTER 17.44, PARK DEVELOPMENT

### 1. Section 17.44.010, Dedication of Land

- A. For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.

**FINDINGS:** The subject property is outside an urban growth boundary. This criterion does not apply.

- B. For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to \$350 per dwelling unit within the development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.
- C. For either DCC 17.44.010 (A) or (B), the developer shall either dedicate the land set aside to the public or develop and provide maintenance for the land set aside as a private park open to the public.
- D. The Planning Director or Hearings Body shall determine whether or not such land is suitable for park purposes.
- E. If the developer dedicates the land set aside in accordance with DCC 17.44.010 (A) or (B), any approval by the Planning Director or Hearings Body shall be subject to the condition that the County or appropriate park district accept the deed dedicating such land.

**FINDINGS:** The subject property is not in an area planned for parks. However, staff is uncertain if portions of the open space tracts are suitable and adaptable for park purposes. Staff requests the Hearings Officer make specific findings on this issue.

- F. DCC 17.44.010 shall not apply to the subdivision or partition of lands located within the boundaries of a parks district with a permanent tax rate.

**FINDINGS:** The subject property is located outside of an urban growth boundary and is not within the boundaries of the Bend Metro Park and Recreation District or the Redmond Area Park and Recreation District.

### 2. Section 17.44.020, Fee in Lieu of Dedication

- A. In the event there is no suitable park or recreation area or site in the proposed subdivision or partition, or adjacent thereto, then the developer shall, in lieu of setting aside land, pay into a park acquisition and development fund a sum of money equal to the fair market value of the land that would have been donated under 17.44.010 above. For the purpose of determining the fair market value, the latest value of the land, unplatted and without improvements, as shown on the County Assessor's tax roll shall be used. The sum so contributed shall be deposited with the County

Treasurer and be used for acquisition of suitable area for park and recreation purposes or for the development of recreation facilities. Such expenditures shall be made for neighborhood or community facilities at the discretion of the Board of County Commissioners and/or applicable park district.

- B. DCC 17.44.020 shall not apply to subdivision or partition of lands located within the boundaries of a parks district with a permanent tax rate.

**FINDINGS:** If the Hearings Officer alternatively requires fee in lieu of dedication, this criterion can be satisfied by imposition of a condition of approval requiring the applicant to pay a fee in lieu of dedication of park land in the amount of \$6,650 (\$350 x 19 dwelling units).

#### **CHAPTER 17.48, DESIGN AND CONSTRUCTION SPECIFICATIONS.**

1. Section 17.48.160, Road Development Requirements - Standards

- A. **Subdivision Standards.** All roads in new subdivisions shall either be constructed to a standard acceptable for inclusion in the county maintained system or the subdivision shall be part of a special road district or homeowners association in a planned unit development.

**FINDINGS:** The new roads serving the subdivision are proposed as private roads to be maintained by the homeowners association within the new subdivision. The private covenants will contain maintenance provisions for the private roads, common area and open space tracts within the subdivision, which will be recorded either prior to or concurrent with the final plat.

- B. **Improvements of Public Rights of Way.**
  - 1. The developer of a subdivision or partition will be required to improve all public ways that are adjacent or within the land development.
  - 2. All improvements within public rights of way shall conform to the improvement standards designated in DCC Title 17 for the applicable road classification, except where a zoning ordinance sets forth different standards for a particular zone.

**FINDINGS:** The Deschutes County Road Department and Transportation Planner have reviewed this application and provided comments, incorporated herein by reference. Staff recommends the Hearing Officer include Road Department conditions (1) and (2) as conditions of any approval of this application.

- C. **Primary Access Roads.** The primary access road for any new subdivision shall be improved to the applicable standard set forth in Table A (or the applicable standard set forth in a zoning ordinance). The applicable standard shall be determined with reference to the road's classification under the relevant transportation plan. For the purposes of this section a primary access road is a road leading to the subdivision from an existing paved county, city or state maintained road that provides the primary access to the subdivision from such a road.

**FINDINGS:** The Deschutes County Road Department and Transportation Planner have reviewed this application and provided comments, incorporated herein by reference. Staff recommends the Hearing Officer include Road Department conditions (1) and (2) as conditions of any approval of this application.

- F. Cul-de-sacs. Cul-de-sacs shall have a length of less than 600 feet, unless a longer length is approved by the applicable fire protection district, and more than 100 feet from the center of the bulb to the intersection with the main road. The maximum grade on the bulb shall be four percent.**

**FINDINGS:** The proposed private roads terminate in three cul-de-sac bulbs. The Road C has a length of over 600 feet and it is unclear if Road E is over 600 feet in length. Staff recommends a condition of any approval requiring written approval of cul-de-sac lengths over 600 feet by the Redmond Fire Department, prior to final plat approval. Additionally, staff recommends a condition of approval that the maximum grade on any cul-de-sac bulb be four percent.

2. Section 17.48.180, Private Roads

**The following minimum road standards shall apply for private roads:**

- A. The minimum paved roadway width shall be 20 feet in planned unit developments and cluster developments with two-foot wide gravel shoulders;**
- B. Minimum radius of curvature, 50 feet;**
- C. Maximum grade, 12 percent;**

**FINDINGS:** These criteria apply, as the proposed subdivision is a planned unit development. Staff notes that Table A to DCC 17.48 specifies a paved width of 20 or 28 feet for “private roads”, with 2 inches of asphaltic concrete surfacing, and 6 inches of base. The width specification includes footnote #8, which specifies:

**Table A Footnote (8)**      ***20’ allowed for cul-de-sac’s and roads with low anticipated traffic volumes as long as separate multiple use paths are provided. 28’ width required (including the required 4’ striped shoulder bikeway in each direction) for circulator and primary subdivision access roads and other roads when separate multiple use paths are not provided.***

The proposed new roads (Roads C, D and E) will meet Title 17 (Table A) standards for private roads, including a 28-foot wide paved surface, with 2-foot gravel shoulders. The proposed curve radius and grade will meet the above standards. Staff recommends the Hearings Officer include striping of the 4’ striped shoulder bikeway in each direction as a condition of any approval.

- D. At least one road name sign will be provided at each intersection for each road;**

**FINDINGS:** Staff recommends the Hearings Officer include this criterion as a condition of any approval.

- E. **A method for continuing road maintenance acceptable to the County;**

**FINDINGS:** The applicant has stated intent to submit and record private covenants containing road maintenance provisions to County Legal Counsel either prior to or with the final plat. Staff recommends the Hearings Officer include this criterion as a condition of any approval.

- F. **Private road systems shall include provisions for bicycle and pedestrian traffic. In cluster and planned developments limited to ten dwelling units, the bicycle and pedestrian traffic can be accommodated within the 20-foot wide road. In other developments, shoulder bikeways shall be a minimum of four feet wide, paved and striped, with no on-street parking allowed within the bikeway, and when private roads are developed to a width of less than 28 feet, bike paths constructed to County standards shall be required.**

**FINDINGS:** The proposed new roads (Roads C, D and E) will meet Title 17 (Table A) standards for private roads, including a 28-foot wide paved surface, with 2-foot gravel shoulders. The proposed curve radius and grade will meet the above standards. Staff recommends the Hearings Officer include striping of the 4' striped shoulder bikeway in each direction as a condition of any approval. Staff recommends a condition of approval prohibiting on-street parking within the bikeway.

#### IV. **RECOMMENDATION:**

This staff report identifies applicable zoning ordinances and evaluates compliance with those ordinances. Staff has identified a number of criteria where staff believes the applicant has not demonstrated compliance with the criteria or compliance with the criteria is in dispute. Staff recommends the Hearings Officer resolve these issues prior to any approval of this application.

Dated this 15<sup>th</sup> day of May, 2015

Mailed this 15<sup>th</sup> day of May, 2015