



Community Development Department

Planning Division Building Safety Division Environmental Health Division

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STAFF REPORT

FILE NUMBERS: 247-15-000226-CU
247-15-000227-CU
247-15-000228-LM

APPLICANT: Hurley Re, PC
747 Millview Way
Bend, OR 97702

OWNERS: KC Development Group, LLC
63560 Johnson Road
Bend, OR 97701

Tumalo Irrigation District
64697 Cook Avenue
Bend, OR 97701

REQUEST: Conditional use permit for surface mining related to the creation of two reservoirs. Conditional use permit to establish a recreation-oriented facility requiring large acreage. Landscape Management site plan review to construct the reservoirs and associated structures.

STAFF CONTACT: Anthony Raguine, Senior Planner

I. APPLICABLE CRITERIA:

Title 18, Deschutes County Zoning Ordinance
Chapter 18.56, Surface Mining Impact Area Combining Zone (SM)
Chapter 18.60, Rural Residential Zone (RR-10)
Chapter 18.84, Landscape Management Combining Zone (LM)
Chapter 18.88, Wildlife Area Combining Zone (WA)
Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS:

A. Location: The subject property is located at 19210 Klippel Road, Bend, and is identified as tax lots 824 and 828 on Assessor's map 17-11-13. It is the site of the former Klippel

Surface Mine (SM Site 294) and is located east of Johnson Road, north of Fawn Lane, south of Klippel Road, and west of Tumalo Creek.

- B. Zoning and Plan Designation:** The subject property is zoned Rural Residential (RR-10). Portions of the property are located within the Landscape Management (LM) Combining Zones associated with Tumalo Creek and Johnson Road. All of the property is within the Wildlife Area (WA) Combining Zone protecting the Tumalo Deer Winter Range. The property is designated Rural Residential Exception Area on the Deschutes County comprehensive plan map.
- C. Site Description:** The subject property is approximately 79 acres in size and consists of two adjacent tax lots. Tax lot 824 contains 15.31 acres and tax lot 828 contains 63.45 acres. The property previously was the site of the Klippel Surface Mine (SM Site 294) which the record indicates consisted of multiple mining pits. The property is developed with two man-made, lined reservoirs filled with water. The smaller reservoir (hereafter “northern reservoir”) is located in the northwestern portion of tax lot 828 and has a capacity of approximately 57 acre-feet of water. The larger of the reservoirs (hereafter “southern reservoir”), located on tax lots 824 and 828, has a capacity of approximately 68 acre-feet of water. It has two man-made islands comprised of gravel and dirt, and at its north end has a small marina, boat ramp, dock, and pilings to support a boat house. Near the southern end of the southern reservoir is a headgate regulating the flow of water from Tumalo Irrigation District’s (hereafter “TID”) irrigation canal into the southern reservoir. The remainder of the subject property is undeveloped with graded level areas and undisturbed areas with scattered pine trees and native brush. Access to the subject property is from a gravel drive off Fawn Lane on the south and from a gravel drive off Klippel Road on the north.
- D. Proposal:** The applicants seek conditional use permit approval for surface mining on the subject property consisting of grading and contouring of existing mining pits established as part of Surface Mining Site No. 294. The grading and contouring established the final shape of the proposed reservoirs referred to as the northern reservoir and the southern reservoir. This earthwork included creating two turnaround islands, a dock area, and boat ramp. Both reservoirs were then lined and filled with water. The applicant’s proposal includes a plan to install an outflow pump between the two reservoirs and associated piping that will allow TID to transfer water back into the TID pipeline along the western edge of the property. This will allow TID to direct water back into its system based on operational needs.

The applicants seek a second conditional use permit to establish a recreational facility associated with the southern reservoir. This recreational facility will allow the owners of the KCDG property to water ski on the southern reservoir. The applicant proposes the following restrictions to the recreational use of this reservoir:

1. Prohibit motorized activity during Winter Deer Range season (April 1 – November 30)
2. Only one motorized boat may be on the southern reservoir at a time
3. No jet skis allowed
4. Operational hours limited to day light hours
5. Adhere to all Deschutes County noise ordinance standards pursuant to DCC 8.08

6. Boat restrictions¹:
 - a. Inboard engines only (reduces engine noise)
 - b. Self-contained engines with internal oil lubrication systems (reduces engine noise and pollution potential due to engine leaks)
 - c. Stock mufflers or quieter (reduces engine noise)
 - d. Direct drive or V-drive transmission (reduces engine noise)
 - e. No two-stroke motors (prevents oil contamination)
7. No alcohol to be allowed on boats or by skiers
8. All motor boat operators must carry the Oregon mandatory boater education card

Additionally, the burden of proof states that the recreational facility will be used by owners of KCDG, and is not accessible by or open to the public.

The applicants have also applied for LM review to construct the southern reservoir within the LM Combining Zone associated with Tumalo Creek.

E. Surrounding Zoning and Land Uses: The subject property is adjacent to the Klippel Acres subdivision zoned RR-10 and WA, and developed with rural residences. To the east is Tumalo Creek. To the west are Johnson Road and the Saddleback Subdivision zoned RR-10 and WA, and developed with rural residences.

F. Land Use/Development/Code Enforcement History: The subject property previously was the site of the Klippel Surface Mine (SM Site 294). The mine was fully mined and reclaimed and received reclamation approval from the Oregon Department of Geology and Mineral Industries (DOGAMI) on September 27, 2005. In May of 2007, Harris Kimble, KC Development Group, LLC's (hereafter "KCDG") predecessor in title, applied for a plan amendment, zone change and goal exception to redesignate SM Site 294, including the subject property, from Surface Mine and Agriculture to Rural Residential Exception Area, and to rezone the site from Surface Mining (SM) and Exclusive Farm Use-Tumalo/Redmond/Bend Subzone (EFU-TRB) to RR-10. In a decision dated November 8, 2007, the Hearings Officer approved the plan amendment, zone change and goal exception.

The subject property was purchased by KCDG in October of 2013. The following is a chronology of events following that purchase.

On October 8, 2013, staff from the county's Community Development Department (CDD) met with representatives of KCDG and their then-attorney Tia Lewis to discuss development of the subject property with a residential cluster development. No development proposal was submitted.

On March 18 and 19, 2014, CDD received three code violation complaints concerning the subject property alleging that rock crushing, construction of a lake with a boat dock and fuel tanks, and use of a private road were occurring without required land use approval. These complaints were investigated by Deschutes County Code Enforcement Technician Tim Grundeman who concluded that no code violations had occurred. KCDG applied for a temporary use permit to allow rock crushing on the subject property in association with private road maintenance and landscaping, and on April 2, 2014,

¹ Based on staff's conversation with the applicant, the boat restrictions serve to reduce noise and pollution potential as shown in staff's notes at the end of each restriction.

CDD issued a temporary use permit for such use (TU-14-8). On June 4, 2014, CDD received another code violation complaint related to similar “unpermitted activities” on the subject property. The code enforcement case is still pending resolution of the subject conditional use permits.

On June 13, 2014, CDD staff, Deschutes County Assistant Legal Counsel John Laherty, representatives of TID, TID’s attorney William Hopp, and TID’s and KCDG’s attorney Elizabeth Dickson met to discuss the need and process for obtaining a Land Use Compatibility Statement (LUCS) for the transfer in place of use of a water storage right from Tumalo Reservoir to the subject property. Ms. Dickson advised CDD staff that an application for a residential cluster development on the subject property would be submitted in the future, potentially within six months. On or about June 16, 2014, CDD Director Nick Lelack determined to treat any request for a LUCS submitted by TID as a “land use action” and to process it according to the county’s procedures therefor.

On June 17, 2014, KCDG submitted applications for a building permit (247-14-003315-STR) and an electrical permit (247-14-003315-ELEC-01) for a boat house and boat slip on the southern reservoir. CDD staff advised KCDG that the Planning Division could not sign off on the building or electrical permit while any LUCS request was pending.

On June 19, 2014, CDD received a letter from Ken Rieck, TID Manager, explaining the need for the transfer in place of use of its water storage right and TID’s belief that the proposed transfer is a use permitted outright in the RR-10 Zone.

On July 25, 2014, John Laherty sent a letter to Elizabeth Dickson stating in relevant part:

“...[T]o the extent KC Development Group LLC has expended, or intends to expend, resources to create reservoirs, install footings for a dock or boathouse, or otherwise perform work on the subject property that does not require County approval, it does so at its own risk and without any guarantee that future County permits or approvals – including, without limitation, land use approval for construction of a cluster development or recreational lake, or building division approval for construction of a boat house or dock – will be granted.

The County has encouraged KC Development Group LLC and its principals to apply for necessary land use approvals first – before devoting significant resources to improving the property – so as to avoid the risk of commencing projects it will ultimately be unable to complete. Your client has chosen to disregard this advice.

Please inform your client (again) that Deschutes County will review any future land-use or building permit application on its own merits, and the County’s decision on such application will be governed solely by consideration of appropriate criteria. Your client’s decision to expend resources on improvements prior to obtaining necessary County approval for his intended development project will not be given undue weight or consideration in this process.”

On July 25, 2014, CDD staff and county legal counsel conducted a site visit to the subject property at the request of neighboring property owners.

On August 4, 2014, TID applied for a LUCS to transfer 108 acre-feet of Tumalo Creek Water to the subject reservoirs (county land use file no. 247-14-000238-PS).

By a letter dated August 6, 2014, Deschutes County Building Official Dave Peterson issued a stop work order to KCDG for work performed on the boat house foundation on the southern reservoir without land use approval or a building permit. The previously submitted building and electrical permit applications were withdrawn by KCDG.

On August 13, 2014, Mr. Lelack completed the WRD form by checking the box stating:

“Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s):”

Mr. Lelack attached to the LUCS form a three-page “Notice of Decision” dated August 13, 2014. The decision cited Section 18.60.020(l) listing “operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District,” and included the following relevant findings:

“According to information provided by Tumalo Irrigation District, TID ‘has decided to move its Regulation Pond storage to [the Klippel Mining Pit] a site upstream from our current in-district storage at Tumalo Reservoir.’ TID states that the existing Reservoir ‘was designed and built in the 1920’s and does not adequately serve TID’s needs,’ and that the new site ‘will be a significant upgrade to operations and maintenance.’ The Planning Director finds that transferring in-district storage from the Tumalo Reservoir upstream to the Klippel Acres Mining Pit in order to improve the operations of TID’s existing irrigation system is a use permitted outright in this zone.”

Notice of the LUCS decision was provided to the owners of all property located within 250 feet of the subject property.

On August 22, 2014, Thomas and Dorbina Bishop, trustees of the Bishop Family Trust (hereafter “Bishops”), filed an appeal of the LUCS.

On September 16, 2014, CDD received a code violation complaint for construction of a new road on the subject property. The complaint was investigated by Tim Grundeman who found no code violation. On September 22, 2014, CDD received a code violation complaint regarding recreational activities – i.e., waterskiing – occurring on the southern reservoir. On October 10, 2014, CDD issued a Notice of Violation to KCDG for operating a recreation-oriented facility requiring large acreage without land use approval.

On October 7, 2014, a public hearing was held before the Deschutes County Hearings Officer (hereafter “HO”) on the LUCS.

On December 15, 2014, the HO issued a decision which was mailed to all parties of record on December 16, 2015. Both TID and the Bishops timely appealed the HO decision to the Deschutes Board of County Commissioners (hereafter “BOCC”), requesting *de novo* review.

On January 7, 2015, by Order No. 2015-009, the BOCC accepted the appeals and consolidated them into a single, *de novo* proceeding. On January 29, 2015 the BOCC held a public hearing on the appeals. On April 8, 2015, the BOCC issued their decision on the LUCS. On April 24, 2015, the BOCC re-issued the LUCS and checked the box stating:

*“Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. (Please see attached documentation of applicable land use approvals which have already been obtained. Record of Action/land use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal period have not ended, check “Being pursued.”**”* (bold emphasis in original)

In the table on the LUCS form, conditional use permits were listed as being necessary to establish a recreation facility and for surface mining. The listed applicable zoning code sections were Deschutes County Code (hereafter “DCC”) sections 18.60.030(G) for a recreation facility and 18.60.030(W) for surface mining. The BOCC’s decision, along with the HO decision, were attached to the re-issued LUCS.

On May 14, 2015, a code violation complaint was filed alleging unpermitted construction on the subject property including piping and concrete work. On May 15, 2015, TID and KCDG attorney Ken Katzaroff submitted an affidavit of Robert Varco, TID Field Supervisor, detailing the construction work. According to the affidavit,

1. TID replaced an existing concrete weir that was originally constructed as part of TID’s Phase II Pipeline Project, which piped the Tumalo Feed Canal from 2010-2011.
2. The original and replacement weirs measure the amount of water diverted to the property.
3. The replacement weir is a more accurate improvement to TID’s existing water delivery system.
4. TID installs approximately 20 new or replacement weirs in its system a year.
5. This weir is part of TID’s operation and maintenance of its existing system, including its reporting requirements for the beneficial use of water.

On May 18, 2015, CDD Senior Planner Anthony Raguine and Code Enforcement Technician John Griley met with Mr. Kimble on-site to investigate the construction. Based on staffs’ investigation and Mr. Varco’s affidavit, CDD determined that the construction work did not require any building or electrical permits, and that the work was permitted outright under DCC 18.60.020(I),

Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.

The code enforcement case alleging unpermitted piping and construction of the replacement weir is closed.

G. Public Agency Comments:

Deschutes County Building Division. The Deschutes County Building Safety Division's code required Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. will be specifically addressed during the plan review process for any proposed structures and occupancies. All Building Code required items will be addressed when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Deschutes County Road Department. No county roads are affected by this application.

Planning Division Senior Transportation Planner. I have reviewed the transmittal materials for 247-15-000226-CU/227-CU/228-LM to create on the site of a former surface mine two reservoirs with recreation facilities on large acreage in the Rural Residential (RR-10) and Landscape Management (LM) zone at 19210 Klippel Road, aka 17-11-13, Tax Lots 824 and 828.

According to the applicant's burden of proof on Page 7, the reservoirs will only be used by existing property owners/members of KC Development Group (KCDG) for recreation; thus no new traffic will be generated. The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook indicates a single-family residence (Land Use 210) generates an average of approximately 10 daily weekday trips. Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. The proposed land use will not meet the minimum threshold for additional traffic analysis.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$3,758 per p.m. peak hour trip. Again, according to the applicant's burden of proof, only existing members/property owners of KCDG will use the reservoirs for recreation and thus no road capacity will be consumed. Therefore, the SDC does not apply.

These comments only apply to the current land uses; if subsequent residential development occurs, the applicant may have to perform a traffic study and will have to pay transportation SDCs. Please let me know if you have any questions. Thanks.

The following agencies did not respond or had no comments. Deschutes County Assessor, Deschutes County Code Enforcement, Deschutes County Environmental Health, Oregon Department of Fish and Wildlife, Oregon Department of Geology and Mineral Industries, and U.S. Fish and Wildlife Service.

H. Public Comments: As of the date of this staff report, a total of 32 comment emails and letters were received from the public. Of these, 19 were in favor of the proposal and 13 were in opposition.

Those in favor of the proposal included the following comments:

1. Increase in wildlife abundance on, and usage of, the subject property
2. Reduction in water loss due to lined reservoirs versus the existing Upper Tumalo Reservoir, which experiences significant leakage
3. Availability of water for fire fighting
4. Observational testimony from neighbors that the ski boat generates little, to no, noise; lawn mowers, vehicular traffic on Johnson Road, airplanes, helicopters and heavy equipment from nearby surface mining² generate as much, if not more noise, than the ski boat
5. Beautification of the previous gravel mine
6. Separation between the northern and southern reservoirs provides adequate room for east-west migration of wildlife
7. Increase in surrounding property values
8. Improved re-regulation of Tumalo Creek water
9. New, smooth, gravel bed for Palla Lane
10. Improved and consistent water delivery to TID patrons
11. Water storage during a drought
12. No issue with insect swarms
13. Potential for wetland habitat recruitment/creation along edge of reservoirs
14. Private property rights should be supported
15. The county knew of the proposed development and did not require any permits during pre-development meetings

Those in opposition to the proposal included the following comments:

1. Boating on the reservoir not compatible with rural residential uses on surrounding properties
2. Ski boat noise disturbs wildlife

² Staff notes that Surface Mining Site No. 293 adjoins the subject property to the north. Site No. 293 is identified as tax lots 500, 600, 700 and 800 on Assessor map 17-11-12. Surface Mining Site No. 308 is located approximately 600 feet to the east of the subject property. Site No. 308 is identified as tax lot 100 on Assessor map 17-12-18, and tax lots 100, 103, 104, 200 and 500 on Assessor map 17-11-13.

3. Lack of information to evaluate surface mining impacts
4. Need for a traffic study related to surface mining activity and use of the recreational lake
5. Lack of information related to public safety, sewer and energy demand
6. Applicant provides no proof of the water right³ necessary to use the reservoirs
7. Lack of information related to surface mining of Non-Goal 5 Aggregate Resources under DCC 18.128.280
8. Increase in gnats and mosquitos; need for vector control plan
9. Observational testimony from neighbors that the ski boat generates noise that disrupts the rural character of the area; the design of the ski lake results in repeated back and forth boat noise
10. Potential for noise impacts from boaters shouting and on-board music sound systems
11. Request for more stringent operating hours
12. Construction of the reservoirs destroyed restored native wildlife habitat and was conducted during the winter range closure period; construction of reservoirs resulted in extended noise impacts to the neighborhood
13. Size, alignment and close proximity of the reservoirs creates a barrier to east-west migration of wildlife
14. Need for an assessment of water evaporation rates for the reservoirs; reservoirs designed with a disproportionate volume to surface area ratio which does not minimize water loss due to evaporation
15. Evaporation can result in the rapid concentration of contaminated water
16. Need for an assessment of water well impacts due to construction
17. Klippel Road is a private road⁴ that is privately maintained and not suitable for increased construction traffic or traffic due to boaters accessing the ski lake
18. Reservoirs cannot function as re-regulation facilities because there is no outlet
19. Safety concern regarding ice-covered reservoirs
20. Permits not obtained prior to construction of reservoirs

³ The record includes an Oregon Water Resources Department (hereafter "OWRD") Final Order denying a permanent change to Water Certificate No. 76684.

⁴ Staff confirmed with the Road Department that Klippel Road is a private road that is privately maintained.

21. Construction of westerly road has resulted in increased pedestrian traffic, adversely affecting residential privacy

- I. **Notice:** A notice of the applications was mailed on May 13, 2015. Comments from the public and from public agencies are detailed above. The applicant submitted a Land Use Sign Affidavit indicating the land use action sign was posted on the property on May 9, 2015. After the sign was posted, staff spoke to a neighbor of the property who indicated an incorrect phone number was listed for staff planner Anthony Raguine on the land use action sign. Staff notes that the sign also listed the general information phone line for CDD, which was correct.

Notice of the public hearing was published in *The Bulletin* on May 31, 2015, and mailed to parties of record on June 5, 2015.

- J. **Lot of Record:** The subject property is comprised of two separate legal lots of record pursuant to lot of record verification LR-05-8 and property line adjustments LL-13-46, LL-13-47, LL-13-48, LL-13-49, LL-13-51 and LL-13-52.
- K. **Review Period:** The subject applications were submitted on April 29, 2015 and deemed complete by the Planning Division on May 29, 2015.

III. **CONCLUSIONARY FINDINGS:**

Title 18, Deschutes County Zoning Code

A. Chapter 18.56, Surface Mining Impact Area Combining Zone – SM

1. Section 18.56.020. Location.

The SMIA zone shall apply to all property located within one half mile of the boundary of a surface mining zone. However, the SMIA zone shall not apply to any property located within an urban growth boundary, city or other county. The extent and location of the SMIA Zone shall be designated at the time the adjacent surface mining zone is designated.

FINDING: The northern half of the subject property is within the SMIA Combining Zone associated with Mining Site No. 293. The provisions of Chapter 18.56 apply.

2. Section 18.56.050. Conditional Uses Permitted.

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone(s) with which the SMIA Zone is combined and shall be subject to all conditions of the underlying zone(s) as well as the conditions of the SMIA Zone.

FINDING: The proposed reservoirs and recreation facility are conditionally allowed in the underlying RR-10 Zone and are, therefore, conditionally allowed in the SM Zone. The

standards of the RR-10 Zone and the conditional use criteria under DCC 18.128 are addressed below.

3. Section 18.56.070. Setbacks.

The setbacks shall be the same as those prescribed in the underlying zone, except as follows:

- A. No noise sensitive or dust sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within 250 feet of any surface mining zone, except as provided in DCC 18.56.140; and***
- B. No noise sensitive or dust sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within one quarter mile of any existing or proposed surface mining processing or storage site, unless the applicant demonstrates that the proposed use will not prevent the adjacent surface mining operation from meeting the setbacks, standards and conditions set forth in DCC 18.52.090, 18.52.110 and 18.52.140, respectively.***
- C. Additional setbacks in the SMIA Zone may be required as part of the site plan review under DCC 18.56.100.***
- D. An exception to the 250 foot setback in DCC 18.56.070(A), shall be allowed pursuant to a written agreement for a lesser setback made between the owner of the noise sensitive or dust sensitive use or structure located within 250 feet of the proposed surface mining activity and the owner or operator of the proposed surface mine. Such agreement shall be notarized and recorded in the Deschutes County Book of Records and shall run with the land. Such agreement shall be submitted and considered at the time of site plan review or site plan modification.***

FINDING: Staff believes the proposed reservoirs and recreation facility are not dust- or noise-sensitive uses⁵. Therefore, these setback standards do not apply.

4. Section 18.56.080. Use Limitations.

No dwellings or additions to dwellings or other noise sensitive or dust sensitive uses or structures shall be erected in any SMIA Zone without first obtaining site plan approval under the standards and criteria set forth in DCC 18.56.090 through 18.56.120.

⁵ "Dust sensitive use" means real property normally used as a residence, school, church, hospital or similar use. Property used in industrial or agricultural activities is not "dust sensitive" unless it meets the above criteria in more than an incidental manner. Accessory uses such as garages and workshops do not constitute dust sensitive uses.

"Noise sensitive use" means real property normally used for sleeping or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not "noise sensitive" unless it meets the above criteria in more than an incidental manner. Accessory uses such as garages or workshops do not constitute noise sensitive uses.

FINDING: Staff believes the proposed reservoirs and recreation facility are not dust- or noise-sensitive uses. Therefore, site plan approval under DCC 18.56.090 through 18.56.120 is not required.

B. Chapter 18.60, Rural Residential Zone – RR10

1. Section 18.60.030. Conditional Uses Permitted.

The following uses may be allowed subject to DCC 18.128:

...

G. Recreation oriented facility requiring large acreage such as off road vehicle track or race track, but not including a rodeo grounds.

...

W. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.

FINDING: Pursuant to the BOCC decision on the LUCS, the applicant has applied for conditional use permits to establish a recreation-oriented facility and for surface mining. The conditional use standards under DCC 18.128 are addressed below.

2. 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: DCC 18.04.030 provides the following definition of setback,

"Setback" means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in DCC Title 18.

Because the reservoirs, including the pit, liner, pilings and docks, do not obstruct from the ground upward, staff believes the yard setback standards do not apply to the reservoirs. However, staff is concerned that the reservoirs do act as an obstruction and may meet the intent of this definition. Staff requests the Hearings Officer determine if the reservoirs must meet the required setback standards.

In addition to the reservoirs, the applicant proposes a boathouse which must comply with the minimum setback requirements of the RR-10 Zone. As noted previously, the record indicates that tax lots 824 and 828 are separate legal lots of record. For this reason, staff believes that any structures must comply with the required setback standards for the legal lot upon which it is located. Based on staff's review of the project plans, the proposed boathouse is the only structure which projects upward from the ground, and it will be located on tax lot 828.

DCC 18.04.030 provides the following definitions,

"Lot Line, Front" means the lot line separating a lot from a street other than an alley. In the case of a lot that does not front directly on any street, the front lot line shall be that lot line parallel to and facing the same direction as the front lot lines of the majority of other properties in the immediate area.

"Street" means the entire width between the right of way lines of every public way for vehicular and pedestrian traffic. Includes the terms "road," "highway," "land," "place," "avenue," "alley" or other similar designation.

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

- A. *"Alley" means a narrow street through a block primarily for vehicular service access to the back or side of properties adjoining another street.*
- B. *"Arterial" means a restricted access street of substantial continuity which is primarily a traffic artery for intercommunication among large areas, and so designated by the County.*
- C. *"Bicycle route" means a right of way for bicycle traffic.*
- D. *"Collector" means a street supplementary to the arterial street system used or intended to be used principally for the movement of traffic between arterial and local streets and roads within the County.*
- E. *"Cul de sac" means a short street having one end open to traffic and the other end terminated by a vehicle turnaround.*
- F. *"Half street" means a portion of the width of a street sufficient for safe service temporarily (as approved by the County Engineer) when the remaining portion of the street is likely to be provided in another subdivision.*
- G. *"Marginal access street" means a minor street parallel and adjacent to a major arterial providing access to adjoining properties, but protected from through traffic.*
- H. *"Local street" means a street intended primarily for access to adjoining properties.*
- I. *"Stubbed streets" means a street having only one outlet for vehicular traffic and which is intended to be extended or continued to serve future subdivisions or developments on adjacent lands.*

Taken together, staff interprets the code to mean that the front lot line is a property line that separates a property from a public or private way that provides ingress or egress to a property for vehicular and pedestrian access. It appears to staff the subject property does not include a property line which separates the property from a public or private street⁶. Therefore, the front

⁶ Although a portion of the northeastern section of tax lot 828 appears to have frontage along Klippel Road, the property line in this area does not separate tax lot 828 from Klippel Road.

lot line will be the lot line parallel to and facing the same direction as the front lot lines of the majority of other properties in the immediate area. Based on staff's review of properties in the immediate area, the front lot lines vary significantly. There does not appear to a particular property line or cardinal direction with which the majority of the properties in the immediate area take road frontage.

Staff notes that the primary access to the subject property is from Buck Drive to Klippel Road, from the northwest. For this reason, staff believes it would be appropriate to consider the property line in the northwest of the property which intersects with Klippel Road to be the front lot line. Staff requests the Hearings Officer determine the front lot line.

As proposed, the boathouse will observe setbacks of at least 500 feet from any property line, exceeding all required property line setbacks.

The boathouse is proposed to have a height of approximately 10 feet above ground level. This will require a solar setback of 5.7 feet. The proposed location of the boathouse at least 500 feet from any property line will allow it to meet this standard.

Any additional setbacks required by applicable building or structural codes will be addressed during building permit review.

3. 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.

FINDING: The proposed boathouse will have a footprint of 924 square feet. The subject property is 78.76 acres, or 3,430,786 square feet, in size. The boathouse will have a lot coverage of less 0.03 percent. Staff believes this criterion will be met.

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: As noted previously, the boathouse will have a proposed height of approximately 10 feet above ground level. Staff believes this criterion will be met.

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 does not propose to divide the property. This criterion does not apply.

4. Section 18.60.070. Limitations on Conditional Uses.

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: Given the nature of the use, the lack of vegetation on-site, and the limited flammable materials proposed on-site (boathouse, docks), staff believes establishment of fire breaks or use of fire resistant materials is not necessary.

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 believes the grading and contouring to create the reservoirs would not have necessitated any imposed grading limitations under this criterion in light of the fact that the reservoirs are lined and filled with water. Staff believes this would have prevented erosion or pollution.

5. Section 18.60.080. Rimrock Setback.

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: Based on staff's site visit, there appears to be no rimrock on-site⁷. Staff believes this criterion does not apply.

C. Chapter 18.84, Landscape Management Combining Zone – LM

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. The 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

⁷ Per 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) 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.

river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.

FINDING: The northwestern portion of the property is burdened by the LM Combining Zone associated with Johnson Road, a designated LM feature. The southern portion of the property is burdened by the LM Combining Zone associated with Tumalo Creek, also a designated LM feature. Staff believes the provisions of DCC 18.84 only apply to the portions of the property within an LM Combining Zone.

As proposed, the southern portion of the southern reservoir is within the LM Zone associated with Tumalo Creek. The dock, boat ramp, pilings and proposed boathouse on the southern reservoir will all be located outside of an LM Zone. Similarly, the northern reservoir is located outside of an LM Zone. Therefore, staff believes the provisions of this chapter apply only to the portion of the southern reservoir within an LM Zone.

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.

FINDING: The proposed reservoirs and recreation facility are conditionally allowed in the underlying RR-10 Zone and are, therefore, conditionally allowed in the LM Zone. The RR-10 Zone standards are addressed above and the conditional use criteria are addressed under DCC 18.128 below.

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.

FINDING: Per the Building Division, the reservoirs do not require a building permit. For this reason, staff believes site plan approval in accordance with DCC 18.84 is not required for the reservoirs. The proposed boathouse will require a building permit. However, the boathouse will be located outside of any LM Zone. For this reason, staff believes site plan approval in accordance with DCC 18.84 is not required for the boathouse.

D. Chapter 18.88, Wildlife Area Combining Zone – WA

1. Section 18.88.020. Application of Provisions.

The provisions of DCC 18.88 shall apply to all areas identified in the Comprehensive Plan as a winter deer range, significant elk habitat, antelope range or deer migration corridor. Unincorporated communities are exempt from the provisions of DCC 18.88.

FINDING: The entire property is burdened by the WA Combining Zone associated with Tumalo Deer Winter Range. The provisions of this chapter apply.

2. Section 18.88.040. Uses Permitted Conditionally.

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

FINDING: The proposed reservoirs and recreation facility are conditionally allowed in the underlying RR-10 Zone and are, therefore, conditionally allowed in the WA Zone if not specifically prohibited under subsection B below. The RR-10 Zone standards are addressed above and the conditional use criteria are addressed under DCC 18.128 below.

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

FINDING: Staff believes the proposed reservoirs are not specifically prohibited in the WA Zone. Staff notes that a recreation facility owned and operated by a government agency or a nonprofit community organization is prohibited. However, the recreation facility proposed by the applicant will not be owned and operated by a government agency or a nonprofit community organization. For this reason, staff believes the proposed recreation facility is not specifically prohibited in the WA Zone.

3. Section 18.88.060. Siting Standards.

- A. ***Setbacks shall be those described in the underlying zone with which the WA Zone is combined.***

FINDING: The applicable setbacks of the underlying RR-10 Zone are addressed above.

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

...

FINDING: Staff believes the siting standard under this criterion applies only to new dwellings. For this reason, staff believes this criterion does not apply.

4. Section 18.88.070. Fence Standards.

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

A. *New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:*

- 1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.***
- 2. The height of the fence shall not exceed 48 inches above ground level.***
- 3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.***

B. *Exemptions:*

- 1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.***
- 2. Corrals used for working livestock.***

FINDING: The applicant does not propose any new fencing. Staff believes compliance with the fencing standards can be achieved via a condition of approval.

E. Chapter 18.116, Supplementary Provisions

1. Section 18.116.030, Off Street Parking and Loading

A. *Compliance. No building or other permit shall be issued until plans and evidence are presented to show how the off street parking and loading requirements are to be met and that property is and will be available for exclusive use as off-street parking and loading. The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18*

FINDING: Staff believes that the operational characteristics of the recreation facility, as proposed, do not include any on-site vehicular parking. As such, staff believes that no off-street parking and loading are required. This is discussed in detail below.

F. Chapter 18.124, Site Plan Review

1. Section 18.124.030. Approval Required.

A. *No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final*

site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.

- B. The provisions of DCC 18.124.030 shall apply to the following:**
- 1. All conditional use permits where a site plan is a condition of approval;**
 - 2. Multiple family dwellings with more than three units;**
 - 3. All commercial uses that require parking facilities;**
 - 4. All industrial uses;**
 - 5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and**
 - 6. As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).**
 - 7. Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.**

FINDING: Parks and recreation facilities, like the proposed “Recreation oriented facility” are subject to site plan review where they serve the general public or otherwise require parking facilities.

Serve the General Public

The applicant has proposed that recreational use on the southern reservoir will only available to owners of the KCDG property. Limiting the use to owners of KC Development Group, LLC, will exclude the “general public”, but staff is uncertain how many owners there are presently of the LLC and if nominal shares might be sold to increase the number of potential owners significantly. Staff requests the Hearings Officer condition any approval of this application to restrict use to a clearly defined group that excludes the “general public”. Staff notes that the impacts analysis provided below is based on use of the recreational facility by the owners of KCDG only. Any additional usage beyond the owners of the KCDG property may result in additional impacts and require additional review. Below, staff suggests the Hearings Officer also impose a maximum number of daily users.

Otherwise Require Parking Facilities

Based on a conversation with KCDG, it is staff’s understanding that KCDG plans to drive the ski boat to the southern reservoir at the beginning of each season to place the boat within the boathouse. KCDG will then drive the vehicle back to their respective dwelling and walk back to the reservoir. At the end of the season, KCDG will again drive to the reservoir to retrieve the ski boat. For this reason, KCDG has not proposed any parking facilities which will trigger site plan review under subsection (B)(5). Because the applicant proposes not to park any vehicles on the subject property for the recreational use, staff concurs with the applicant that site plan review is not required. It is staff’s understanding that KCDG is aware that vehicular parking on the subject property for the recreational use may constitute a parking facility which will require site plan review. Staff notes that parking facilities and site plan review were required by this Hearings Officer for the members of a private paintball club and their guests under CU-07-79. Staff recommends, at minimum, a condition of any approval requiring that no vehicular parking be allowed on the subject property for use of the recreational facility prior to site plan approval.

G. Chapter 18.128, Conditional Uses

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;

FINDING:

Site

As noted previously, the subject property is approximately 160 acres in size and is the location of former Mining Site No. 294. Because of this previous use, the property was subject to extensive grading and excavation which created deep pits and entirely removed vegetation within these pits. As seen in the applicant's Exhibit U, the northern and southern reservoirs are located in areas already disturbed during the mining operations. The size of the property and the location of the reservoirs allow a minimum 50-foot setback from any adjacent property. Given the level of disturbance due to prior mining activities and setbacks from adjacent properties, staff believes the site is suited to accommodate the reservoirs and recreation facility.

Design

The proposed reservoirs were designed and located within the pre-existing mining pits and, therefore, makes use of the pre-existing depth created by excavation of the site. Additional contouring and grading completed the final design of the reservoirs. According to the record, Tumalo Creek water can be held in both reservoirs. The applicant's Exhibit C includes an outflow manhole and pump located between the two reservoirs that will tie back in to TID's canal along the western side of the property. This will allow TID to remove water as necessary to accommodate downstream users.

The design of southern reservoir includes two boat turn-arounds, a boat ramp, two docks and a two-boat boathouse. The ramp, docks and boathouse will be located at the northeastern end of the southern reservoir. The subject property includes sufficient room to accommodate these accessory structures while still providing a minimum 50-foot setback to any adjacent property.

Staff believes the site is suitable to the design of the reservoirs and recreation facility.

Operating Characteristics

As proposed and further detailed in the Irrigation Contract (Exhibit A), the reservoirs will hold approximately 125 acre-feet of water pursuant to Water Certificate 76684. In addition, the approximately 55 acres of water right appurtenant to the KCDG property will pass through the reservoirs but is not included in the 125 acre-feet of stored water. The proposed outflow pipe that ties back into the TID canal will allow TID to remove water as necessary for their operations. Staff does not anticipate any impacts to the site based upon the operating

characteristics of the reservoirs. For this reason staff believes the site is suitable for the proposed reservoir use based on operating characteristics.

The applicant proposes a number of restrictions related to the recreational use of the southern reservoir as follows:

1. Prohibit motorized activity during Winter Deer Range season (April 1 – November 30)
2. Only one motorized boat may be on the southern reservoir at a time
3. No jet skis allowed
4. Operational hours limited to day light hours
5. Adhere to all Deschutes County noise ordinance standards pursuant to DCC 8.08
6. Boat restrictions:
 - a. Inboard engines only (reduces engine noise)
 - b. Self-contained engines with internal oil lubrication systems (reduces engine noise and pollution potential due to engine leaks)
 - c. Stock mufflers or quieter (reduces engine noise)
 - d. Direct drive or V-drive transmission (reduces engine noise)
 - e. No two-stroke motors (prevents oil contamination)
7. No alcohol to be allowed on boats or by skiers
8. All motor boat operators must carry the Oregon mandatory boater education card

In addition to the above restrictions, the applicant has proposed that the southern reservoir is only available to owners of the KCDG property. Staff believes a condition of approval limiting use of the recreation facility to the owners of the KCDG property will prevent impacts to the site due to increased traffic, and possibly noise and dust. Staff believes this condition should also specify a maximum number of users, and that no guests or other public use should be allowed. Additionally, staff believes a condition of approval prohibiting amplified music, both land-based and boat-based, will reduce the potential for noise impacts. Based on the proposed operating characteristics of the recreational facility, with the implementation of staff's recommended conditions of approval, staff does not anticipate additional impacts to the site. For this reason, staff believes the site is suitable for the recreational use based on its operating characteristics.

2. Adequacy of transportation access to the site; and

FINDING: The subject property is currently served by Klippel Road, a private road that is privately maintained. Because the reservoirs are already constructed, staff limits its review to transportation access related to the proposed uses, rather than address adequacy of access during the construction phase. If the subject property were undeveloped, review under this criterion could include construction-related transportation issues. Staff notes that a letter from Mr. Mark Borgers indicates that the pavement along Klippel Road was damaged due to heavy equipment traffic. Staff is unsure what, if anything, should be done to address construction related traffic impacts.

Staff believes traffic related to the reservoir use will be minimal; limited to maintenance of the reservoir along with the piping, weir, pump and other reservoir-associated items. For this reason, staff believes Klippel Road provides adequate transportation access to the site for the reservoir use.

The applicant's proposal indicates that the southern reservoir will only be used by owners of the KCDG property. Staff recommends a condition of approval limiting use of the southern reservoir to only owners of the KCDG property, including a maximum number of users, and that no other

guests or public use should be allowed. With this condition, staff believes the reservoir use will not generate any additional trips on Klippel Road.

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

FINDING: The subject property was significantly altered during the mining operation associated with Surface Mining Site No. 294. This mining resulted in areas of deep excavation and grading, with total vegetation loss in those areas. The areas which were not mined retained a covered of native brush and pine trees. The construction of the reservoirs appears to have retained almost all of the native brush and pine trees which were left undisturbed by the mining operation. According to the record, reclamation of the site was limited to grass seeding of the disturbed areas of the site. Photos of the reclaimed site can be seen in the DOGAMI-issued Mined Land Reclamation Award (Exhibit F).

There is debate in the record regarding the value of the revegetation effort and the affect its loss had on deer and elk habitat. There is also debate regarding the affect the reservoirs had and will continue to have on deer and elk. What does not appear to be in debate is the return of deer and elk to the property post-construction. For this reason, staff is unsure what impact, if any, the construction of the reservoirs had and continues to have on deer and elk populations.

With regard to the proposed recreational use, opponents are concerned that continued water skiing will negatively impact deer and elk. The applicant proposes prohibiting water skiing during the critical winter season to minimize impacts. The applicant's biological opinion from Mr. Paul Valcarce⁸ includes the following:

"Since the proposed boat season is from April 1 to October 31⁹, mule deer disturbance would not exist during the classified winter range period. Mule deer disturbance should be no greater and even less than one of the local roads during the summer."

Staff requests the Hearings Officer determine the nature and extent of the project's impact to wildlife and whether the proposal is suitable to the site considering natural resource values.

The general topography of the site was significantly altered by the mining operation. The reservoirs are sited within these previously disturbed areas. For this reason, staff believes the reservoirs and recreational use are suitable to the site considering the post-mining physical features of the site.

The predominant natural hazard to the subject property is wildfire. As discussed previously, the proposed reservoir use was beneficial to firefighting efforts during the Two Bulls and Shevlin Park fires. Staff believes the reservoir use will reduce potential wildfire hazard on the subject property.

⁸ Mr. Valcarce's credentials include employment as a Senior Conservation Officer with Idaho Fish and Game. Mr. Valcarce's experience includes surveys of mule deer and elk, and mule deer reproduction and migration studies.

⁹ Page 7 of the burden of proof indicates that motorized boat activity will be limited to April 1 – November 30.

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).

FINDING: The subject property is surrounded by rural residential uses on lands zoned RR-10. Surface Mining Site No. 293 adjoins the subject property to the north, with Site No. 308 approximately 600 feet to the east. Exclusive Farm Use (EFU) zoned lands are located approximately 1,000 feet to the north. These lands are a mixture of vacant properties and other properties developed with rural residential and farm uses. Approximately 900 feet to the northwest are primarily undeveloped Forest Use (F-2) zoned lands. Tumalo Creek is approximately 225 feet to the east at its closest point to the subject property. Staff is unaware of any projected uses on nearby lands.

Because the potential impacts of the reservoir and recreational uses are different, staff addresses each use with respect to the factors listed in DCC 18.128.015(A) separately below.

Reservoir

Site

Given the distance and intervening vegetation and development, staff believes the siting of the proposed reservoir use will have no impact on nearby surface mining uses; no impact to residential and farm uses on EFU zoned lands; and no impact on uses on lands zoned F-2. As noted previously, the reservoirs observe setbacks of at least 50 feet from any property line. The siting of the reservoirs within the previously disturbed mining areas retains the majority of the remaining tree cover surrounding the reservoirs. Considering the observed setbacks, remaining tree cover, and generally passive nature of the reservoir use, staff believes the siting of the reservoirs are compatible with existing uses and projected uses on surrounding properties.

Design

The plans for the reservoirs include a proposed outflow pump and piping that allows TID to pump water back into the TID canal for the benefit of downstream users. The plans also include a proposed dry hydrant to allow fire tenders to use the water during fire emergencies. The record includes evidence of the value of these reservoirs during the Two Bulls fire in 2014. Additionally, the reservoirs were used again in 2015 during the Shevlin Park fire. Staff believes the design of the reservoirs will allow efficient re-regulation of TID water and will provide a valuable resource for firefighting efforts in the area. For these reasons, staff believes the design of the reservoirs is compatible with existing and projected uses on surrounding properties with respect to TID's ability to deliver water and for firefighting.

The record includes testimony that the reservoirs may provide a breeding ground for gnats and mosquitos. The applicant has submitted into the record an affidavit from Ken Reick. In this affidavit, Mr. Reick indicates that the reservoirs are large enough to develop wind-driven wave action which will presumably inhibit mosquito breeding. Additionally, Mr. Reick states that in his 25 years of employment with TID, he is not aware of any mosquito complaints related to any of the TID's reservoirs. Mr. Reick expects the subject reservoirs to perform similarly. Should the Hearings Officer find that the reservoirs have resulted in an increase in nuisance insects, staff recommends the applicant submit a mitigation plan to address this issue.

Operating Characteristics

Staff expects little to no impact from the day-to-day operation of the reservoirs to surrounding uses. However, staff questions whether maintenance of the reservoirs could result in impacts to surrounding uses. Could maintenance include re-grading, re-contouring and re-lining of the reservoirs? Staff requests that the applicant provide information regarding an anticipated maintenance schedule and specifically what type of work could be expected during maintenance.

Adequacy of Transportation Access

The primary access to the subject property appears to be the portion of Klippel Road that passes through a number of properties to the northwest before connecting to Buck Drive, a public road maintained by the county. As noted previously, Klippel Road is a private road that is privately maintained.

Staff anticipates that the only traffic that will be generated by the reservoir use will be those related to maintenance of the reservoirs. Staff is uncertain what the nature and extent of maintenance will entail for the reservoirs. For this reason, staff is uncertain if Klippel Road is adequate for the reservoir use. Staff requests that the applicant provide information regarding an anticipated maintenance schedule and specifically what type of work could be expected during maintenance.

Natural and Physical Features

The predominant natural features of the surrounding properties include the moderate to dense tree cover, the rolling topography and Tumalo Creek to the southeast and east. Natural resource values in the area include existing tree cover, Tumalo Creek, and wildlife that makes use of the area including deer and elk. Given the generally passive use of the reservoirs to store water, staff believes the reservoirs will have no impact to existing tree cover, surrounding topography, and Tumalo Creek.

There is evidence in the record that wildlife has returned, and in possibly greater abundance, due to the reservoirs. However, there is conflicting testimony regarding whether the reservoirs create a barrier to east-west travel. Given the almost 1,000-foot distance between the reservoirs, it seems unlikely that the reservoirs will prevent east-west wildlife travel.

Recreational Facility

Site, Design and Operating Characteristics

In order to address compatibility with surrounding uses, staff believes it is important to identify potential impacts from the proposed use, and then analyze the extent of those impacts. Based on staff's review of the opposition comments, the issues identified by the public with respect to the recreational facility primarily revolve around noise impacts and traffic impacts¹⁰.

The record includes conflicting testimony regarding the level of noise impact due to the motorized ski boats. Some nearby residents report having a difficult time hearing a ski boat on the water. In an effort to gauge the decibel level of the ski boat as it operated on the water, the

¹⁰ Other impacts such as adverse effects on wildlife and insects are addressed under the "Reservoir" section of this criterion.

applicant submitted the results from an informal noise test. The results of the noise test indicate very little noise increase over ambient noise from boat operation. Additionally, the applicant proposes a number of restrictions to reduce noise impacts including:

1. Only one motorized boat may be on the southern reservoir at a time
2. No jet skis allowed
3. Operational hours limited to day light hours
4. Adhere to all Deschutes County noise ordinance standards pursuant to DCC 8.08
5. Boat restrictions:
 - a. Inboard engines only
 - b. Self-contained engines with internal oil lubrication systems
 - c. Stock mufflers or quieter
 - d. Direct drive or V-Drive transmission

Conversely, Ms. Lindquist, who resides immediately west and adjacent to the subject property, reports hearing the boat go back and forth around the lake repeatedly while on her porch. Due to the design of the southern reservoir, if a noise impact is created, it will be repeated each time the boat completes a revolution. Given the conflicting testimony, staff requests the Hearings Officer determine if a noise impact will result from the proposed water ski use of the southern reservoir.

The applicant proposes that the water ski lake will only be used by the owners of the KCDG property. Additionally, the applicant proposes to deliver the water ski boats down to the reservoir at the beginning of the season, and retrieve them at the end of the season. Based on this limited usage, staff believes there will be no impact to Klippel Road due to traffic.

Adequacy of Transportation Access

As noted above, the applicant proposes limited trips to and from the southern reservoir. Based on this limited usage, staff believes the existing access from Klippel Road is adequate.

Natural and Physical Features

The predominant natural features of the surrounding properties include the moderate to dense tree cover, the rolling topography and Tumalo Creek to the southeast and east. Natural resource values in the area include existing tree cover, Tumalo Creek, and wildlife that makes use of the area including deer and elk. Given the operating parameters proposed by the applicant, staff believes the recreational facility use will have no impact on the natural and physical features on surrounding properties.

Comment letters submitted into the record identify a possible impact to wildlife due to the proposed water skiing use on the southern reservoir. The applicant proposes prohibiting water skiing during the critical winter season to minimize impacts. Additionally, the wildlife opinion offered by Mr. Valcarce suggests that water skiing on the southern reservoir will result in a disturbance that is no greater than those produced by local roads. Staff requests the Hearings Officer determine the nature and extent of the impact of water skiing to wildlife on surrounding properties.

The predominant natural hazard on surrounding properties is wildfire. As discussed previously, the proposed reservoir use was beneficial to firefighting efforts during the Two Bulls and Shevlin

Park fires. Staff believes the reservoir use will reduce potential wildfire hazard on surrounding properties.

2. Section 18.128.280. Surface Mining of Non-Goal 5 Mineral and Aggregate Resources.

These uses are subject to the following standards:

A. An application shall be filed containing the following information:

1. ***A detailed explanation of the project and why the surface mining activity is necessary.***

FINDING: The record indicates that surface mining was necessary in order to smooth and contour the pre-existing mining pits to allow a polymer liner to be placed within the reservoirs. The liner was vital to TID's needs because it prevents loss of water due to seepage.

2. ***A site plan drawn to scale and accompanied by any drawings, sketches and descriptions necessary to describe and illustrate the proposed surface mining.***

FINDING: The application materials include Exhibit C which illustrates the extent of the reservoirs and the final grades surrounding the reservoirs.

B. A conditional use permit shall not be issued unless the applicant demonstrates at the time of site plan review that the following conditions are or can be met:

1. ***The surface mining is necessary to conduct or maintain a use allowed in the zone in which the property is located.***

FINDING: As noted above, the HO and BOCC determined that the activity associated with creating the reservoirs meets the use under DCC 18.60.030(W),

Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.

Also as noted above, the record indicates that surface mining was necessary in order to smooth and contour the pre-existing mining pits to allow a polymer liner to be placed within the reservoirs. The liner was vital to TID's needs because it prevents loss of water due to seepage.

2. ***Erosion will be controlled during and after the surface mining.***

FINDING: Because the work to create the reservoirs is already completed, staff is unable to review any proposed erosion control plan.

3. ***The surface mining activity can meet all applicable DEQ noise control standards and ambient air quality and emission standards.***

FINDING: Because the work to create the reservoirs is already completed, staff is unable to review any proposed noise abatement plan. The applicant states that all surface mining work was completed within the scope of the approved county temporary use permit TU-14-8 and complied with DOGAMI rules as evidenced by the DOGAMI site visit letter (Exhibit K).

4. Sufficient water is available to support approved methods of dust control and vegetation enhancement.

FINDING: Because the work to create the reservoirs is already completed, staff is unable to review any dust control plan. The applicant indicates that dust control was completed per the DOGAMI operating permit. Per the DOGAMI site visit letter, a reclamation plan was not required.

5. The surface mining does not adversely impact other resources or uses on the site or adjacent properties, including, but not limited to, farm use, forest use, recreational use, historic use and fish and wildlife habitat as designed or through mitigation measures required to minimize these impacts.

FINDING: Adverse impacts to the site and adjacent properties are addressed under 18.128.030 above.

C. If the surface mining actively involves the maintenance or creation of manmade lakes, water impoundments or ponds, the applicant shall also demonstrate, at the time of site plan review, that the following conditions are or can be met:

1. There is adequate water legally available to the site to maintain the water impoundment and to prevent stagnation.

FINDING: The record includes an OWRD Final Order denying a permanent change to Water Right Certificate 76684. The applicant's burden of proof indicates TID has submitted a Permanent Transfer Application to OWRD to permanently transfer this water into the reservoirs. Staff recommends a condition of approval requiring the applicant to submit proof of adequate water prior to any reservoir use or recreational use of the property.

2. The soil characteristics or proposed lining of the impoundment are adequate to contain the proposed water and will not result in the waste of water.

FINDING: The reservoirs are lined with a polymer material without any appreciable leakage. The applicant's burden of proof includes an informational brochure regarding the liner as Exhibit JJ.

3. Where the impoundment bank slope is steeper than three feet horizontal to one foot vertical, or where the depth is six feet or deeper, the perimeter of the impoundment is adequately protected by methods such as fences or access barriers and controls.

FINDING: According to the applicant, the impoundment bank slope is not greater than three feet horizontal to one foot vertical. However, the depth of the reservoirs is greater than six feet. Therefore, perimeter fencing, access barriers or controls are required.

The applicant states the perimeter of the impoundment is privately owned and not accessible by the public. Additionally, the rim of the old pit protects trespassers from inadvertently accessing the reservoirs site. Staff requests the Hearings Officer determine if these controls are adequate to meet this criterion. Staff notes that a comment letter from Mr. Jeff Coughenour expresses a concern regarding safety related to ice-covered lakes.

4. ***The surface mining does not adversely affect any drainages, all surface water drainage is contained on site, and existing watercourses or drainages are maintained so as not to adversely affect any surrounding properties.***

FINDING: No watercourses exist on-site. Per the applicant's site plan (Exhibit C), the disturbed areas of the site are contoured to direct surface water to the reservoirs. Staff believes this criterion will be met.

D. Limitations

1. ***Excavation does not include crushing or processing of excavated material.***

FINDING: The applicant received temporary use permit approval to crush excavated material under county permit TU-14-8. The applicant is not seeking to crush or process excavated material as part of this conditional use permit.

2. ***A permit for mining of aggregate shall be issued only for a site included on the County's non-significant mineral and aggregate resource list.***

FINDING: The applicant is not requesting a permit to mine aggregate as part of this conditional use permit.

3. ***Hours of operation shall be 7:00 a.m. to 6:00 p.m. Monday through Saturday. No surface mining activity shall be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.***

FINDING: Under TU-14-8, rock crushing was limited to 7:00 am to 5:00 pm, Monday through Friday, with no work on holidays. Staff notes that these restrictions were limited to rock crushing only. Because the work to create the reservoirs is already completed, the restrictions in this approval criterion were not specifically conditioned for all the grading work on-site.

- 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.***

FINDING: Staff requests the Hearings Officer determine if any conditions of approval are necessary to comply with any standards under DCC 18.128.

IV. CONCLUSIONS:

Based upon the preceding analysis, staff believes that additional information is necessary to determine if the applicant can meet all of the required approval criteria.

Dated this 23rd day of June, 2015

Mailed this 24th day of June, 2015