



Community Development Department

Planning Division Building Safety Division Environmental Health Division

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STAFF REPORT

FILE NUMBERS: 247-15-000113-CU / 114-CU / 115-NUV / 116-LM

APPLICANT: Peter Dreifuss
c/o Hurley Re, P. C.
747 SW Mill View Way
Bend, OR 97702

OWNER: Peter Dreifuss & Sandra Bovenzi
17266 Satterlee Way
Bend, OR 97707

ATTORNEY: Elizabeth Dickson & Ken Katzaroff
Hurley Re, P. C.
747 SW Mill View Way
Bend, OR 97702

REQUEST: Applicant requests conditional use approval for a community dock and decks; verification of a non-conforming structure (bunkhouse) and approval to alter same; and landscape management review for the bunkhouse and an accessory structure (garage) on the subject property.

LOCATION: The subject property is identified as Tax Lot 4300 on Deschutes County Assessor's Map 20-11-18C and has an assigned address of 17266 Satterlee Way, Bend.

STAFF CONTACT: Will Groves, Senior Planner

I. APPLICABLE CRITERIA:

Title 18, Deschutes County Zoning Ordinance
Chapter 18.96. Flood Plain Zone – FP Zone
Chapter 18.84. Landscape Management Combining Zone – LM Zone
Chapter 18.88. Wildlife Area Combining Zone – WA Zone
Chapter 18.120 Nonconforming Uses
Chapter 18.116. Supplementary Provisions
Chapter 18.128. Conditional Use

Title 22, Deschutes County Development Procedures Ordinance

II. **BASIC FINDINGS:**

- A. Location:** The subject property is identified as Tax Lot 4300 on Deschutes County Assessor's Map 20-11-18C and has an assigned address of 17266 Satterlee Way, Bend.
- B. Zoning and Plan Designation:** The subject property is zoned FP (Flood Plain), WA (Wildlife Area Combining Zone), and LM (Landscape Management Combining Zone).
- C. Site Description:** The subject property is adjacent to the Deschutes River and was platted as part of the Oregon Water Wonderland Unit II subdivision. The subject property is approximately 1.41 acres. The property is presently developed with a dock, "Bunkhouse" with associated decking, garage, river viewing platforms and gravel driveway.
- D. Proposal:** The applicant requests conditional use approval for a community dock and river-viewing deck; verification of a non-conforming structure ("Bunkhouse") and approval to alter same; and landscape management review for the "Bunkhouse" and accessory garage ("Boathouse") on the subject property.
- E. Surrounding Zoning and Land Uses:** The area surrounding the subject property consists mostly of residential lots on lands zoned RR-10 with FP zoning along the river.
- F. Public Agency Comments:**

La Pine Fire Department. The La Pine Fire District has received the County Planning request for comment on a conditional use approval, non-conforming structure and landscape management review for a community dock, deck, bunkhouse and garage at 17266 Satterlee Way - 247-15-00113-CU/114-CU/115-NUV/116-LM.

The property and developments although located in the river corridor is in a High Wildland Fire Hazard Area. The District requests that the landscape meet the Oregon Forestland – Urban Interface Fire Protection Act standards – OAR 629-044, as well as FireWise and FireFree landscaping best practices criteria to design and maintain a safe landscape for this environment.

Army Corps of Engineers. As the Project Manager for Deschutes County, I have many concerns regarding the proposed project.

1. It is located in the Oregon Spotted Frog critical habitat, recently listed under the Endangered Species Act.
2. It is located in the Deschutes National Forest, which makes it a designated Wild & Scenic River.
3. ODFW has certain requirements for docks.
4. National Wetland Identification map indicates this area is designated wetlands (PEMC- Palustrine emergent seasonally flooded) and PSSC (Palustrine scrub-shrub seasonally flooded).

So in the Corps' opinion, these people would need a Corps permit if wetlands were to be filled with possible mitigation. The Corps would have to consult with Deschutes National Forest regarding a free flow analysis, consult with U.S. Fish & Wildlife Service regarding

impacts to the ESA listed spotted frog. Would there be a discharge into the river, i.e. pilings, etc. what would the dock be constructed of, when, etc.

Oregon Department of Fish and Wildlife. In reviewing the application, I agree with [the Army Corps of Engineers]. There is concern about impacts to spotted frog habitat, as well as to the wetlands in general. ODFW's purview is primarily with regards to fill/removal within the in-water work period, if there is fill/removal to be done as part of this project.

ODFW also has recommended dock guidelines, which are attached. We realize these are just guidelines and we are willing to work with the landowners to help assure that their needs, as well as the needs of the fish and wildlife resources, are met should the dock construction move forward.

In reviewing the application, I do have a few questions:

*The applicant states this will be a community dock and will be shared by several adjacent landowners. The applicant also states that there are several docks on nearby properties. Is there a need for an additional dock? Couldn't one of the other docks be deemed the community dock to prevent further impacts to the wetlands, spotted frog habitat and the river corridor in general?

*If there is any work to be done within the river channel (below OHW), an in-water work permit will need to be provided by ODFW. The in-water work period is from July 1 - October 15. We actually prefer that in-water work be done when river flows are at their lowest, which typically occurs after irrigation season ends, around mid-October. That being said, ODFW can issue an in-water work variance that would allow work within the channel outside of the designated in-water work period. ODFW would request, at least, a two week notice to issue the permit and would require dates when work is starting and when it will be completed.

Department of State Lands: DSL may require a permit as well if total removal-fill volume exceeds 50 cubic yards.

Deschutes County Transportation Planner: I have reviewed the transmittal materials for 247-15-000113-CU/114-CU/115-NVU/116-LM for a community dock and landscaping decks, verification of a non-conforming structure (bunkhouse) and approval of an alteration of the bunkhouse, and landscape management review of a garage in the Flood Plain (FP), Landscape Management (LM), and Wildlife Area Combining zones at 17266 Satterlee Way, aka 20-11-18C, Tax Lot 4300.

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 \$3,852 per p.m. peak hour trip. County staff has determined a local trip rate of 0.81 p.m. peak hour trips per single-family dwelling unit; therefore the applicable SDC is

\$3,120 (\$3,852 X 0.81). The SDC would only be triggered if the hearing's officer finds the bunkhouse is a legal residential use.

US Forest Service: I see where [the Army Corps of Engineers] had sent an earlier message dated July 24th regarding this property. I share some of the same concerns she had - it is not actually located on the Deschutes NF but it is within the Deschutes W and S corridor, and she is correct that a free flow analysis (Section 7a of W and S act analysis) should have been prepared by us and sent to the Corps for their permitting process. Do you know if this is the floating, removable dock style? And if it had pilings anchored into the riverbed? I looked on Google Earth and I see a dock near the property. Is this the newly constructed dock?

US Forest Service Second Comment: If those posts are below OHWM then falls under Army Corps permitting and the need for a W and S River 7a analysis from us. The deck above the OHWM does not fall under the 7a analysis, but scenic views may be of some concern.

The following agencies did not respond or had no comments. Deschutes County Environmental Soils, Deschutes County Assessor, Deschutes County Building Division, Deschutes County Road Department, Upper Deschutes Watershed Council, US Fish and Wildlife Service.

- H. Public Comments:** As of the date of this staff report, one comment email was received from the public. This letter states that the original "Bunkhouse" was built between 1979 and 1981, and had a toilet and shower. The letter states that the original "Bunkhouse" did not have its own well or electricity and these were shared with a neighboring property. The letter states the "Bunkhouse" is many times its previous size.
- I. Notice:** A notice of the public hearing was mailed on July 20, 2015 and published in The Bulletin. 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 March 16, 2015.
- J. Lot of Record:** The subject property is in the Oregon Water Wonderland Unit No. 2 subdivision, as Lot 2, Block 57.
- K. Review Period:** The subject applications were submitted on March 6, 2015. An incomplete letter was mailed April 1, 2015 and the applications were deemed complete by the Planning Division on July 15, 2015.
- L. Land Use History:** A dock was denied verification and alteration of a non-conforming use under NCU-08-1.

III. CONCLUSIONARY FINDINGS:

Title 18, Deschutes County Zoning Code

A. CHAPTER 18.96, FLOOD PLAIN ZONE

1. Section 18.96.020, Designated Area.

FINDING: At the outset, staff is uncertain if the provisions of the FP zone apply to the entirety of this property. While the whole property is zoned Flood Plain, staff believes the boundary of the flood plain (See DCC 18.96.130) is limited to an area immediately adjacent to the river. In prior decisions, staff has assumed that, when the flood plain was found to be less extensive than was mapped by FEMA via a submitted flood plain survey, that the provisions of the Flood Plain Zone did not apply to uses outside the interpreted floodplain and that the provisions on the adjacent zone applied. Staff is uncertain if this is the correct interpretation and provides findings under both the standards of DCC 18.60 and 18.96.

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.

2. Section 18.96.130, Interpretation of FIRM Boundaries

The Planning Director shall make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). Such interpretations shall be processed as a development action pursuant to Chapter 22.16.

FINDING: 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. 41017C1130E, revised September 28, 2007. The FIRM map indicates that this lot is within the 100 year flood plain. The applicant has provided a floodplain survey performed by Scott Freshwaters, Licensed Professional Surveyor, that shows that the "Bunkhouse", "Well house", and "Boathouse" are all located above the base flood elevation and, therefore, outside the Flood Plain. The river-viewing deck, dock and portions of the gravel placement are within in

the Flood Plain Zone and subject to the provisions of this zone. The BFE at this property is 4164.2' (NAVD88).

3. Section 18.96.040, Conditional uses permitted.

The following uses may be allowed subject to applicable sections of this title:

- C. Single family dwelling, or a manufactured home subject to DCC 18.116.070, on an individual lot. In addition to the other requirements of DCC 18.96, single family dwellings proposed to be sited in areas of the Flood Plain Zone designated "Agriculture" on the Comprehensive Plan Map may be approved only as uses identified by DCC 18.16.030(A), (B), (D) or (E) and subject to the applicable provisions of DCC 18.16 governing those uses. In addition to the other requirements of DCC 18.96, single family dwellings proposed to be sited in areas of the Flood Plain Zone designated "Forest" on the Comprehensive Plan Map may be approved only as uses identified by DCC 18.36.030(Y), 18.40.030(X) or 18.40.030(Y) and subject to the applicable provision of DCC 18.36 and 18.40 governing those uses.***

FINDING: Staff believes that, to the extent the "Bunkhouse" is a single family dwelling, it is a non-conforming use and not a conditional use in this zone. If the Hearings Officer determines that the "Bunkhouse" was established as a non-dwelling structure designed to support recreational vehicle use of the property and has been since altered to a dwelling, staff believes the provisions of this chapter would apply (See DCC 18.120.010(E)(2)).

- F. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland, subject to DCC 18.120.050 and 18.128.270. Excavation, grading and fill within any area of special flood hazard identified in DCC 18.96.020.***

FINDING: Based on available aerial photography, it appears a significant amount of gravel and some larger introduced rocks armoring the riverbank have been placed below the base flood elevation.

At the outset, the applicant argues:

Deschutes County only defines the term "fill and removal" as a term that includes any deposit or removal of material. No threshold volume amount or other criteria, such as type of material, are defined. Absent additional criteria, the movement of even one pebble could qualify as "fill and removal" under the Deschutes County Code. For clarification, we turn to State statutes and regulatory authority.

The purpose of "fill and removal" regulations under state regulations is to prevent significant addition or removal of material that would affect the river or the riverbank's integrity. These regulations were adopted pursuant to Oregon's Removal-Fill Law (ORS 196.795-990). That law requires that any person planning to "remove or fill" material "within the waters of the state" shall obtain a permit from the Oregon Department of State Lands ("DSL"). This means that

permits are only required when performing work below the ordinary high watermark of a river or stream such as the Deschutes River. See Removal Fill Guide, Exhibit T at page 24.

Staff believes the plain language of the code makes deposition of any volume of material in a flood plain a conditional use, unless otherwise it is addressed in the code (e.g. DCC 18.120.050, Fill and Removal Exceptions), specifically called out as a use category under DCC 18.96.040, performed as part of the maintenance of a verified non-conforming use, or performed as part of an approved alteration of a non-conforming use.

As discussed in detail below, staff's review of the available historical record indicates that there was a boat dock on the property in 1979. In the 1985 aerial photo, that dock and a gravel area adjacent to the dock are clearly visible. In the 1987 aerial photo, the dock is gone and the gravel area has been expanded across the property line to the east and armored with concrete debris. In 2010, the applicant maintained the graveled area by adding approximately 8 cubic yards of gravel to the existing driveway. As such, staff believes the 2010 deposition of gravel was maintenance of a non-conforming use allowed under DCC 18.120.010(C). The applicant also seeks ongoing authority to add up to eight cubic yards of gravel for ordinary maintenance of the driveway every five years in the future.

Staff notes that maintenance is allowed for verified non-conforming uses and that the gravel driveway was not a verified non-conforming use in 2010. Staff is uncertain if maintenance performed prior to verification of the nonconforming use is protected under DCC 18.120.010(C) and requests the Hearings Officer make specific findings on this issue.

Alternatively, the applicant requests conditional use approval for the 2010 and future ongoing deposition of gravel on the driveway in the floodplain. Staff finds that this fill, if not covered under non-conforming use standards, is a conditional use in the Flood Plain Zone.

The Subject Property also has several larger rocks that shore up and protect the bank from erosion. As evident in the 1985 aerial photograph, bank stabilization material has been present for at least three decades and was expanded to the east in 1987. The applicant requests nonconforming use verification and maintenance for this bank protection and stabilization. Fill and removal permits for bank protection were not required in Deschutes County until the adoption of Ordinance 89-009 in 1989. Therefore, the existing bank stabilization is a nonconforming use, and maintenance of such use may be allowed under DCC 18.120.010(C), as discussed below.

- G. *Recreational uses requiring only structures having an insignificant effect on flood waters outside the Floodway, such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, wildlife or nature preserves, game farms, fish hatcheries, shooting preserves and hunting or fishing areas subject to DCC 18.128, except in areas designated "Forest" or "Agriculture" on the Comprehensive Plan Map.***

FINDING: The applicant has also requested conditional use approval for a pair of connected decks located in the flood plain. The applicant's burden of proof states:

Applicant is seeking approval for landscaping in the form of an at-grade platform deck. Under Deschutes County Code 18.04.030, decks are included in the

definition of landscaping. The deck on the subject property is used for viewing of the Deschutes River. The deck is a split-level deck that is built near grade on pier blocks. The deck is a water-dependent use. The only utility provided by the deck is as a viewing platform. Because of how narrow the lot is, and because of the existing trees and existing nonconforming structure (Bunkhouse), moving the deck outside of the actual flood plain would not serve the intended purpose. It is designed without rails or stairs as a platform only, placed on the ground. Therefore, under this criteria, it would not block water flows and so it has an insignificant effect on flood waters outside of the Floodway. This criteria is met.

Staff finds that the proposed decks are located outside of the mapped floodway. Staff also finds that, due to their low profile and limited area that the decks will likely have "...an insignificant effect on flood waters outside the Floodway". The subject property is not designated "Forest" or "Agriculture" on the Comprehensive Plan Map. Private river viewing platforms are not a use specifically addressed under this criterion and staff is uncertain if the proposed use is allowed. Staff requests that the Hearing Officer make specific findings on this issue.

- I. All new construction, expansion or substantial improvement of an existing dwelling, an agricultural related structure, a commercial, industrial or other non residential structure, or an accessory building.***

FINDING: Staff again notes that "Bunkhouse", "Well house", and "Boathouse" are all located above the base flood elevation and, therefore, outside the Flood Plain. However, staff believes that if the Hearings Officer finds that the provisions of this chapter apply, the alteration of the "Bunkhouse" would be subject to the provisions of this subsection (See DCC 18.120.010(E)(2)), as would the construction of the "Well house" and "Boathouse".

- J. A boat dock or pier, either individual or community, on private property which lies in the following areas:***
 - 1. On the Deschutes River between river miles 226.4 and 224.5. This area is identified in the Scenic Waterway Management Plan as the Wickiup River Community Area;***
 - 2. On the Deschutes River between river miles 217.5 and 216.5. This area is identified in the Scenic Waterway Management Plan as the Pringle Falls River Community Area; and***
 - 3. On the Deschutes River between river miles 207 and 192. This area is identified in the Scenic Waterway Management Plan as River Community Areas and Recreational River Area respectively.***

FINDING: The applicant has also requested conditional use approval for a community dock. Staff notes that the previous dock was no longer on the property as of 1987 and is not a non-conforming use, as that use was abandoned prior to 1987 (See NCU-08-1). The subject property is located at approximately River Mile 194.5. The applicant's burden of proof states:

Applicant proposes to share the community dock with Gordon & Linda Ferris, adjacent neighbors to the Subject Property. The Ferrises have an existing, floating dock that is in disrepair. The Ferrises would like to use the Applicant's dock as a community dock instead of going to the significant expense of repairing

their individual dock. Applicant is prepared to execute a reciprocal use and access agreement for this shared use.

As discussed below, staff believes that the applicant may be eligible for a community dock, provided the dock located on the Ferris property (201118C004400) is removed. Staff notes that this removal may require excavation in mapped floodplain and floodway, as well as work in the bed and banks of the Deschutes River. Staff recommends that any approval of a community dock on the subject property include a condition of approval requiring a conditional use approval for the lawful removal of the dock located on the Ferris property in a specified time period.

The applicant also argues that the property is eligible for an individual dock approval:

In the alternative, Applicant believes that the dock could be approved under the individual dock criteria. The individual dock criteria under DCC 18.96.080.G.4.a requires 200 feet of river footage. The Subject Property has waterfront of 196.82 feet. See Shoreline Survey, Exhibit J. Applicant believes that this substantially complies with this criterion, and so it has been satisfied. Additionally, under DCC 18.96.080.G.4.c, individual docks must not exceed 160 square feet, and cannot extend into the water more than 20 feet. Here, the dock is 255.46 square feet but only extends into the water approximately 8 feet. As already discussed, the dock's size is a function of its utility and use to dock pontoon boats, and although the total surface area is larger than the individual dock criteria, the impact to the free-flowing waterway is less significant and public safety is enhanced. Therefore, we believe the intent of this criteria to be satisfied and the dock may be approved as an individual dock.

As discussed below, staff believes the applicant does not meet the 200 foot frontage standard required for an individual dock.

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.***

FINDING: No construction of a dwelling (including manufactured housing), accessory structure or farm use structure in a floodway is proposed. No new construction of a dwelling is proposed, unless the Hearings Officer finds the "Bunkhouse" was altered from a non-dwelling to a

dwelling. Staff recommends, as a condition of any approval, that all necessary federal, state and local government agency permits shall be obtained. At minimum, staff recommends that the applicant be required to obtain a permit or document that no permit is required from ODFW, ACOE, USFWS, and USFS.

5. Section 18.96.080, Criteria to evaluate conditional uses.

- A. A conditional use permit in a Flood Plain Zone shall not be approved unless all standards established by the Federal Emergency Management Agency and DCC Title 18 are addressed and findings are made by the Hearings Body or Planning Director that each of the standards and criteria are satisfied.**

FINDING: Staff believes this criterion will be met if the Hearings Officer finds that applicable provisions of DCC 18.96 have been satisfied, as staff believes these requirements cover all standards established by the Federal Emergency Management Agency. Applicable standards are addressed below.

- C. A conditional use permit shall be based upon findings which relate to the property and existing and proposed structure(s). They shall not pertain to the property owner, inhabitants, economic or financial circumstances.**

FINDING: This land use decision is based upon findings which relate to the property and existing and proposed structure(s). The findings do not pertain to the property owner, inhabitants, economic or financial circumstances.

- D. All structures in the flood plain shall meet the following standards.**

FINDING: Staff again notes that “Bunkhouse”, “Well house”, and “Boathouse” are all located above the base flood elevation and, therefore, outside the Flood Plain. Staff is uncertain if the provisions of section (D) apply to these structures and request that the Hearings Officer make specific findings on this issue. Suggested findings for the dock and deck are provided below.

- 1. Anchoring.**
a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

FINDING: The applicant argues that deck is not considered a structure under DCC 18.04.030, and therefore this criterion does not apply. Staff believes that the deck is a structure¹ as it was plainly built or constructed (see Hearing Officer and Board Decisions in 247-14-000238-PS on this topic) and is required to be anchored, ensuring a fixed connection to the ground. The applicant has stated that the dock is anchored but did not specify the anchoring. Staff recommends that the Hearings Officer requests additional information on the deck and dock anchoring to determine if the deck is anchored to prevent flotation, collapse or lateral movement of the structure.

¹ 18.04.030 - "Structure" means something constructed or built having a fixed base on, or fixed connection to, the ground or another structure.

- b. All manufactured homes must be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over the top or frame ties to ground anchors.**

FINDING: This criterion only applies to manufactured homes. No manufactured home is proposed.

2. Construction Materials and Methods.

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.**

FINDING: The community dock is constructed with treated wood, specifically designed for docks, and therefore is specifically resistant to flood damage. The dock contains no electrical, heating, or other service facilities. The deck is constructed using treated wood underneath and composite materials for the decking itself, and is therefore specifically resistant to water. The deck contains no electrical or other service facilities.

- b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.**

FINDING: Staff finds that “methods and practices that minimize flood damage” for the dock and deck would include proper anchoring to prevent these structures from floating downstream and damaging other property during a flood. Staff recommends that the Hearings Officer requests additional information on the deck and dock anchoring to determine if the structures are anchored to prevent flotation, collapse or lateral movement of the structure.

- c. Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.**

FINDING: The dock and deck contain no electrical, heating, or other service facilities.

3. Utilities.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.**
- b. New and replacement sanitary systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into flood waters.**
- c. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.**

FINDING: The only water system on the subject property is a well and a nonconforming sanitary septic system which serves the Bunkhouse. There is no replacement of water supply systems being applied for. The applicant has stated that the existing septic (approved 1976), exists and drains above the FEMA Flood Elevation Line. Staff cannot find any evidence in the record definitively identifying the location of the septic tank and drain lines and recommends the Hearings Officer requests additional information on this topic.

4. Below-grade crawlspace is allowed subject to the standards in FEMA Technical Bulletin 11-01.

FINDING: No below-grade crawlspaces are proposed.

G. Specific Standards. In the Flood Plain Zone, the following requirements must be met:

1. Residential Construction.

...

FINDING: Staff again notes that “Bunkhouse is located above the base flood elevation and, therefore, outside the Flood Plain. Staff is uncertain if the provisions of section (G)(1) apply to this structure and request that the Hearings Officer make specific findings on this issue. Suggested findings for the dock and deck are provided below. If the Hearings Officer determines that the “Bunkhouse” was established as or altered to be a dwelling, staff believes the provisions of this section could apply (See DCC 18.120.010(E)(2)).

2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at least one foot above the level of the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

...

FINDING: FEMA guidance² provides specific standards for accessory structures³: Staff is uncertain if the deck constitutes a non-residential accessory structure, but includes suggested findings based on the FEMA guidance. Staff has not included proposed findings for the “Well house” and “Boathouse”, but these standards could apply to these structures if the Hearings Officer finds that these structures are subject to these criteria, even though they are located above the based flood elevation.

These accessory structures must be low value and not be used for human habitation. They must also meet the following requirements:

² <https://www.fema.gov/accessory-structures>

³ Accessory structures are also referred to as appurtenant structures. An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example a residential structure may have a detached garage or storage shed for garden tools as accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings. National Flood Insurance Program (NFIP) regulations for new construction generally apply to new and substantially improved accessory structures. *Ibid.*

The proposed deck is a low value structure not intended for human habitation.

Accessory structures shall be designed to have low flood damage potential.

As described above, the deck is built of water resistant materials. Staff recommends that the Hearings Officer requests additional information on the deck anchoring to determine if the structure is anchored to prevent flotation, collapse or lateral movement of the structure. This would ensure the structure has low flood damage potential.

Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

Staff believes that the low-profile deck was constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

Accessory structures shall be firmly anchored to prevent flotation which may result in damage to other structures.

Staff recommends that the Hearings Officer requests additional information on the deck anchoring to determine if the structure is firmly anchored to prevent flotation which may result in damage to other structures.

Service facilities such as electrical and heating equipment shall be elevated or floodproofed.

As described above, no electrical and heating facilities are proposed for the decking.

Accessory structures shall have openings as required under 60.3(c)(5).

- (5) ***Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.***

The deck does not have fully enclosed areas below the lowest floor. This standard does not apply.

Floodway encroachment provision of 60.3 (d) (3) must be met.

No floodway encroachments are proposed.

4. Docks, Piers and Walkways.

a. No individual boat dock or pier shall be allowed on any lot with less than 200 feet of river frontage.

FINDING: The applicant argues that the property is eligible for an individual dock approval:

In the alternative, Applicant believes that the dock could be approved under the individual dock criteria. The individual dock criteria under DCC 18.96.080.G.4.a requires 200 feet of river footage. The Subject Property has waterfront of 196.82 feet. See Shoreline Survey, Exhibit J. Applicant believes that this substantially complies with this criterion, and so it has been satisfied. Additionally, under DCC 18.96.080.G.4.c, individual docks must not exceed 160 square feet, and cannot extend into the water more than 20 feet. Here, the dock is 255.46 square feet but only extends into the water approximately 8 feet. As already discussed, the dock's size is a function of its utility and use to dock pontoon boats, and although the total surface area is larger than the individual dock criteria, the impact to the free-flowing waterway is less significant and public safety is enhanced. Therefore, we believe the intent of this criteria to be satisfied and the dock may be approved as an individual dock.

Staff believes the applicant does not meet the 200 foot frontage standard required for an individual dock. The applicant has not applied for a variance to this requirement.

b. No community boat dock or pier shall be allowed on any lot with less than 100 feet of river frontage.

FINDING: The subject property has over 100 feet of river frontage and complies with this criterion. Staff notes that "community dock" is defined under DCC 18.040.030 as:

"Boat dock or pier, community" means a personal use boating structure that is built over or floats upon the water of a lake, river or stream that serves more than one property owner for the mooring of boats or as a landing place for marine transport, and that has a surface area of 320 square feet or less.

Staff believes that the existing dock is a personal use boating structure that is built over the water of a river for the mooring of boats or as a landing place for marine transport. It has a surface area of 320 square feet or less. To ensure that dock serves more than one property owner, staff recommends the Hearings Officer condition any approval on the recording of access easements and maintenance agreements.

Staff also notes that the code does not explicitly prohibit a property with an existing individual dock from also being a "member" of a community dock. Staff, however, believes this circumvents the general intent of the code to limit docks to an overall density not to exceed one dock per 200 feet of river frontage. Staff recommends that any approval of a community dock on the subject property include a condition of approval for a conditional use approval, requiring the lawful removal of the dock (approved under CU-07-66) located on the Ferris property within a specified period of time.

c. No individual boat dock or pier shall be more than 20 feet in length or more than eight feet in width. The total surface area shall not exceed 160 square feet.

FINDING: As discussed above, staff believes the applicant is not eligible for an individual boat dock.

- d. No community boat dock or pier shall be more than 20 feet in length. The total surface area shall not exceed 320 square feet.**

FINDING: The applicant's dock has a surface area of 255.46 square feet, is 10.6 feet in length, 24.1 feet in width, and therefore meets this criterion.

- e. A boat dock or pier shall not extend into or over the water more than 20 feet as measured from the ordinary high water mark (OHM), or five percent of the distance between the ordinary low water mark (OLM) on each river or stream bank measured at right angles to the shoreline, whichever is less, unless it can be shown that a greater extension:
 - i. Is necessary to allow access to the OHM;**
 - ii. Will not increase flood hazard; and**
 - iii. Will not cause the deterioration or destruction of marine life or wildlife habitat. When the lines of ordinary high or low water cannot be determined by survey or inspection, then such lines shall be determined by a registered professional engineer using the annual mean high or low water for the preceding year, using data from the State of Oregon Watermaster.****

FINDING: Staff notes that the Ordinary High Water Mark is abbreviated as both OHWM and OHM and the Ordinary Low Water Mark is abbreviated as OLWM and OLM. The applicant's dock extends less than 8 feet from the OHWM. In response to the OLWM standard, the applicant responded:

We have consulted with Registered Professional Engineer, Timothy James Weishaupt, who mapped the Site Plan, Exhibit A. He stated that he is unaware of a documented OLM for this stretch of river, particularly since the Deschutes River is a highly-regulated river in terms of flow. Deschutes County planning staff suggested we measure the river at its current level; however, this provides no objective standard with which to judge the community dock's existence by. Therefore, because the dock meets the objective standard of not extending more than 20 feet from the OHM, this criteria has been met.

Staff believes the OLWM is the annual low flow reached during winter. Unfortunately public winter aerial photography is unavailable. Previews of commercial aerial photography viewable at <http://www.teraserver.com/> for February 22, 2014 and March 19, 2015 appear to show the seasonal OLWM is located near the OHWM on the south side of the river and near the wetland fringe on the north side of the river. Staff estimates the right-angle OLWM distance from bank to bank measured at the subject property is approximately 130 feet, limiting the dock's projection over the water to 6.5 feet.

However, section (e)(iii) requires, in part:

When the lines of ordinary high or low water cannot be determined by survey or inspection, then such lines shall be determined by a registered professional engineer using the annual mean high or low water for the preceding year, using data from the State of Oregon Watermaster.

Staff believes that this criterion requires that an OLM determination be made by a licensed professional engineer using data from the State of Oregon Watermaster in this case and that the applicant demonstrate compliance with (e)(i, ii, and iii) prior to any approval of the dock. In regards to (e)(iii) staff notes the comment letters submitted by ODFW, USFS and ACOE and incorporates them herein by reference.

f. Individual boat docks and piers shall have a minimum five foot setback from adjoining property boundaries projected over the water surface.

FINDING: As discussed above, staff believes the applicant is not eligible for an individual boat dock.

g. Dock, pier and walkway structures shall not be covered or enclosed.

FINDING: The dock is not covered or enclosed.

h. All materials used in dock, pier or walkway construction must be in compliance with all DEQ and EPA regulations.

FINDING: Staff is unaware of any specific DEQ or EPA regulations regarding materials used in dock, pier or walkway construction.

i. Docks, piers and walkways shall use either pilings or Styrofoam floats if such floats are fully enclosed and sealed.

FINDING: The dock is constructed with pilings.

j. Docks, piers and walkways shall not impede water movement or cause deposition on waterway beds.

FINDING: The dock pilings have a very limited profile in the water. Staff believes that the pilings would not impede water movement or cause deposition on waterway beds. Staff notes that the applicant will be required to obtain a free flow analysis under the Wild and Scenic Rivers Act from the USFS. Staff recommends that any findings of compliance with this criterion be conditioned on the applicant receiving an approved free flow analysis under the Wild and Scenic Rivers Act from the USFS.

k. Docks, piers and walkways containing concrete or wood preservatives shall be fully cured or dried prior to placement in the water.

FINDING: The applicant did not address this criterion. It is unclear if the treated wood pilings were fully cured prior to placement in the water.

- l. No walkway shall be more than four feet in width. The length of the walkway shall be no more than the minimum required to allow access to a dock.*
- m. Walkways shall include at least one handrail if the structure is elevated 30 inches or more from ground level.*

FINDING: The dock does not have a walkway⁴.

- n. All docks, piers and walkways shall meet the test of noninterference with navigation.*

FINDING: The dock projects less than ten percent into the OLM width of the river. Staff believes that the dock would not interfere with navigation.

- H. Floodways. In floodways the following provisions shall apply:*
 - 1. Encroachments, including fill and removal, replacement of a dwelling lawfully in existence on the effective date of Ordinance 88 030 and other development are prohibited unless certification by a registered professional engineer is provided demonstrating that the proposed encroachments will not result in any increase in flood levels during a base flood discharge.*

FINDING: The dock encroaches into the floodway. The applicant has provided a certification by a registered professional engineer demonstrating that the proposed encroachment will not result in any increase in flood levels during a base flood discharge.

- 2. The applicant must demonstrate that all necessary federal, state and local government agency permits have been or can be obtained and that all other applicable sections of DCC Title 18 have been satisfied.*

FINDING: Staff recommends that the applicant be required as a condition of any approval to demonstrate all necessary federal, state and local government agency permits have been or can be obtained. At minimum, staff recommends that the applicant be required to obtain a permit or document that no permit is required from ODFW, ACOE, USFWS, and USFS. Staff believes that all other applicable sections of DCC Title 18 have been addressed in this staff report.

- 5. Section 18.96.085, Elevation Certification.

Elevation of all new construction, including replacement and substantial improvements, relative to mean sea level of the lowest floor shall be

⁴ DCC 18.04.030 - "Walkway" means a structure that is built over or floats upon the waters of a lake, river or stream and that provides access to a boat dock or pier.

documented before the framing inspection with a survey certified by a State of Oregon registered professional engineer or land surveyor.

FINDING: The FEMA elevation certificate form⁵ states:

This information is being collected for the primary purpose of estimating the risk premium rates necessary to provide flood insurance for new or substantially improved structures in designated Special Flood Hazard Areas.

Boat docks and river viewing decks are not eligible for flood insurance, as specified in *National Flood Insurance Program, Answers to Questions About the NFIP*.

28. What types of property may be insured against flood loss?

Insurance may be written on any building eligible for coverage with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site. Buildings must resist flotation, collapse, and lateral movement. The structure must be located in a community that participates in the NFIP.⁶

Staff has not, to date, required elevation certificates for structures which do not have two or more outside rigid walls and a fully secured roof. Staff believes this criterion does not apply.

Staff again notes that the “Bunkhouse”, “Well house”, and “Boathouse” are located above the base flood elevation and, therefore, outside the Flood Plain. Staff is uncertain if the provisions of this section apply to these structures and requests that the Hearings Officer make specific findings on this issue.

6. 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.***

FINDING: All structures on the property are located over 20 feet from Satterlee Way, a rural local street, and over 10 feet from side yards. Staff believes that the solar setback requirements

⁵ <https://www.fema.gov/media-library/assets/documents/160>

⁶ http://www.fema.gov/media-library-data/20130726-1438-20490-0889/f084_atq_11aug11.txt

in DCC 18.116.180 do not apply, because the north lot line abuts the river, which is not the location of a potential structure⁷.

Staff believes the rear property line is the centerline of the Deschutes River. All structures on the property are over 20 feet from the centerline of the River. However, staff believes that the specific standards for the dock in relation to the OHWM and OLWM supersede the general 20-foot rear setback under these criteria.

7. 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.

FINDING: The applicant states that the existing sewage disposal installation is a non-conforming use, but staff is uncertain where the existing installation is situated with regard to the 100-foot setback required under this criterion. Staff recommends that the Hearings Officer requests additional information to determine the present OHWM setback of the sewage installation and establish the extent and nature of the non-conforming use.

B. All structures, buildings or similar permanent fixtures shall be setback 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.

FINDING: Staff believes that the specific standards for the dock in relation to the OHWM and OLWM supersede the general 100-foot setback under these criteria.

In response to this criterion for the deck, the applicant states:

The landscape platform deck qualifies as “landscaping” under DCC 18.04.030, and therefore is not subject to setback requirements. DCC 18.04.030 provides:

“Landscaping” means trees, grass, bushes, shrubs, flowers, and garden areas, and incidental arrangements of fountains, patios, decks, street furniture and ornamental concrete or stonework and artificial plants, bushes, or flowers. (Emphasis added.)

⁷ DCC 18.04.030 - "Potential structure," for purpose of solar access protection on a potential structure, is any structure or building that could be built as a permitted use in a particular location under existing development standards under the existing Deschutes County Comprehensive Plan.

In this case, the landscape deck was added to highlight the landscaped areas of the subject property. Special care was taken to preserve existing vegetation, including large trees, by improving around the trees. As evident by the Landscaping Photos, Exhibit N, the area around the landscaping deck has been further landscaped, including adding shrubs and bark, to improve water and soil retention. See also Landscape Deck, Exhibit I.

In the alternative, if Deschutes County decides that the landscaping deck can only qualify as a structure subject to a 100 foot setback and not as landscaping as defined by the code, we ask that Deschutes County grant an exception to the setback requirement.

The purpose of the landscape deck is to passively view and enjoy the Deschutes River, as evident by the introduction of a bench for viewing and relaxation. The landscaping deck was specifically laid out to maintain the existing vegetation and trees. Due to the amount of vegetative screening, compliance with the 100 foot setback requirement would extinguish the utility of the landscape deck because the view of the Deschutes River would be obscured. This would greatly restrict the use and value of the property because the water frontage could not be viewed and enjoyed, considering Applicant's care to maintain the natural setting and existing vegetation. Thus, site-specific conditions warrant this exception.

The policy implication of denying an exception would be to encourage the removal and thinning of existing vegetation, including established trees, in the FP Zone and at the water's edge. Applicant chose to leave existing vegetation and designed the landscape deck to maximize preservation of natural resources, including the view of the river and the existing native trees. Therefore, a setback exception should be granted and this criterion may be deemed satisfied.

Staff believes that, while the deck could be included in the definition of landscaping, the deck is also plainly a structure (DCC 18.04.030 definition quoted above and incorporated herein by reference) subject to this criterion. Exceptions to the river setback are provided under DCC 18.120.030(D) and (E), however these exceptions only pertain to additions to dwelling and new dwellings. In addition, staff believes this setback requirement is not a "yard" eligible for exception under DCC 18.120.030(B). While at grade improvements might be allowed in a setback⁸, the deck is raised above grade and staff believes this criterion specifies all "structures" to meet this setback, regardless of their relation to grade.

As such, staff believes that that deck cannot be approved in its current location within the 100-foot setback, unless some other provision expressly allows it. Staff notes that structures such as boat ramps and bridges would necessarily fall within the 100-foot setback but do not have any code provision allowing them in the 100-foot setback. In prior decisions, staff has not applied this setback to structures that necessarily cross the OHWM, such as boat ramps and bridges. Staff is uncertain if the river viewing deck has a necessary relationship to the River that might supersede the setback in this criterion and requests the Hearings Officer make specific findings on this issue. Staff notes that the intent of the 100-foot setback is, in part, to protect riparian corridors along rivers.

⁸ DCC 18.04.030 - "Setback" means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in DCC Title 18.

The “Boathouse” and “Well house” are set back from the ordinary high water mark of the Deschutes River at least 100 feet. The “Bunkhouse” is located approximately 80 feet from the OHWM of the Deschutes River. The non-conforming status of this structure is discussed in detail below.

8. 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.***

FINDING: The existing structures cover well under 30 percent (18,426 square feet) of the subject property. No structure on the property exceeds 30 feet in height, as measured from natural grade.

9. Section 18.96.130, Interpretation of FIRM Boundaries

The Planning Director shall make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). Such interpretations shall be processed as a development action pursuant to Chapter 22.16.

FINDING: The Flood Insurance Rate Map (FIRM) for the section of the Deschutes River near this lot is Map No. 41017C1130E, revised September 28, 2007. The FIRM map indicates that the entire lot is within the 100 year flood plain. The applicant has provided a floodplain survey performed by Scott Freshwaters, Licensed Professional Surveyor, that shows that the “Bunkhouse”, “Well house”, and “Boathouse” are all located above the base flood elevation and, therefore, outside the Flood Plain Zone. Staff finds that there is a conflict between the mapped boundary and actual field conditions and interprets that the extent of the flood plain on the property is as shown on the Scott Freshwaters survey.

The deck, dock and portions of the gravel placement are within in the Flood Plain Zone and subject to the provisions of this zone. The base flood elevation at this property is 4164.2’ (NAVD88).

B. CHAPTER 18.60. RURAL RESIDENTIAL ZONE

FINDING: At the outset, staff is uncertain if the provisions of the RR-10 Zone apply to this property. While the whole property is zoned Flood Plain, staff believes the boundary of the flood plain (See DCC 18.96.130) is limited to an area immediately adjacent to the river. In prior decisions, staff has assumed that, when the flood plain was found to be less extensive than was mapped by FEMA, that the provisions of the Flood Plain Zone did not apply to uses outside the interpreted floodplain and that the provisions on the adjacent zone applied. Staff is uncertain if this is the correct interpretation and provides findings under the standards of DCC 18.60 and 18.96.

1. Section 18.60.020, Uses Permitted Outright.

- A. A single-family dwelling, or a manufactured home subject to Section 18.116.070.**

FINDING: As described above, the “Bunkhouse”, “Boathouse”, and “Well house” are situated above the base flood elevation (see 18.96.130 Interpretation of FIRM Boundaries) and, as such are not located in the Flood Plain. The “Bunkhouse” is a single family dwelling, and the “Boathouse” and “Well house” are accessory structures to the residential use.

Staff notes that, if the Hearings Officer finds that the “Bunkhouse” is not a single family dwelling, structures on the property are subject to DCC 18.116.040(A). Alternatively, staff is uncertain if the “Boathouse”, and “Well house” might be regarded as alterations of the non-conforming “Bunkhouse” use.

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: RR-10 setbacks on the property are 20 feet from Satterlee Way, 10 feet from the east and west sides, and 20 feet from the centerline of the River. The “Bunkhouse”, “Boathouse”, and “Well house” comply with these setbacks as well as the solar setback requirements in DCC 18.116.180.

3. 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.**

FINDING: The applicant states that the existing sewage disposal installation is non-conforming use, but staff is uncertain where the existing installation is situated with regard to the 100-foot setback required under this criterion. Staff recommends that the Hearings Officer request additional information to determine the present OHWM setback of the sewage installation and establish the extent and nature of the non-conforming use.

- 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: The “Boathouse” and “Well house” are set back from the ordinary high water mark of the Deschutes River at least 100 feet. The “Bunkhouse” is located approximately 80 feet from the OHWM of the Deschutes River. The non-conforming status of this structure is discussed in detail below.

4. 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: The existing structures cover well under 30 percent (18,426 square feet) of the subject property. The “Bunkhouse”, “Boathouse”, and “Well house” each do not exceed 30 feet in height, as measured from natural grade.

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

FINDING: The property is located in the Landscape Management (LM) Combining Zone associated with The Deschutes River. The provisions of this chapter apply to development on this property.

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.

FINDING: Staff believes that it is unclear which of the proposed uses are outright or conditional uses, as described elsewhere in this report. Staff requests the Hearings Officer make specific findings on this issue.

3. 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: Staff believes that it is unclear which of the proposed uses are outright or conditional uses, as described elsewhere in this report. Staff requests the Hearings Officer make specific findings on this issue.

4. 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: Staff believes that the “Well House” is less than 200 square feet, does not require a building permit, and is not subject to the provisions of this chapter. Staff has confirmed with the Building Division that neither the dock nor deck require a building permit and, therefore, are not subject to the provisions of this chapter. The “Boathouse” is a structure subject to the provisions of this chapter. The “Bunkhouse” has been substantially altered by an enlargement. The applicant did not provide the before/after square footage or value, but Staff believes that, based on photos in the record the 2008 remodel of the “Bunkhouse” exceeds 25 percent in the size and/or value of the pre-existing “Bunkhouse” and is subject to the provisions of this chapter.

5. Section 18.84.080, Design Review Standards.

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.*

FINDING: The subject lot is situated within the LM Combining Zone associated with the Deschutes River. Staff recommends a condition of any approval requiring existing tree and shrub cover screening the “Boathouse” and “Bunkhouse” from the Deschutes River be retained.

- 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.***

FINDING: The applicant provided photo color samples for the structures. The structures are finished in muted earth tones (i.e. browns) and natural tone wood finishes.

- C. *No large areas, including roofs, shall be finished with white, bright or reflective materials. Metal roofing material is permitted if it is non-reflective 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.***

FINDING: The applicant provided photo color samples for the roofs of the structures. The roofs are a brown, muted earth tone. Staff is uncertain if the white garage door in the “Boathouse” is a large area finished with white materials and requests the Hearings Officer make specific findings on this issue.

- D. *Subject to applicable rimrock setback requirements or rimrock setback exception standards in Section 18.84.090, 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.***

FINDING: There is no rimrock on the subject property. Staff believes that the “Boathouse” and “Bunkhouse” have been sited to take advantage of existing vegetation and trees in order to reduce visual impact as seen from the River.

- 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, flag poles or other projections from the roof of the structure. This section shall not apply to agricultural structures located at least 50 feet from a rimrock.***

FINDING: The tallest structure on the subject property is the accessory garage (“Boathouse”), which is approximately 16 feet in height. Therefore, this criterion has been met.

- F. *New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.***

FINDING: No new residential or commercial driveway access to designated landscape management roads is proposed.

- G. *New residential 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.***

FINDING: The “Bunkhouse” and “Boathouse” accessory garage have minimal exterior lighting. The Bunkhouse’s only exterior light is on the south side, and thus not visible from the River. The two exterior lights on the garage are on the east and north sides, and are directionally shielded. Staff recommends the Hearings Officer include this requirement as a condition of any approval.

- 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 of 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.***

FINDING: Staff believes that the “Bunkhouse” and “Boathouse” have adequate on-site screening from Deschutes River. No 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 should be required.

- 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.***

FINDING: The applicant has indicated there will not be any signage placed on the property. If signage is placed on the property in the future, the owner is advised that such signage needs to meet this standard.

- J. *A conservation easement as defined in Section 18.04.280 "Conservation Easement" and specified in Section 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, Squaw Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.***

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

5. 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.

FINDING: Setbacks of the underlying zones are discussed in the relevant sections of this staff report. The subject property does not front on a designated landscape management road.

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 onsite 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.

FINDING: The “Boathouse” is set back from the ordinary high water mark of the Deschutes River at least 100 feet. The “Bunkhouse” is located approximately 80 feet from the OHWM of the Deschutes River. The non-conforming status of this structure is discussed in detail below.

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).***

FINDING: There is no rimrock on the subject property.

6. Section 18.84.095, Scenic Waterways.

Approval of all structures in a State Scenic Waterway shall be conditional upon receipt of approval of the Oregon Department of Parks and Recreation.

FINDING: The subject property is not located in a State Scenic Waterway.

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 subject property is in a deer migration corridor.

2. Section 18.88.030, Uses Permitted Outright.

In a zone with which the WA Zone is combined, the uses permitted outright shall be those permitted outright by the underlying zone.

FINDING: Staff believes that it is unclear which of the proposed uses are outright or conditional uses, as described elsewhere in this report. Staff requests the Hearings Officer make specific findings on this issue.

3. 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: Staff believes that it is unclear which of the proposed uses are outright or conditional uses, as described elsewhere in this report. Staff requests the Hearings Officer make specific findings on this issue.

4. 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 and FP Zones 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. Staff notes that the “Bunkhouse” is within 300 feet of Satterlee Way, a public road for vehicular access existing as of August 5, 1992.

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 18.120, EXCEPTIONS

1. Section 18.120.010, Nonconforming Uses.

Except as otherwise provided in DCC Title 18, the lawful use of a building, structure or land existing on the effective date of DCC Title 18, any amendment thereto or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in DCC Title 18. A nonconforming use or structure may be altered, restored or replaced subject to DCC 18.120.010. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption.

- A. **Expansion or Replacement of a Nonconforming Structure.**
1. **Nonconforming Structure. For the purposes of DCC 18.120.010, a nonconforming structure is one that was lawfully established and violates current setbacks of DCC Title 18 but conforms with respect to use.**

FINDING: The “Bunkhouse” is located at 80 feet from the ordinary high water mark and does not conform with the 100-foot river setback requirements for structures of DCC 18.60, 18.84, and 18.96. The non-conforming status of this structure is discussed below. Staff is uncertain if the “Bunkhouse” conforms with respect to use. Staff requests the Hearings Officer determine if the “Bunkhouse” is and was established as a single-family dwelling^{9,10} or was a non-dwelling established as a structure designed to support recreational vehicle use of the property.

2. **Replacement or Expansion without Additional Encroachment in Setback Area. A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the preexisting nonconforming structure or may be expanded with an addition that does not project into the required setback area at any point, subject to all other applicable provisions of DCC Title 18.**

FINDING: Staff believes that, based on the applicant's submitted evidence, the “Bunkhouse” was expanded outside of its 1976 footprint in 2008¹¹. Staff believes this expansion is regulated under DCC 18.120.030(D).

3. **Replacement or Expansion with Additional Encroachment in Setback Area. Replacement or expansion of a nonconforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or preexisting structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or preexisting structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or preexisting structure; and (4) meets the variance approval standards set forth in DCC 18.132.025(A)(1) through (4).**

Such replacements or expansions must conform with all other applicable provisions of DCC Title 18.

⁹ DCC 18.04.030 - "Dwelling, single family" means a detached building containing one dwelling unit and designed for occupancy by one family only, not including temporary structures such as tents, teepees, travel trailers and other similar structures.

¹⁰ DCC 18.04.030 - "Dwelling unit" means one or more rooms in a building designed for occupancy by one family and having not more than one cooking area or kitchen.

¹¹ Staff notes that the applicant materials include a number of photos dated “Winter 2007”, however, Staff photos dated March 2008 in the NCU-08-1 record do not show that the work had occurred as of that date.

FINDING: As described below, the “Bunkhouse” was expanded within the 100-foot river setback. This expansion is not an additional projection into the “front, side or rear yard” setback, therefore staff believes the expansion is not covered under this criterion. Staff believes this expansion is regulated under DCC 18.120.030(D).

B. Verification of Nonconforming Use.

1. ***Subject to the procedures set forth in DCC 18.120.010 and in DCC Title 22 for processing declaratory rulings, the planning division will verify whether or not a use constitutes a valid nonconforming use in accordance with the provisions of DCC 18.120.010 and applicable state law. Verification of the existence of a nonconforming use is required prior to or concurrent with any application to alter or restore the use.***

FINDING: The applicant has applied to verify and alter the “Bunkhouse”, and verify the septic system that serves it. This application includes a concurrent verification and alteration for the “Bunkhouse”.

Staff believes the gravel driveway is a non-conforming use, as described below. The property also contains bank armoring consisting of medium sized rocks. Staff is uncertain if this bank armoring is a non-conforming use, as described below.

2. ***Subject to DCC 18.120.010(F)(2), the applicant shall demonstrate all of the following:***
 - a. ***The nonconforming use was lawfully established on or before the effective date of the provisions of the zoning ordinance prohibiting the use or had proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested;***

FINDING: The applicant states the following in the submitted burden of proof:

Deschutes County applicable zoning regulations came into effect in November, 1979. The Applicant is seeking verification of nonconforming use for the Bunkhouse and the septic system that serves it, as well as alteration of the Bunkhouse. The Subject Property has a colorful history as a cherished vacation home for almost 40 years.

In 1975, the Subject Property was purchased by James Cate and Sherman Tucker. Mr. Cate lived on the Subject Property full time, from 1975 until 2005. Attached as Exhibits C and O are a number of letters from Mr. Cate, and a neighbor, Bonnie Brown.

In 1976, Mr. Cate built a bathhouse on the property to serve guests when they visited. The bathhouse contained personal hygiene facilities, a bed, and a small kitchenette. Deschutes County approved the existing septic system in 1976. The septic system was originally approved for RV use, but the County informed Mr. Cate that that it could be connected to the bathhouse, so long as the septic system was approved. See attached septic certificate, Exhibit L. Mr. Cate

subsequently used the existing septic to serve the bathhouse. The existence of the bathhouse was confirmed by Ms. Brown to be in existence since at least 1985, when her family moved in across the river.

Therefore, because the existing septic system was approved in 1976, it was in existence before Deschutes County zoning regulations (1979), and is a verified nonconforming use.

In 1992, Mr. Tucker, the joint-owner of the Subject Property, sought to expand the existing septic system to build a new house on the Subject Property. That permit was denied. See Exhibit P. Thereafter, Mr. Tucker sold his interest in the property to Mr. Cate, who continued to use the existing bathhouse and septic system instead of building a new residence. Presumably, that sale was because Mr. Tucker could not expand the septic to build a new residence on the Subject Property.

In 2009, Applicant, Mr. Dreifuss, purchased the Subject Property. Applicant seeks verification for the existing bathhouse (now called Bunkhouse by the Applicant), as well as the existing septic, approved for use in 1976. Because both uses existed as a singular use as a plumbed guest facility prior to Deschutes County adoption of zoning regulations (1979), both uses should be verified as nonconforming use and this criteria has been satisfied.

The primary use and footprint of the Bunkhouse has been minimally altered. Applicant has installed exterior decking. However, because the Bunkhouse is entirely above the FEMA Flood Elevation Line, see Exhibit A, we believe no substantial changes or impacts have been made and the criteria has been met.

In the alternative, the existence of the nonconforming Bunkhouse and septic system can be verified because they have been in continuous use since the mid-1970s. Applicant has submitted ample evidence to establish such use. See letters from Mr. Cate, Exhibit C, and letter from Ms. Brown, Exhibit O. Under ORS 215.130, Applicant receives a presumption that a verified nonconforming use exists if evidence shows the existence and continuity of the use for the 10-year period preceding application. In this case, Applicant has shown continuous use for 40 years, and so Applicant is entitled to this presumption.

Staff believes that the existing septic system was permitted in 1976 based the applicant's submitted evidence and was lawfully established. To the extent this system falls within the 100-foot setback from OHWM, this use was lawfully established prior to DCC 18.96.100(A) sewage disposal setback standards and DCC 18.96.080(D)(3)(b and c) septic design standards (Ord. 88-030 § 4, 1988). It also predates DCC 18.60.050(A) sewage disposal setback standards (Ord. 91 020 §1, 1991). Staff recommends the Hearings Officer request a figure to determine what portion, if any, of the septic system falls within the 100-foot river setback.

The gravel driveway is visible in aerial photographs dating back to 1985. A 1987 aerial photograph shows an expansion of the gravel driveway to the east and the presence of some bank armoring consisting of rock / concrete rubble, a significant portion of which falls on the property to the east (20-11-18C TL 4400). It is unclear if the nature and extent of the bank armoring matches that established prior to the DCC 18.96.040 fill and removal requirements (Ord. 88 030 §4, 1988).

Staff believes that the “Bunkhouse”, based the applicant’s submitted evidence, was built in 1976. Structural permits have been required since October 1973. Staff is uncertain if, due to the size or use of the structure, the “Bunkhouse” was exempt from structural permits. In addition, Staff was not able to locate in the record what facilities were included in the 1976 “Bunkhouse”. The Hearings Officer will need to determine if the “Bunkhouse” was established as a single-family dwelling or was a non-dwelling established as a structure designed to support recreational vehicle use of the property. This is important because, as described below, staff believes that additions within the 100-foot river setback may only be performed on dwellings.

- b. The nonconforming use as it existed on the date it became nonconforming, considering the nature and the extent of the actual use of the property, has continued without abandonment or interruption; and***

FINDING: Staff believes that, based the applicant’s submitted evidence, the “Bunkhouse”, septic system, gravel driveway, and bank armoring have existed without abandonment or interruption.

- c. Any alteration in the nature and extent of the nonconforming use was done in compliance with applicable zoning ordinance standards governing alterations of non-conforming uses.***

FINDING: Staff believes that, based the applicant’s submitted evidence, it appears that there has been no alteration in the nature and extent of the septic system or gravel driveway. Staff is uncertain if the bank armoring has been altered. The extent of the “Bunkhouse” within the 100-foot river setback was altered by the applicant in 2008 by “improving its structural integrity, interior finishes, roof, and external decking”. It appears that no building permit was obtained for this work and an alteration of the non-conforming use was not approved for this work. Staff is uncertain if the an alteration of a non-conforming use can be performed after the fact under this criterion and requests the Hearings Officer make specific findings on this issue.

- 3. For purposes of determining whether an abandonment or interruption of use has occurred, the following shall apply:***
 - a. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be one year.***
 - b. An abandonment or interruption in a use or portion thereof may arise from the complete cessation of actual use of a property for a one-year period or may arise from a change in the nature or extent of the use made of the property for a one-year period or more.***
 - c. An interruption or abandonment that constitutes less than full cessation of the use or a portion thereof may, in accordance with DCC 18.120.010(F)(4), result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued.***

FINDING: Staff believes that, based the applicant's submitted evidence, the "Bunkhouse", septic system, gravel driveway, and bank armoring have existed without abandonment or interruption.

- d. ***Absent an approved alteration, a change in the nature of the use may result in a determination that the use has been abandoned or has ceased if there are no common elements between the activities of the previous use and the current use.***

FINDING: Staff believes that, based the applicant's submitted evidence, that has been no change in the nature of the septic system and gravel driveway use. Staff believes that, to the extent the "Bunkhouse" and bank armoring use have been altered, there are still common elements between the activities of the previous use and the current use.

- e. ***Change of ownership or occupancy shall not constitute an interruption or abandonment, provided that, absent an approved alteration, the continuing use made of the property falls within the allowed scope of use made of the property by previous owners or occupants.***

FINDING: Staff believes that the change of ownership of the property does not constitute an interruption or abandonment. Staff requests the Hearings Officer determine if the continuing use of the property falls within the allowed scope of use made of the property by the previous owners.

- f. ***Factors to be considered in determining whether there has been a change in the nature and/or extent of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), the frequency of use, the hours of operation, changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.***

FINDING: Staff believes that, based the applicant's submitted evidence, there has been no change in the nature or extent of the gravel driveway use. If the Hearings Officer finds that the use of the "Bunkhouse" has changed from a non-dwelling established as a structure designed to support recreational vehicle use of the property to a single-family dwelling, staff is uncertain if the increase in potential usage of the septic system represents a change in the use of the septic system. Staff notes that the Satterlee Way area is extremely limited for septic use and many properties cannot receive approval for a new septic system.

Staff has insufficient evidence to determine if the extent of the bank armoring (lineal extent, type and size of materials, etc.) has changed and recommends the Hearings Officer requests additional information on this topic.

Staff is uncertain if the extent of the Bunkhouse use has been changed under this criterion. This is because, based on the applicant's submitted evidence, it is unclear if the enclosed square footage of the "Bunkhouse" has been changed. It appears, based on current photos of the "bunkhouse" and the Exhibit O photo of the structure some time prior to 2008, that at least the decking has been substantially expanded. It is unclear if the interior facilities of the "Bunkhouse" were significantly altered during this work. Staff recommends the Hearings Officer obtain additional information on the enclosed square footprint of the "Bunkhouse", interior facilities, and total footprint including decks both pre- and post-2008 to determine if there has been a change in the spatial extent of the "Bunkhouse" use.

As mentioned above, the Hearings Officer will also need to determine if the "Bunkhouse" was established as a single-family dwelling or was a non-dwelling established as a structure designed to support recreational vehicle use of the property. Although the current owner may not presently use the "Bunkhouse" as a full time residence, staff believes a future owner may occupy the "Bunkhouse" for full time use unless this use is restricted by the Hearings Officer. Without such a restriction, staff believes the Hearings Officer must assume that the "Bunkhouse" may be used as a full-time dwelling for the purpose of this analysis.

- C. *Maintenance of a nonconforming use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations which are subject to DCC 18.120.010(E).***

FINDING: Staff believes that historic and proposed future replenishment of gravel in the driveway is maintenance of a nonconforming use.

- D. *Restoration or replacement of a nonconforming use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:***
- 1. *Restoration is made necessary by fire, natural disaster or other casualty;***
 - 2. *The nonconforming use is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction; and***
 - 3. *The restoration or replacement of the nonconforming use is commenced within one year of the damage or destruction.***

FINDING: No restoration or replacement is proposed.

- E. *Alteration of a nonconforming use.***
- 1. *The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.***

FINDING: To the extent the "Bunkhouse", septic system, and bank armoring uses have changed, staff believes that these changes were not in response to a lawful requirement.

- 2. *Any other alteration to a nonconforming use may be permitted subject to all applicable provisions of DCC Title 18, including site plan review and upon a finding that the alteration will have no greater adverse impact on the neighborhood.***

FINDING: Staff has read this criterion to require that alteration of non-conforming uses comply with all provisions of DCC Title 18 including setbacks (and the exceptions provided for setbacks) and Landscape Management Site Plan Review. Staff has addressed the criteria staff believes are applicable throughout this staff report.

Staff believes that a change in the lawfully established extent of the bank armoring (post 1988) would potentially have adverse impacts the Deschutes River and its riparian habitat. Staff recommends the Hearings Officer request additional information on the history of the bank armoring in order to support an analysis of impacts under this section.

If the Hearings Officer finds that the use of the “Bunkhouse” has changed from a non-dwelling established as a structure designed to support recreational vehicle use of the property to a single-family dwelling, staff is concerned that an increase in potential usage of the septic system represents a change in the use of the septic system. Again, if full-time dwelling use is not restricted by this decision staff believes the Hearings Officer must assume that the “Bunkhouse” may be used as a full-time dwelling for the purpose of this analysis.

Satterlee Way area is extremely limited for septic use and many properties cannot receive approval for a new septic system due to shallow groundwater. The shallow groundwater rises to 18 to 19 inches below the ground surface, as documented in the 1992 letter from Deschutes County Environmental Health Division. This letter concluded that residential use of the existing septic system would, “...cause pollution of public waters or create a public health hazard...”. Staff believes that the existing system is likely contaminating shallow groundwater in the area and increased use of the system would exacerbate this problem.

As described above, it is unclear if the enclosed square footage of the “Bunkhouse” has been changed, but staff believes the footprint of the structure, including attached decks, has been significantly expanded within the 100-foot river setback. Staff recommends the Hearings Officer require additional information on this issue. Staff is uncertain if this expansion is regulated as a non-conforming use, as it is explicitly provided an exception under 18.120.030(D). Staff suspects this expansion is either prohibited if the Hearings Officer finds the “Bunkhouse” is a non-dwelling, or is subject to 18.120.030(D) if the Hearings Officer finds the “Bunkhouse” is a dwelling. Staff requests the Hearings Officer to make specific findings on this issue.

3. ***For the purposes of DCC 18.120.010(E)(2), an “alteration of a nonconforming use” shall include any change in the use of the property that would constitute a change in the nature or extent of the use of the property.***

FINDING: Staff has provided a detailed analysis of the nature and extent of the non-conforming uses under DCC 18.120.010 above and incorporates this analysis herein by reference.

F. Procedure.

1. ***Any application for verification of a nonconforming use or to expand, alter, restore or replace a nonconforming use shall be processed in conformance with the applicable procedures set forth in DC 18.120.010 and the applicable procedures of DCC Title 22, the Deschutes County Uniform Development Procedures Ordinance.***

FINDING: Staff believes that this non-conforming use application has been and will be required to be processed in conformance with the applicable procedures set forth in DC 18.120.010 and the applicable procedures of DCC Title 22, the Deschutes County Uniform Development Procedures Ordinance.

2. ***Notwithstanding DCC 22.20.010, the initial decision on an application for an alteration of a nonconforming use shall be made administratively, without a public hearing. The Planning Director may give prior notice of the pending application pursuant to DCC 22.20.020.***

FINDING: Staff believes this this provision requires that the initial decision on an application for an alteration of a nonconforming use shall be made administratively, without a public hearing. Staff is uncertain if the portion of this application containing the non-conforming use alteration is properly before the Hearings Officer. Staff believes, however, that the Hearings Officer certainly can rule on the verification of the lawful establishment, extent, nature, and maintenance of non-conforming uses on the property [18.120.010(B, C and F) and 18.120.030(D)]. Staff suspects that staff would then need to follow the Hearing Officer's decision with a decision on the alteration [18.120.010(E)]. Staff requests the Hearings Officer make specific findings on this issue.

3. ***Except as allowed by DCC 18.120.010(F)(3)(a), the burden of proof shall be on a verification applicant to prove the existence, continuity, nature and extent of the use.***

FINDING: The applicant has submitted a burden-of-proof addressing the existence, continuity, nature and extent of the use.

- a. ***Notwithstanding DCC 22.24.050, if an applicant demonstrates by a preponderance of the evidence that the nature and extent of the use sought to be verified is of the same nature and extent as the use of the property for the ten-year period immediately preceding the application, without interruption or abandonment, it shall be presumed that the nonconforming use, as proven, lawfully existed at the time the use became nonconforming and has continued without interruption or abandonment until the date of application.***

FINDING: Staff believes that the nature and extent of non-conforming uses on the property were unchanged from their establishment (as described in detail above) to the more recent property improvements performed in 2008 (within ten years prior to the present application).

- b. ***The presumption may be rebutted by a preponderance of evidence showing that the use was unlawful prior to the time it became nonconforming, or that the use prior to the ten-year period was of a different nature or different in extent than the use, as proven, or that the use prior to the ten-year period was interrupted or abandoned. If the presumption is so rebutted, the***

presumption shall disappear and be of no further aid to the applicant.

FINDING: Staff believes that the nature and extent of non-conforming uses on the property were unchanged from their establishment (as described in detail above) to the more recent property improvements performed in 2008 (within ten years prior to the present application). Staff requests the Hearing Officer determine if the uses prior to the ten-year period were of a different nature or different in extent than the uses, as proven.

4. ***If the proof demonstrates the continued existence of a valid non-conforming use, but of a different nature or extent than that claimed by the applicant, the Hearings Body may declare there to be a valid nonconforming use to the extent proven.***

FINDING: Staff notes this option is available to the Hearings Officer.

5. ***An approval of a verification, replacement or restoration of a nonconforming use verification shall not be conditioned; an approval shall be sufficiently detailed to describe the allowed parameters of the verified use. However, an approval of an alteration of a nonconforming use may be conditioned in a manner calculated to ensure mitigation of adverse impacts so that the change has no greater adverse impact to the neighborhood.***

FINDING: Staff requests that the Hearings Officer's decision be sufficiently detailed as to describe the allowed parameters of the verified uses. To the extent the Hearing Officer rules on the alterations to the uses, staff notes that any approval of an alteration of a nonconforming use may be conditioned in a manner calculated to ensure mitigation of adverse impacts so that the change has no greater adverse impact to the neighborhood.

6. ***After a decision has been rendered on an application for a verification of a nonconforming use (including any appeals provided for under DCC Title 22 and under state law), the applicant shall not be entitled to reapply under DCC 22.28.040 for another verification determination involving the same use of the property.***

FINDING: Staff recommends the Hearings Officer note this requirement in her decision.

2. Section 18.120.030, Exceptions to Yard Requirements.

The following exceptions to yard requirements are authorized for a lot in any zone:

...
D.

- An addition to an existing residential dwelling which is within 100 feet from the ordinary high water mark along a stream or lake may be constructed provided that the addition is for residential dwelling purposes, no part of the addition is closer to the stream or lake than the existing residential structure, the addition is 900 square feet in area or smaller and does not exceed the area of floor space of the***

existing structure and the addition conforms with all other setbacks and building limitations.

FINDING: Staff believes that this exception provides the only pathway to expand structures in the 100-foot river setback and is only afforded to residential dwellings. If the Hearings Officer determines the “Bunkhouse” is a residential dwelling, the Hearings Officer will then need to determine the pre-existing setback and square footage of the “Bunkhouse” in order to find that the expanded Bunkhouse is no closer to the River and that the addition complies with the spatial limitations of this criterion.

Staff is uncertain about several issues under this criterion and requests the Hearings Officer make specific findings on these issues:

- 1) Is the pre-existing “floor space” of the structure that portion of the structure that falls within the 100-foot river setback, or the entire structure?
- 2) Does the “budget” set for additional floor area under this criterion apply only to additions within the 100-foot river setback, or the entire addition project?
- 3) Since this addition is in the LM zone, does decking count towards the existing floor area or addition area calculations? See DCC 18.84.090(C).

For example, if a 2,000 square foot house includes one square foot in the 100-foot river setback, would it be afforded an additional 900 square feet in the 100-foot river setback and unlimited expansion beyond the 100-foot river setback under this criterion? Staff appreciates the Hearings Officer’s guidance on this matter.

F. Chapter 18.116, SUPPLEMENTARY PROVISIONS

1. Section 18.116.040, Accessory Uses

An accessory use shall comply with all requirements for a principal use, except as DCC Title 18 specifically allows to the contrary, and shall comply with the following limitations:

- A. ***The primary use of the property must be established or applied for prior to issuance of any building or land use permits for accessory structures.***

FINDING: Staff requests the Hearings Officer determine the primary use of the property. Staff believes this will require determining if the “Bunkhouse” is and was established as a single-family dwelling or was a non-dwelling established as a structure designed to support recreational vehicle use of the property.

1. ***Exception:***
 - a. ***Building permit for a ramada or carport may be issued without establishment or application of primary use if all other criteria for issuance are met.***

FINDING: No carport¹² or ramada¹³ is proposed.

- b. *Land use, building or environmental health permits or extensions of such permits sought to correct existing code violations for the subject property shall be issued if all other criteria for issuance are met.***

FINDING: The subject property is in code enforcement and this is an applicable criterion.

- c. *A building permit for an accessory structure or structures not exceeding a combined total of 2,000 square feet in size, with no windows, with only one floor, an operable garage door, no plumbing or stack vents through the roof or walls and not requiring plumbing or mechanical permits..***

FINDING: If the Hearings Officer finds that the primary use of the property has not been established, the “Boathouse” and “Well House” would either be subject to this criterion or might be viewed as alterations to the non-conforming “Bunkhouse” use. Staff requests the Hearings Officer make specific findings on this issue.

G. Chapter 18.128, Conditional Uses

1. Section 18.128.010, Operation.

- A. *A conditional use listed in DCC Title 18 shall be permitted, altered or denied in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan.***
- B. *In the case of a use existing prior to the effective date of DCC Title 18 and classified in DCC Title 18 as a conditional use, any change in use or lot area or an alteration of structure shall conform with the requirements for a conditional use.***

FINDING: Staff is uncertain if the “Bunkhouse”, “Well House” and “Boathouse” are conditional uses subject to section (B). Please refer to the discussion of these uses in DC 18.96 and 18.60. Staff believes that the gravel driveway, where it is in the flood plain, and the bank armoring, to the extent it has been altered would be subject to section (B). As described above, staff believes that the gravel driveway has only been maintained and, therefore, staff believes that section (B) does not apply to the maintenance of the gravel driveway. If the Hearings Officer finds that the bank armoring has been changed, section (B) would apply.

2. Section 18.128.015. General Standards Governing Conditional Uses.

¹² DCC 19.04.030 - “Carport” means a structure used to shelter a vehicle, having no enclosed uses above and entirely open on two or more sides.

¹³ DCC 18.04.030 - “Ramada” means a stationary structure having a roof extending over a manufactured structure which may also extend over a patio or parking space of motor vehicles and is used principally for protection from snow, sun or rain. A ramada is open on two or more sides and has no enclosed 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:

FINDING: Staff is uncertain if the “Bunkhouse”, “Well House” and “Boathouse” are conditional uses or are otherwise subject to these criteria. Please refer to the discussion of these uses in DC 18.96 and 18.60.

Staff provides proposed findings for the community dock and the river-viewing deck. If the bank armoring has changed, under DCC 18.128.010(B) it will also need to be evaluated under applicable standards of the chapter (DCC 18.128.015 and 18.128.270). Staff also notes that, if the Hearings Officer finds the gravel driveway or its maintenance are not non-conforming uses, these uses could be evaluated as conditional uses.

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: The subject property is a riverfront property in a residential neighborhood. The dock’s operating characteristics would include river and boating access for the benefit of the subject and adjacent property. The river-viewing deck would be used by occupants of the subject property for river-viewing, recreational use, and potentially outdoor dining. Staff believes the dock and deck have been adequately designed for these uses, provided the Hearings Officer finds that the dock and deck are adequately anchored. Staff believes the site is suitable for the proposed use based on site, design and operating characteristics of the use.

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

FINDING: Staff believes that adequate transportation access to the site is provided by Satterlee Way, and the existing gravel driveway.

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

FINDING: The site is generally level and presents no topographic obstacles to the use. Natural hazards at the property are limited to the mapped floodplain. As described above, both the dock and deck are located below the base flood elevation and should be anticipated to be submerged by the base flood (100-year flood). However, staff believes that the presence of the dock and deck would not put the occupants of the property at any additional hazard from flooding. Provided the dock and deck are properly anchored and are resistant to flood damage (as required under DCC 18.96) they should not be adversely impacted by flooding. Staff also notes that the applicant has provided an engineer’s non-rise certification, showing the dock would not increase flood depths in the area.

Staff incorporates the comment of the La Pine Fire Department, identifying the property as a High Wildland Fire Hazard Area, herein by reference. Staff recommends the Hearings Officer, at minimum, impose the Default Standards of OAR 629-044-1060 on the subject property as conditions of any approval and note that these requirements may conflict with wetland vegetation protections and Landscape Management screening requirements and that such

conflicts should be resolved before any land use decision is issued. At a minimum, the applicant should identify the specific standards that may conflict with wetland vegetation protection, and demonstrate how the project will accomplish both, sometimes conflicting, goals.

Staff finds the natural resource values of the property include the recreational use of the river, riparian habitat and riparian corridor along the Deschutes River (including its bed and banks), as well as potential habitat for the spotted frog. Staff notes comments provided by ACOE, USFS, and ODFW and incorporates them herein by reference. Staff recommends the applicant coordinate directly with these agencies, as well as USFWS, to confirm that the dock and deck would not adversely impact the natural resource values of the property. Staff is uncertain if compliance with the ODFW dock recommendation guidelines is necessary to comply with this criterion, even though these recommendations are not mandatory.

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: If the dock and deck are appropriately anchored, staff believes the proposed dock and deck would not adversely impact either the residential use of surrounding properties or their existing or projected transportation access. Because the applicant has provided an engineer's non-rise certification, showing the dock would not increase flood depths in the area, staff believes the dock and deck would not exacerbate flood hazard on surrounding properties. Staff also believes that the dock and deck would not adversely impact the natural resource values of surrounding properties, provided the Hearings Officer finds this application complies with DCC 18.128.015(A)(3).

2. Section 18.128.020. Conditions.

In addition to the standards and conditions set forth in a specific zone or in DCC 18.124, the Planning Director or the Hearings Body may impose the following conditions upon a finding that additional restrictions are warranted.

- A. Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.***
- B. Require a special yard or other open space or a change in lot area or lot dimension.***
- C. Require a limitation on the height, size or location of a structure.***
- D. Specify the size, number, location and nature of vehicle access points.***
- E. Increase the required street dedication, roadway width or require additional improvements within the street right of way.***
- F. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.***
- G. Limit or specify the number, size, location, height and lighting of signs.***
- H. Limit the location and intensity of outdoor lighting and require shielding.***

- I. **Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.**
- J. **Specify the size, height and location of any materials to be used for fencing.**
- K. **Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.**
- L. **Require that a site plan be prepared in conformance with DCC 18.124.**

FINDING: Staff notes that the Hearings Officer may impose conditions upon a finding that additional restrictions are warranted.

3. Section 18.128.270, Fill and Removal.

Except as otherwise provided in DCC Title 18, no person shall fill or remove any material or remove any vegetation, regardless of the amount, within the bed and banks of any stream or river or in any wetland, unless such fill or removal is approved as a conditional use subject to the following standards:

FINDING: Staff finds that both the dock and deck fall within the wetlands mapped on the Ann's Butte National Wetlands Inventory Map, and the dock falls within the bed and banks¹⁴ of the Deschutes River. Staff believes that these criteria apply to all projects located in the bed and banks of any stream or river or in any wetland because such project involves the fill and/or removal¹⁵ of materials and require the removal of vegetation. Staff requests specific findings if the Hearings Officer determines that these criteria do not apply because, for example, the proposed projects fall in a different use category or that the fill and removal of material necessary to accomplish these projects is accessory to those other use categories. Staff is also uncertain if these criteria, to the extent they apply, regulate the entirety of the dock and deck or just non-construction materials (e.g. excavation of footings, other earthmoving, and placed dirt, rock, or gravel).

- D. **Except for uses identified in DCC 18.128.270(B) and (C), an application for a conditional use permit for activity involving fill or removal of material or vegetation within the bed and banks of a stream, river or wetland:**
 - 1. **Shall be granted only after consideration of the following factors:**
 - a. **The effects on public or private water supplies and water quality.**

¹⁴ DCC 18.04.030 - "Bed or banks of stream or river" means the physical container of the waters of a stream or river lying below bank full stage and the land 10 feet on either side of the container.

¹⁵ DCC 18.04.030 - "Fill and removal" means the deposit or removal by artificial means of material at a location within the waters of any lake, river or stream, or in wetlands or riparian areas.

FINDING: Staff believes that the dock and deck would have no adverse impact on private water supplies. Staff believes the Hearings Officer will need to determine that the dock has adequately controlled future erosion in order to determine impacts on water quality.

- b. *The effects on aquatic life and habitat, and wildlife and habitat. The Oregon Department of Fish and Wildlife will be requested to review and comment on the application.***

FINDING: Staff notes comments provided by ACOE, USFS, and ODFW and incorporates them herein by reference. Staff recommends the applicant coordinate directly with these agencies, as well as USFWS, to confirm that the dock and deck would not adversely impact aquatic life and habitat, and wildlife and habitat. Staff is uncertain if compliance with the ODFW dock recommendation guidelines is necessary to comply with this criterion, even though these recommendations are not mandatory. Staff requests the Hearings Officer make specific findings on this issue.

- c. *Recreational, aesthetic and economic values of the affected water resources.***

FINDING: Staff believes that the dock and deck would have no adverse impact on the recreational, aesthetic and economic values of the Deschutes River.

- d. *Effects on the hydrologic characteristics of the water body such as direction and velocity of flow, elevation of water surface, sediment transportation capacity, stabilization of the bank and flood hazards.***

FINDING: Staff believes that the dock and deck would have no adverse impact on the hydrologic characteristics of the water body such as direction and velocity of flow, elevation of water surface, sediment transportation capacity, stabilization of the bank and flood hazards. Staff relies, in part, on the no-rise certification provided by the applicant's engineer. Staff notes that the applicant will be required to obtain a free flow analysis under the Wild and Scenic Rivers Act from the USFS. Staff recommends that any findings of compliance with this criterion be conditioned on the applicant receiving an approved free flow analysis under the Wild and Scenic Rivers Act from the USFS.

- e. *The character of the area, considering existing streambank stabilization problems and fill or removal projects which have previously occurred.***

FINDING: Staff believes that the bank has been subject to bank armoring since some time prior to 1985. Staff believes that the dock and deck are not significant adverse impacts to the character of the area, considering the existing streambank stabilization problems and fill or removal projects which have previously occurred.

- 2. *Shall not be granted unless all of the following conditions are met:***
 - a. *That all necessary state and federal permits will be obtained as a condition of approval of the conditional use.***

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

- b. That there is no practical alternative to the proposed project which will have less impact on the surrounding area, considering the factors established in DCC 18.128.270(D)(1).***

FINDING: Staff believes the dock guidelines provided by the ODFW represent practical alternatives under this criterion.

- c. That there will be no significant impacts on the surrounding area, considering the factors established in DCC 18.128.270(D)(1).***

FINDING: Staff notes comments provided by ACOE, USFS, and ODFW and incorporates them herein by reference. Staff recommends the applicant coordinate directly with these agencies, as well as USFWS, to confirm that the dock and deck would not adversely impact aquatic life and habitat, and wildlife and habitat. Staff requests the Hearings Officer make specific findings on this issue.

- d. That erosion will be adequately controlled during and after the project.***

FINDING: The dock and deck are constructed. Staff believes the Hearings Officer will need to determine that the dock has adequately controlled future erosion in order to find that the applicant has complied with this criterion.

- e. That the essential character, quality, and density of existing vegetation will be maintained. Additional vegetation shall be required if necessary to protect aquatic life habitats, functions of the ecosystem, wildlife values, aesthetic resources and to prevent erosion.***

FINDING: Staff believes this criterion requires that any adverse impacts to the essential character, quality, and density of existing vegetation be entirely mitigated. Staff believes that the Hearing Officer will need to evaluate the pre-existing vegetation and post-project vegetation in order to perform an analysis under this criterion. This information does not appear to be in the record.

- f. That the proposed fill or removal activity will be consistent with all relevant goals and policies of the Deschutes County Comprehensive Plan.***

FINDING: Staff believes the Deschutes County Comprehensive Plan allows a community dock provided it complies with all applicable criteria. The Deschutes County Comprehensive Plan defines:

“Riparian (zone, habitat, or vegetation)” means of, or pertaining to, the bank of a river, or of a pond or small lake. Riparian habitat is riverbank vegetative cover and food for many wildlife species.

The Deschutes River is inventoried as a riparian corridor in Table 5.3.2 of the Comprehensive Plan. Staff believes that the 100-foot river setback was implemented as a protection for riparian corridors and prohibits structures not explicitly allowed in this setback area. Staff is uncertain if the river-viewing deck can be allowed within the 100-foot river setback and if the fill and removal needed to construct this deck would be consistent with all relevant goals and policies of the Deschutes County Comprehensive Plan. Staff requests the Hearings Officer make specific findings on this issue.

- g. *That a conservation easement, as defined in DCC 18.04.030, “Conservation Easement,” shall be conveyed to the County, which provides, at a minimum, that all elements of the project will be carried out and maintained as approved, in perpetuity, for the regulated fill or removal area and all real property on the same lot, within 10 feet of any wetland, river or stream.***

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

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 10th day of August, 2015

Mailed this 10th day of August, 2015