



Sent via electronic mail

April 18, 2023

Lisa Graham
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Application G-19132 for a Permit to Use Groundwater – Bull Springs Ranch, LLC

Dear Ms. Graham:

On May 14, 2021, GSI Water Solutions, Inc. (GSI) filed Application G-19132 on behalf of Bull Springs Ranch, LLC (Applicant), for a permit to use groundwater. To date, the Department has not issued a proposed final order on the application. During the past approximately two years, changes have occurred that have resulted in the need to update Application G-19132. The updates do not change the source of water, or enlarge the proposed use of water in any way.

One of the changes that has occurred is a minor tax lot adjustment. To document this change, GSI is providing updated versions of the land use information form, application map, and legal description. The Applicant is also making minor changes to the proposed uses for which the Applicant will use groundwater to fill the pond, as shown in Section 5 (page 5) of the application. Finally, minor modifications have been made to the descriptions in Sections 6 and 8 (on pages 6 and 7).

GSI requests that the Department replace pages 5–7 of the application with the enclosed pages. GSI also requests that the Department replace Attachments A, B, and C with the enclosed materials.

If you have any questions regarding this application, please contact me at 541-390-0591.

Sincerely,
GSI Water Solutions, Inc.

A handwritten signature in blue ink that reads "Bruce Brody-Heine".

Bruce Brody-Heine
Principal Hydrogeologist

CC: Todd Taylor, Bull Springs Ranch, LLC

Enclosures: Modified pages to Application for a Permit to Use Groundwater

appropriate, whether the proposed use is detrimental to the protection or recovery of a threatened or endangered fish species and whether the use can be conditioned or mitigated to avoid the detriment.

If a permit is issued, it will likely contain conditions to ensure the water use complies with existing state and federal water quality standards; and water use measurement, recording and reporting required by the Water Resources Department. The application may be denied, or if appropriate, mitigation for impacts may be needed to obtain approval of the proposed use.

If yes, you will be required to provide the following information, if applicable.

☐ Yes ☐ No The proposed use is for more than **one** cubic foot per second (448.8 gpm) and is not subject to the requirements of OAR 690, Division 86 (Water Management and Conservation Plans).

If yes, provide a description of the measures to be taken to assure reasonably efficient water use:

N/A

Statewide - OAR 690-033-0330 thru -0340

Is the well or proposed well located in an area where the Statewide rules apply?

☒ Yes ☐ No

If yes, and the proposed groundwater use is determined to have the potential for substantial interference with nearby surface waters you are notified that the Water Resources Department will determine whether the proposed use will occur in an area where endangered, threatened or sensitive fish species are located. If so, the Water Resources Department, Department of Fish and Wildlife, Department of Environmental Quality, and the Department of Agriculture will recommend conditions required to achieve “no loss of essential habitat of threatened and endangered (T&E) fish species,” or “no net loss of essential habitat of sensitive (S) fish species.” If conditions cannot be identified that meet the standards of no loss of essential T E fish habitat or no net loss of essential S fish habitat, the agencies will recommend denial of the application unless they conclude that the proposed use would not harm the species.

SECTION 5: WATER USE

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
To fill a pond for irrigation, forestry/fire suppression, wildlife use and aesthetics	Year-round	9.0

For irrigation use only:

Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).

Primary: N/A Acres Supplemental: N/A Acres

If you listed supplemental acres, list the Permit or Certificate number of the underlying primary water right(s):

N/A

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: N/A

- If the use is **municipal or quasi-municipal**, attach **Form M** N/A
- If the use is **domestic**, indicate the number of households: N/A (**Exempt Uses:** Please note that 15,000 gallons per day for single or group **domestic** purposes and 5,000 gallons per day for a single **industrial or commercial** purpose are exempt from permitting requirements.)

- If the use is **mining**, describe what is being mined and the method(s) of extraction (*attach additional sheets if necessary*): N/A

SECTION 6: WATER MANAGEMENT

A. Diversion and Conveyance

What equipment will you use to pump water from your well(s)?

- ☒ Pump (give horsepower and type): 20-hp submersible pumps
☐ Other means (describe): _____

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water. Water will be pumped from Well 1 and Well 2 using submersible pumps and conveyed to the proposed pond via 4" mainline.

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler) (*attach additional sheets if necessary*)

Water will be conveyed to the pond to fill it for irrigation, forestry/fire suppression, wildlife use and aesthetics.

C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters (*attach additional sheets if necessary*).

Groundwater appropriation will be measured using flow meters if required by OWRD. The proposed pond is off-channel, and no construction is anticipated to occur near riparian or aquatic environments. No discharge to surface water is contemplated, and no adverse effects to public uses of surface waters are anticipated.

SECTION 7: PROJECT SCHEDULE

- Date construction will begin: Within 5 years of permit issuance
- Date construction will be completed: Within 5 years of permit issuance
- Date beneficial water use will begin: Within 5 years of permit issuance

SECTION 8: RESOURCE PROTECTION

In granting permission to use water the state encourages, and in some instances requires, careful control of activities that may affect adjacent waterway or streamside area. See instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources.

- ☒ Water quality will be protected by preventing erosion and run-off of waste or chemical products.
Describe: The proposed storage of water will not cause erosion or run-off of waste or chemical products.
- ☒ Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.
Note: If disturbed area is greater than one acre, applicant should contact the Oregon Department of Environmental Quality to determine if a 1200C permit is required.

Describe planned actions and additional permits required for project implementation: The proposed pond would be excavated off-channel and would not impact riparian or streamside areas. The source of water to fill and maintain the pond is groundwater from existing wells.

- ☐ Other state and federal permits or contracts required and to be obtained, if a water right permit is granted:
List: The applicant will obtain any necessary federal, state, and local permits required for construction of the proposed pond.

SECTION 9: WITHIN A DISTRICT

- ☐ Check here if the point of appropriation (POA) or place of use (POU) are located within or served by an irrigation or other water district.

Irrigation District Name N/A	Address	
City	State	Zip

SECTION 10: REMARKS

Use this space to clarify any information you have provided in the application (*attach additional sheets if necessary*).

The Applicant is concurrently filing an application for a permit to store groundwater (appropriated under this requested permit) in the pond under the Alternate Review process (Application R-89110).

The Applicant understands that impacts to surface water from the use of groundwater will need to be mitigated through the Deschutes Groundwater Mitigation Program.

Attachment A

Land Use Information Form - Updated

Application for a Permit to Use Groundwater – Bull Springs Ranch, LLC

Land Use Information Form



Mailing Date:
Oregon Water Resources Department
Wednesday, March 8, 2023
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
 - d) The application involves irrigation water uses only.

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Applicant(s): Bull Springs Ranch, LLC, Attn Todd Taylor

Mailing Address: 18525 Bull Springs Road

City: Bend

State: OR

Zip Code: 97703

Daytime Phone: 541-382-7887

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
<u>17S</u>	<u>11E</u>	<u>22</u>	<u>NESW</u>	<u>2735</u>	<u>F1</u>	☒ Diverted	☒ Conveyed	☐ Used	<u>The use of ground-water to fill a pond for irrigation, forestry/fire suppression, wildlife use and aesthetics</u>
<u>17S</u>	<u>11E</u>	<u>22</u>	<u>NESW</u>	<u>2736</u>	<u>F1</u>	☒ Diverted	☒ Conveyed	☒ Used	
<u>17S</u>	<u>11E</u>	<u>22</u>	<u>SESW</u>	<u>2736</u>	<u>F1</u>	☒ Diverted	☒ Conveyed	☒ Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Deschutes County

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- ☒ Permit to Use or Store Water ☒ Water Right Transfer ☐ Permit Amendment or Ground Water Registration Modification
☐ Limited Water Use License ☐ Allocation of Conserved Water ☐ Exchange of Water

Source of water: ☐ Reservoir/Pond ☒ Ground Water ☐ Surface Water (name) _____

Estimated quantity of water needed: 0.031 cfs and up to 9 AF ☒ cubic feet per second ☐ gallons per minute ☒ acre-feet

Intended use of water: ☐ Irrigation ☐ Commercial ☐ Industrial ☐ Domestic for _____ household(s)
☐ Municipal ☐ Quasi-Municipal ☐ Instream ☒ Other Use of groundwater to fill a pond

Briefly describe:

The Applicant proposes to use groundwater from two existing wells to fill a pond. The pond will store water for irrigation, forestry/fire suppression, wildlife use and aesthetics. See attached for additional information.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- ☐ Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s):
- ☐ Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
Conditional Use Permit for Large Tract Dwelling	18.36.050(c)	☒ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

The staff report for Deschutes County file CU-05-106 is attached. This is the approval for the existing Large Tract Dwelling.

Name: Audrey Stuart Title: Associate Planner
 Signature: Audrey Stuart Phone: 541-388-6619 Date: 3/6/23
 Government Entity: Deschutes County

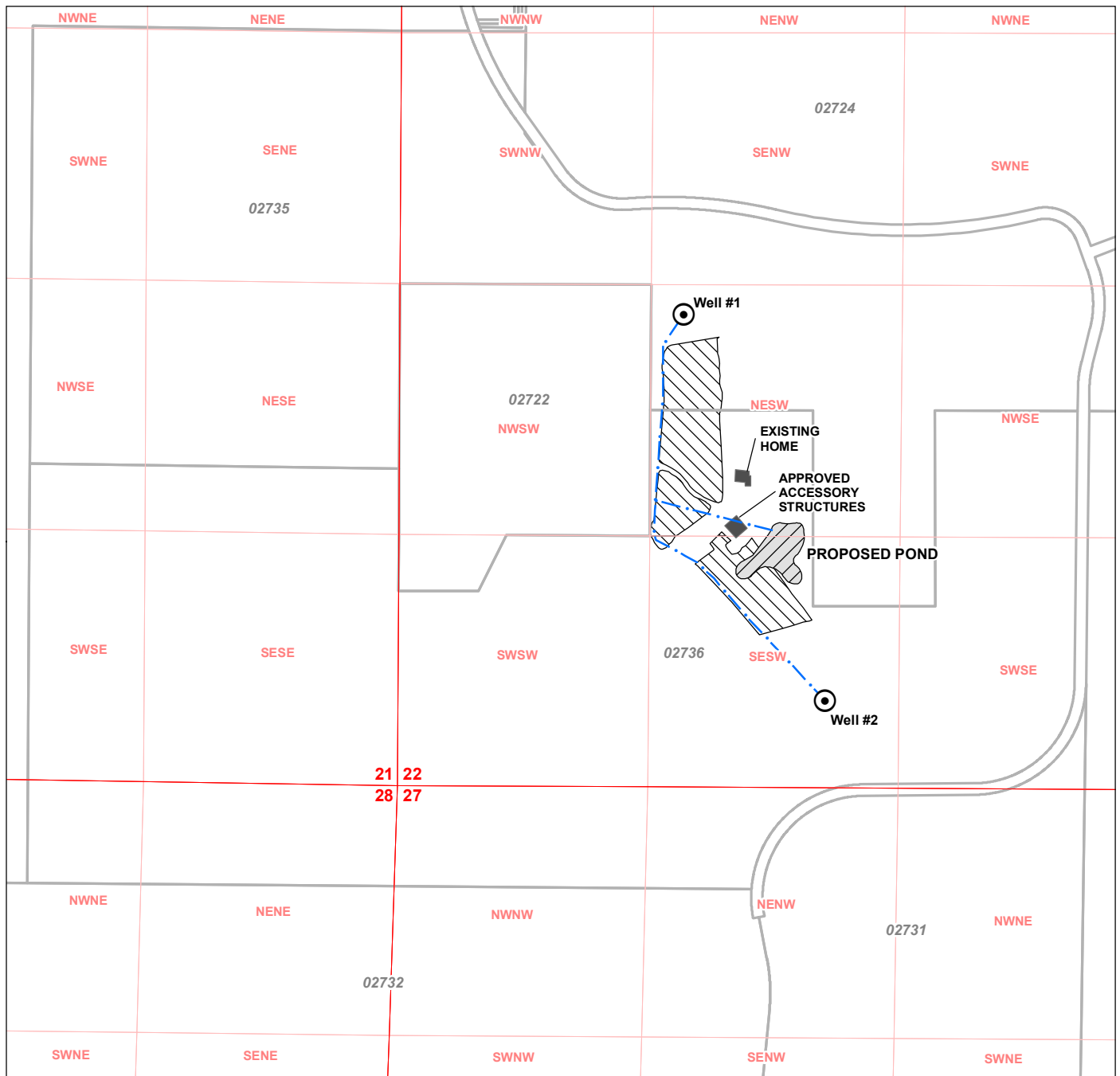
Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____
 City or County: _____ Staff contact: _____
 Signature: _____ Phone: _____ Date: _____

LAND USE COMPATIBILITY

The subject property is zoned “Forest Use (F1)” and “Wildlife Area Combining Zone (WA)” under Title 18 of the Deschutes County Code. The applicant proposes to use groundwater from two existing wells to fill the pond. The location of the pond and developed wells are depicted on the map attached hereto. The pond will be utilized to store water in support of and accessory to previously developed land uses that are either permitted outright or previously approved in the F1 Forest Zone. In 2005, Deschutes County issued conditional use approval for the development of a “large-tract forest dwelling” on the subject property under the standards of Deschutes County Code (“DCC”) Section 18.36.030 (*See County approval in CU-05-106 and SMA 05-4*). In 2019, the County approved the development of an accessory structure on the subject property to be utilized in connection with ongoing farm and forest uses, both of which are permitted outright in the F1 Zone (*See County approval in 247-19-000765-AD*). The approved large tract forest dwelling and accessory structures have been fully constructed in the locations depicted on the attached map. As noted above, the subject property is currently utilized for both agricultural and forestry uses. Forest operations and forest practices are permitted outright in the F1 Forest Zone under DCC 18.36.020(A). Farm use is permitted outright in the F1 Forest Zone under DCC 18.36.020(E). The ponderosa pine forest on the subject property is actively managed for timber production and fire protection purposes under the standards of the Oregon Forest Practices Act. The subject property is also currently irrigated with 10.6 acres of appurtenant water rights. Livestock grazing activity is conducted throughout the property as a permitted “farm use” and the pond will support this developed land use. In addition, the proposed pond will be utilized by the applicant to support forest operations as a readily available water source for fire suppression purposes. The pond also provides both a benefit to area wildlife (Tumalo Winter Deer Range) consistent with the purposes of the Wildlife Area Combining WA Zone (*See DCC 18.88.010*) and will serve as an aesthetic benefit to the previously approved large tract dwelling structure. In sum, the proposed pond structure is an accessory use to the previously approved, permitted and developed land uses that are ongoing within and upon the subject property.



LEGEND

-  Proposed Point of Appropriation (POA)
-  Water Supply Line to Pond
-  Proposed Place of Use (POU)
-  Authorized Irrigation Place of Use, Permit S-18768
-  Tax Lot

A Map to Accompany Land Use Information Form

Bull Springs Ranch, LLC Proposed Points of Appropriation and Place of Use

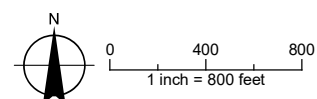
Township 17 South, Range 11 East (W.M.)

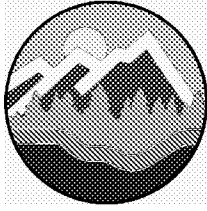
Deschutes County

DISCLAIMER

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

Date: February 21, 2023
Data Sources: BLM, ESRI, OWRD, USGS





**DESCHUTES COUNTY
PLANNING DIVISION**
117 NW Lafayette Avenue, Bend, OR 97701
(541) 388-6575
FAX 385-1764

CERTIFICATE OF MAILING

FILE NUMBERS: MP-05-31, CU-05-106, SMA-05-41

DOCUMENT MAILED: STAFF REPORT

LOOKUP AREA (circle one):

Subject property tax lot number:

I certify that on the 21st day of December 2005, the attached notice/report, dated December 21, 2005, was mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

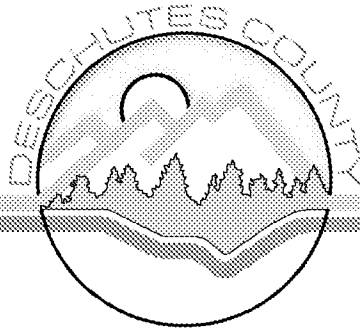
DATED this 21st day of December 2005.

COMMUNITY DEVELOPMENT DEPARTMENT

By: Bend Mailing Services

<u>APPLICANT/OWNER</u> Hap Taylor & Sons, Inc. P.O. Box 83 Bend, Oregon 97709	HEARINGS OFFICER: Karen Green
<u>ATTORNEY</u> Kristin Udvari Ball Janik LLP 101 SW Main Street, Suite 1100 Portland, Oregon 97204	

ENGINEER David Williams Hickman Williams & Associates, Inc. 805 SW Industrial Way, Suite 10 Bend, Oregon 97702	Paul Dewey Sisters Forest Planning Committee 1539 NW Vicksburg Bend Oregon 97701
COURTESY COPIES TO:	
County Assessor's Office- Theresa Maul	Deschutes County Building Division: Dan Horton
Property Address Coord.	Deschutes County Road Department: George Kolb



Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

DESCHUTES COUNTY PLANNING DIVISION

STAFF REPORT

FILE NUMBERS: MP-05-31, CU-05-106, SMA-05-41

HEARING DATE: Thursday, January 5, 2006, 6:30 p.m. in the Barnes and Sawyer rooms of the Deschutes Services Building located at 1300 NW Wall Street in Bend

**APPLICANT/
OWNER:** Hap Taylor & Sons, Inc.
c/o Bruce Churchill
P.O. Box 83
Bend, OR 97709

ATTORNEY: Kristin Udvari
Ball Janik LLP
101 SW Main Street, Suite 1100
Portland, OR 97204

ENGINEER: David Williams
Hickman Williams & Associates, Inc.
805 SW Industrial Way, Suite 10
Bend, Oregon 97702

REQUEST: The applicant is proposing a Minor Partition to divide a 322-acre parcel into two parcels (a 68-acre Surface Mining parcel and a 240-acre F-1 zoned parcel) and a Conditional Use permit for a Large Tract Dwelling in the Forest Use (F-1) zone.

STAFF CONTACT: Catharine White, Associate Planner

I. APPLICABLE CRITERIA:

A. Title 17 of the Deschutes County Code, the Subdivision/Partition Ordinance

1. Chapter 17.22, Approval of Tentative Plans for Partitions

* Section 17.22.020, Requirements for Approval

2. Chapter 17.36, Design Standards
 - * Section 17.36.040, Existing Streets
 - * Section 17.36.160, Easements
 - * Section 17.36.170, Lots – Size and Shape
 - * Section 17.36.180, Frontage
 - * Section 17.36.210, Solar Access Performance
 - * Section 17.36.260, Fire Hazards
 - * Section 17.36.290, Individual Wells
4. Chapter 17.44, Park Development
 - * Section 17.44.010, Dedication of Land
 - * Section 17.44.020, Fee in Lieu of Dedication
5. Chapter 17.48, Design and Construction Specifications
 - * Section 17.48.170, Road Development Standards – Partitions

B. Title 18 of the Deschutes County Code, the County Zoning Ordinance.

1. Chapter 18.36, Forest Use Zone—F-1
 - * Section 18.36.030, Conditional Uses Permitted
 - * Section 18.36.040, Limitations on conditional uses
 - * Section 18.36.050, Standards for Single-Family Dwellings
 - * Section 18.36.060, Siting of Dwellings and Structures
 - * Section 18.36.070, Fire Siting Standards for Dwellings and Structures
 - * Section 18.36.080, Fire Safety Design Standards for Roads
 - * Section 18.36.085, Stocking requirement
 - * Section 18.36.090, Dimensional standards
 - * Section 18.36.100 Yards and setbacks
2. Chapter 18.52, Surface Mining Zone—SM
 - * Section 18.52.060, Dimensional standards
3. Chapter 18.56, Surface Mining Impact Area Combining Zone—SMIA
 - * Section 18.56.050, Conditional uses permitted.
 - * Section 18.56.060, Dimensional standards
 - * Section 18.56.070, Setbacks
 - * Section 18.56.120, Waiver of remonstrance
4. Chapter 18.84, Landscape Management Combining Zone—LM
5. Chapter 18.88, Wildlife Area Combining Zone—WA
 - * Section 18.88.040, Uses Permitted Conditionally

- * Section 18.88.050, Dimensional standards
- * Section 18.88.060, Siting standards
- * Section 18.88.070, Fence standards

II. **BASIC FINDINGS:**

- A. **LOCATION:** The property is located at 18807 Bull Springs Road, Bend and identified on the County Assessor's tax map as #17-11-00-2722.
- B. **ZONING:** Zoning of the property is Forest Use (F1) and Surface Mining (SM) with overlays of a Wildlife Area (WA) Combining Zone and a Surface Mining Impact Area (SMIA) Combining Zone. A small portion of the property along Johnson Market Road is in the Rural Residential (RR-10) zone and Landscape Management zone; however, neither the partition proposal nor the single family dwelling will affect the RR-10 or LM zones.
- C. **LOT OF RECORD:** The subject property is a legal lot of record as it is Parcel 1 of Minor Partition MP-01-16 (Partition Plat 2002-90).
- D. **SITE DESCRIPTION:** The subject property is 322- acres in size¹ and irregular in shape. Its topography varies from level to mildly sloping. The Burden of Proof indicates the subject parcel is part of the larger Bull Springs Tree Farm "owned by a succession of industrial forest land organizations since the 1920s as discussed below:

It has been managed as part of an industrial tree farm with most of the old growth harvested by the 1960s. This area is currently fully stocked with regeneration and second-growth sized Ponderosa Pine with the exception of an area of approximately 35 acres situated adjacent to the surface mine area where regeneration as [sic] apparently been limited by the presence of a frost pocket.

¹ The Burden of Proof identifies the subject property as comprising 322 acres. However, the proposed parcel sizes (68 acres and 240 acres) total 308 acres. The applicant provided the following explanation regarding the parcel size of the subject property:

The property is 322, but approximately 14 acres are being dedicated for the roads. So, subtracting the dedicated acres, the parcel is only 308. Thus, to calculate our lot sizes & ensure that the large tract dwelling lot would contain 240 acres after the dedication, we calculated the acreage for the partition parcels as if the dedication had been finalized.

Staff notes that per the definition of "Lot Area" (DCC 18.04), that Lot area is computed as gross area for lots larger than 2.5 acres and includes streets, roads, and easement of access that would accrue to the subject property if the road, street or easement were vacated. [Also noted is MP-01-16 that created the subject parcel, created a 341.95-acre parcel. A subsequent lot line adjustment, LL-03-17, appears to have adjusted the parcel to 321.95.]

Surface Mining Site #296 is located along the west-central border of the property and currently is actively mined gaining access from Bull Springs Road, which connects to Johnson Market Road. With the exception of the surface mine, the property is vacant. The subject property abuts Johnson Market Road on its eastern boundary and Bull Springs Road intersects with Johnson Market Road, the Loop Road abuts the property along its easterly boundary, and the portion of the Sisters Mainline Road to be dedicated abuts the property along its northerly boundary. Bull Springs Road, Loop Road, and the portion of the Sisters Mainline abutting the subject property are in the process of being dedicated to the public via Conditional Use permit, CU-04-6 (A-04-10).

E. SURROUNDING LAND USES: Surrounding land uses include privately owned properties in a mixture of residential and forest uses. Specifically:

North of the property are several privately owned parcels, including northeast of the subject property near Johnson Market Road tax lot 17-11-23-400 is zoned RR-10 and developed with a residence and three parcels west of tax lot 400 are zoned F-2 and developed with residences with two of the parcels in forest tax deferral. Northwest are three large-sized vacant privately owned parcels zoned F-1 and receiving forest tax deferral. One of the parcels has an approved conditional use permit for a large tract dwelling (17-11-00-2724) and tax lot 4300 has approval for a three lot partition (which requires dedication of Bull Springs Road), which is in the process of final plat review. East of the property is Johnson Market Road and southeast is a large nearly 270-acre parcel that the Assessor's records shows a dwelling. South is a large vacant 260-acre F-1 zoned parcel receiving forest tax deferral and west and southwest of the subject property is a large privately-owned vacant F-1 zoned parcel consisting of 1,306 acres and receiving forest tax deferral.

F. BACKGROUND—RELEVANT CASES

Several recent cases affect the applicant's proposal, which are referenced throughout the Staff Report. These cases include:

A-02-6 (MP-01-16/MA-02-4): An appeal from an administrative decision approving the applicants' (Tweedfam Investments, LLC and Hap Taylor & Sons, Inc.) modified request to partition a 1,907-acre parcel, which resulted in creating the subject parcel. The Hearings Officer affirmed the administrative decision on appeal.

Bull Springs Road Dedication, A-04-10/CU-04-6: An appeal of a Hearings Officer decision approving a conditional use permit to dedicate Bull Springs Road, a private roadway easement ("Loop Road"), and a segment of the U.S. Forest Service Sisters Mainline Road as Local Access Roads in the F-1 and RR-10 zones. The Deschutes County Board of Commissioners approved the road dedication subject to 13 Conditions of Approval. As of the date of the Staff Report, the road has yet to be dedicated to the public.

Hogensen large-tract dwelling, A-03-15 (CU-03-45): An appeal from an administrative decision approving a large-tract dwelling on a 320-acre parcel zoned F-1 and WA. The Hearings Officer affirmed the administrative decision subject to one condition in addition to the conditions included in the administrative decision. On appeal, LUBA remanded the decision to the County; however, their decision addresses several assignments of error that are relevant

to the subject proposed large-tract dwelling [*Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78, 97-98 (2004); *aff'd* 198 Or App 311 (2005)]. The County has yet to act on the remand.

- G. **PROPOSAL:** The applicant proposes to partition a 322-acre parcel into two parcels to separate its surface mining site from the bulk of the F-1 zoned portion of the parent parcel. The surface mining site, Site No. 296 on the County's Goal 5 inventory,² is an active mining and processing site. Parcel 2 will encompass the SM site and will be approximately 68 acres in size, consisting of both SM and F-1 zone, with a flag lot configuration that connects to the portion of the Sisters Mainline Road to be dedicated. The remaining Parcel 1 will be approximately 240 acres in size and be entirely zoned F-1. The applicant is also requesting conditional use approval for a large tract dwelling on proposed Parcel 1. The proposed building site envelope will be located in the southeastern portion of the property with yard setbacks that exceed 100 feet from all existing and proposed property lines. Access will be from the Bull Springs Road dedication, which currently is a private road and in the process of being dedicated to the public. Bull Springs Road connects to Johnson Market Road, a public road. Water will be served by a well and sewage disposal will be via an on-site disposal system.
- H. **PUBLIC AGENCY COMMENTS:** The Planning Division sent notice of the proposed land division to a number of public agencies and as of the date of the Staff Report received the following responses:

Deschutes County Road Department: The applicant is to meet the following conditions if this land use application is approved:

- a. Dedication of Bull Springs Road (CU-04-6/A-04-10) must be completed prior to final plat approval for this application.
- b. The realignment of Bull Springs Road with Johnson Market Road (CU-04-6/A-04-10) must be completed prior to final plat approval for this application
- c. Bull Springs Road along the subject parcels will need to be improved to the standard for partitions listed in DCC 17.48.170 (A) which states, "For a parcel size of 10 acres or larger, the minimum road improvement standard shall be 20 feet wide with five inches of aggregate surfacing (cinders are acceptable), the centerline of which coincides with the centerline of the right of way.
- d. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally

² Applicant incorrectly references surface mining site #296 in the Burden of Proof as site #298.

established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County Standards.

- e. All easements of record or existing rights-of-ways shall be noted on the final mylar.

In looking at the tentative partition, it does not appear that parcel 2 has frontage on the right-of- ways being dedicated as part of CU-04-6/A-04-10.

Deschutes County Building Safety Division: Building permits and proper plan review will be required for large tract dwellings.

Deschutes County Property Address Coordinator: The address of record for this property is: 18807 Bull Springs Road. This is subject to change. If this application is approved, the applicant's shall contact the Property Address Coordinator for new addresses.

Deschutes County Assessor: Currently under deferral.

As of the date of the Staff Report, the following agencies either had no comment or did not respond to the mailed notice: Bend Fire Department, Deschutes County Environmental Health, Watermaster—District 11, Pacific Power and Light, Qwest, Oregon Department of Fish and Wildlife, Oregon Department of Geology and Mineral Industries, USFS, Deschutes County Forester.

- I. **PUBLIC COMMENTS:** The Planning Division sent written notice of the land use applications to all property owners within 750 feet of the subject property. In addition the Public Hearing notice was published in the Bend Bulletin on December 11, 2005. The applicant also posted notice of the Land Use Action Sign on the property and the notarized Land Use Sign Affidavit shows the sign was posted on December 15, 2005. The Planning Division received one public comment from attorney Paul Dewey representing the Sisters Forest Planning Committee raising the following initial concerns about the proposal:

Initial concerns include whether both resulting lots meet the minimum lot sizes for the zone, whether this will have a significant impact on forest practices, whether this will have a significant impact on fire-fighting and whether the proposed location of the dwelling meets the Code criteria.

- J. **REVIEW PERIOD:** The Planning Division deemed this application complete and accepted it for review on December 16, 2005.

III. **CONCLUSIONARY FINDINGS:**

COMPLIANCE WITH MINOR PARTITION CRITERIA

Title 17, Deschutes County Subdivision/Partition Ordinance

A. Chapter 17.22, Approval of Tentative Plans for Partitions.

Section 17.22.020, Requirements for approval.

A. No application for partition shall be approved unless the following requirements are met:

- 1. Proposal is in compliance with Oregon Revised Statutes chapter 92, the applicable comprehensive plan and applicable zoning ordinance. A proposed partition is not in compliance with the zoning ordinance if it would conflict with the terms of a previously issued approval for a land use on the property or would otherwise create a nonconforming use on any of the newly described parcels with respect to an existing structure or use;**

FINDING: The proposed partition will be in compliance with ORS Chapter 92 if it is in conformance with Titles 17 and 18 of the County Code. The Comprehensive Plan and implementing zoning ordinance (DCC Title 18) allow the site to be divided into parcels that are at least 80 acres in size as prescribed in DCC Section 18.36.090. In addition, the findings below address relevant sections of the code including DCC Sections 18.52.060, 18.56.060 and 18.88.050. Staff also believes the partition will not conflict with the terms of any previous land use approvals for the subject property or create a nonconforming use on any of the proposed parcels.

- 2. Proposal does not conflict with existing public access easements within or adjacent to the partition;**

FINDING: An October 7, 2005 Preliminary Title Report submitted with the application identifies several easements within the property and are shown on the tentative plat. The proposed partition does not appear to conflict with any existing public access easements within or adjacent to the partition.

- 3. The partition is accessed either by roads dedicated to the public or by way of United States Forest Service or Bureau of Land Management roads where applicant has submitted a written agreement with the appropriate land management agency providing for permanent legal access to the parcels and any required maintenance. This provision shall not be subject to variance;**

FINDING: The partition is proposed to be accessed by portions of the Bull Springs Road dedication, which currently is comprised of a private road and USFS Sisters Mainline Road, but has Conditional Use approval to be dedicated to the public and staff is aware the applicant is in the process of completing the road dedication requirements. Bull Springs Road connects to Johnson Market Road, a road dedicated to the public. Since the Bull Springs Road dedication process has not been completed, the applicant is requesting a condition of approval be added requiring the dedication of Bull Springs Road prior to final plat approval as stated by the applicant below:

The declaration of dedication for the subject road dedication will be submitted to the County for execution prior to final plat approval. Thus, to ensure access via a public road, this partition approval can be conditioned upon execution of the declaration of dedication prior to final plat.

Staff agrees with the applicant to conditional approval requiring that Bull Springs Road be dedicated to the public prior to final plat approval, which will ensure the partition will be accessed by a road dedicated to the public.

4. An access permit can be obtained from either the County Public Works Department, the City Public Works Department or the State Highway Division;

FINDING: The applicant believes that no access permit is necessary as stated below:

No access permit is necessary to allow driveway access from the recently-dedication public road to the subject parcels. The access driveways for the SM site already exist, and the future access driveway for the proposed large tract dwelling is presently a dirt road off of the Loop Road, as depicted on maps attached to the Residential Site Analysis prepared by Mr. John Jackson of Singletree Enterprises. (Exhibit 5).

Staff believes the applicant has raised a question regarding whether this criterion is mandatory if the applicant will not be creating any new access points to a public road and requests the Hearings Officer's review. If the Hearings Officer finds this criterion is mandatory, then staff recommends adding a Condition of Approval requiring driveway access permits be obtained prior to final plat approval. From staff's perspective, the important issue is to ensure that for any new parcels created with driveway access onto a public road, that the new parcels can meet the driveway access standards in DCC 12.28, including required sight distance and safety standards, which are field checked by the Road Department.

5. Each parcel is suited for the use intended or offered, considering the size of the parcels, natural hazards, topography and access;

FINDING: The intended uses of the proposed parcels include surface mining on Parcel 2 and residential and forest uses on proposed Parcel 1. Each of these is addressed below:

Parcel Size

Parcel 1: Residential and Forest uses

The applicant proposes to establish a large-tract dwelling in the southeastern portion of the property and continue forest uses on proposed Parcel 1. Regarding the residential use, the size of Parcel 1 is 240-acres, which is consistent with the large tract dwelling criteria requiring that the subject property shall consist of at least 240 contiguous acres in one ownership. The parcel size is also large enough to accommodate the fire siting standards and yard setbacks in the F-1 zone. The applicant references the Hearings Officer's findings in the prior decision approving the applicant's request to partition the property [reference file numbers A-02-6 (MP-01-16, MA-02-4)] as stated below:

In the above-referenced case, the Hearings Officer concluded that the parent parcel would be suitable for residential use because it would meet the minimum size for large tract dwellings (240 acres), and was of a sufficient size to enable the property owner to satisfy the fire siting standards requiring fuel removal and reduction within a 130-foot radius of any proposed dwelling. At 240 acres, proposed Parcel 1 will continue to meet minimum size standards for large tract dwellings, and will be of a sufficient size to enable the property owner to site the proposed large tract dwelling in a location that will accommodate the fire siting standards. (See Residential Sites Analysis, Exhibit 5, and Forestry Assistance Stewardship Plan, Exhibit 6). In addition, the property was recently annexed into the Deschutes County Rural Fire Protection District #2. (Exhibit 3).

Regarding forestry use on Parcel 1, the applicant states the following:

In addition, Parcel 1 is also suitable for the intended forestry uses because it is well in excess of the minimum lot size for the F-1 zone. Deschutes County implements Statewide Planning Goal 4 (Forest Lands) and the related chapter of the County Comprehensive Plan by imposing an 80-acre minimum lot size in the F-1 zone. The purpose of the F-1 zone is to preserve forest lands, and the 80-acre minimum lot size ensures that parcels zoned F-1 maintain a size consistent with the management of the property for forest uses. The Hearings Officer confirmed in File No. MP-01-16 that the minimum lot size for the F-1 zone reflects the County's determination that forestry operations can be conducted successfully on parcels as small as 80 acres. (See Hearings Officer's Decision, File No. MP-01-16/A-02-6, p. 14). Because the proposed 240-acre F-1 parcel in this case greatly exceeds the 80-acre minimum lot size, the parcel is presumed to be suitable for forest use. The Forestry Assistance Stewardship Plan attached as Exhibit 6 details the Applicant's plans for Parcel 1, and confirms that the parcel can be managed for timber harvest, wildlife habitat, open space, wildfire management and other forest uses authorized by the F-1 zone.

Staff agrees with the applicant that the parcel sizes for residential and forestry uses are suitable for the proposed residential and forestry uses on proposed Parcel 1.

Parcel 2, Surface Mining Use

Proposed Parcel 2 will continue its use as an active surface mining site, #296. The parcel will consist of approximately 68 acres in size with the surface mining zone comprising about 40 acres. Staff agrees with the applicant that additional acreage north and south of the SM zone ensures that the surface mining site is not reduced in size (which is consistent with the dimensional standards in the SM zone) and provides a buffer for Parcel 1. Staff believes that the 68-acre size of proposed Parcel 2 is suitable for surface mining use.

Natural Hazards: The Hearings Officer found in A-02-6 that wildfire and snow accumulation are potential natural hazards to be analyzed under this criterion, which staff believes would apply to the applicant's proposal. Regarding fire, the Hearings Officer in A-02-6 made the following finding relative to dwellings in the forest zones:

With respect to fire, there is no question that dwellings in the forest zones create new wildfire ignition sources — e.g., structure tires, fireplaces, barbecues, lawnmowers, use and storage of flammable liquids and fireworks. In addition, the presence of such dwellings may cause firefighting efforts to be shifted from protecting timber and forestry equipment to protecting residential structures and people. Nevertheless, state statutes and administrative rules and the county's zoning ordinance allow dwellings in the F-1 Zone as long as they can satisfy the fire siting and design standards in Sections 18.36.070 and 18.36.080, and the conditional use approval criteria in Section 18.36.050. The latter provisions require the applicant for a dwelling in the F-1 Zone to demonstrate, among other things, that the dwelling will not "significantly increase the fire hazard, fire suppression costs or risks to fire suppression personnel."

The applicant submitted a conditional use application for a large tract dwelling to be sited in the southeastern portion of the property. The fire siting standards and conditional use criteria for siting a dwelling in the Forest Use zone are included below. In addition, the subject property is within the Deschutes County Rural Fire Protection District #2 (DCRFPD #2) and staff sent notice of the application to the Bend Fire Department and as of the date of this Staff Report has not received a response from the Fire Department. Staff believes the applicant has or can satisfy through the imposition of conditions, the fire siting standards and conditional use criteria for siting a dwelling in the Forest Use zone and, therefore, believes the site is suitable for residential and forestry use considering natural hazards.

Regarding the natural hazard of heavy snow accumulation, the applicant responds as follows:

The only potential natural hazard that could impede emergency access to a dwelling on Parcel 1 would be heavy snow accumulation. However, the parcel will be accessed via public roads, which are currently plowed by the Applicant to ensure unimpeded access to Surface Mining Site No. 298. Pursuant to Conditions 10 and 11 of the road dedication decision, File No. CU-04-6/A-04-10, the owners of property adjacent to the roads that were also parties to the dedication are responsible for maintaining the subject roads to ensure continuous access for emergency vehicles. For the reasons summarized herein, Parcel 1 is suitable for residential use.

Staff agrees with the applicant, that the Board's approval for the Bull Springs Road dedication (file number CU-04-6) requires the owners to maintain the dedicated road as stated in conditions number 10 and 11 below:

10. The owners of property adjoining the proposed road dedication that were parties to the application shall maintain the dedicated road. Prior to acceptance of the dedication, the applicants/owners shall submit to the Planning Division a written road maintenance agreement executed by the owners of all property adjoining the proposed road dedication.

11. The owners of property adjoining the proposed road dedication shall maintain the dedicated road so that at all times it meets the Bend Fire Department's minimum fire apparatus access road standards. Specifically, the dedicated road shall have an unobstructed width of not less than 20 feet, a uniform all-weather driving surface sufficient to support a 50,000-pound vehicle, a vertical clearance of not less than 13 feet 6 inches, turning radii not less than 45 feet, and gradient not exceeding 12 percent unless a variance is approved by the fire department.

The applicant was a party to the road dedication application and, therefore, is bound by the conditions above. Staff believes a condition of approval should be added that requires Bull Springs Road to be dedicated prior to final plat approval to ensure the maintenance of the roadways used to access the partition.

Regarding the surface mining use, staff believes the proposed partition does not affect the suitability of the site relative to wildfire hazard or snow hazards since the surface mining use exists and the partition will not change the size or use of the surface mining portion of the parcel.

Topography: The topography of the property ranges from relatively level to gently sloping, which staff believes is suitable for forestry, residential and surface mining uses.

Access: Access to the partition will be via Bull Springs Road onto Loop Road, and a portion of the Sisters Mainline Road, which have land use approval to be dedicated to the public. Staff believes that compliance with the Road Department's recommended conditions and with a condition of approval requiring Bull Springs Road to be dedicated

prior to final plat approval, that access will be suitable for residential, forestry, and surface mining uses.

Based on the above, staff believes the proposed parcels will be suitable for residential, forestry and surface mining uses.

6. All required utilities, public services and facilities are available and adequate and are proposed to be provided by the petitioner;

FINDING: The applicant provided the following in response to this criterion:

All services and facilities necessary to serve the surface mining use within proposed Parcel 2 already exist. No additional utilities/services are necessary to ensure the ongoing operation of the surface mining use. New utilities will be extended to the proposed large tract dwelling on Parcel 1, including electric, telephone, and a septic drainfield. Existing electricity and telephone services are available for nearby residences to the north of Bull Springs road, thereby indicating the availability of service in the area. As noted on the tentative partition plat, a private well already exists within the subject parcel. Well logs are attached as Exhibit 4. Septic site evaluations will be performed prior to development of the proposed dwelling. Finally, as noted above, the property is within the Deschutes County Rural Fire Protection District #2. (Exhibit 3)

Staff agrees with the applicant that electrical and telephone services are available considering the number of homes along Bull Springs Road. In addition, regarding access, a Condition of Approval should be added that requires the roads subject to the Bull Springs Road dedication to be dedicated prior to final plat to ensure access to the partition is available and adequate. Regarding septic, the applicant proposes an on-site septic system. Staff sent notice of the application to the Environmental Health Division and as of the date of this Staff Report has not received any comments. Finally, police protection would be provided by the Deschutes County Sheriff.

Based on these findings and the applicant's ability to conform to the conditions of approval specified above, staff believes the proposal can meet this criterion.

7. A water rights division plan, reviewed and approved by the appropriate irrigation district or the watermaster's office, if water rights are associated with the subject property;

FINDING: The applicant states the subject property has no water rights and each proposed parcel contains one exempt well as shown on the tentative partition plat.³ Staff also confirms the property is not located within an irrigation district. Per Final Plat requirements, 17.24.060, a statement of water rights must appear on the final plat.

³ Staff notes the Tentative Plat does not show an existing well on the surface mining parcel, proposed Parcel 2.

8. For partitions or portions thereof within one-half mile of SM zones, the applicant shows that a noise or dust sensitive use, as defined in Title 18 of the Deschutes County Code, can be sited consistent with the requirements of chapter 18.56 of Title 18, as demonstrated by the site plan and accompanying information required to be submitted under section 17.28.010(C) of this chapter.

FINDING: The subject property is partially zoned Surface Mining. The applicant is proposing to divide the property that will result in the Surface Mining zone being located in proposed Parcel 2. Therefore, as accurately pointed out by the applicant, proposed Parcel 1 will be entirely in the Surface Mining Impact Combining (SMIA) zone as it will be located within one-half mile of the SM zone. The Burden of Proof addresses the siting requirements for noise- and dust-sensitive uses in 18.56 and are included below in the Staff Report. Based on the analysis set forth below regarding siting requirements of 18.56, staff believes the proposed dwelling will be sited consistent with the SMIA code.

B. If the Planning Director determines that the proposed partition constitutes series partitioning, or if series partitioning has occurred in the past, then the Planning Director may refer the application to the hearings officer for a determination as to whether the application should be subject to the requirements of DCC 17.36.300, Public Water Supply System, and DCC 17.48.160, Road Development Requirements for Subdivisions.

FINDING: Deschutes County Code defines series partitioning as follows:

"Series partitioned lands" and "series partition" mean a series of partitions of land resulting in the creation of four or more parcels over a period of more than one calendar year.

The subject property was part of a previous three lot partition in MP-01-16, MA-02-4 (A-02-6). In addition, in the prior partition decision, the appellant, Sisters Forest Planning Committee submitted evidence "of at least seven partitions since 1994 that the county approved on land including and/or abutting the subject property" (reference page 16 of A-02-6). Staff believes the proposed parcel partition in conjunction with the prior partitions is a series of partitions resulting in the creation of four or more parcels over a period of more than one calendar year and, therefore, constitutes series partitioning. The applicant does not agree as stated below:

Given the time that has elapsed since the 2001 partition that created the parent parcel (MP-01-16), and the large size of the parcels proposed herein, this 2-lot partition should not qualify as a "series partition."

Staff believes the applicant has not correctly interpreted the code and requests the Hearings Officer to confirm or reject staff's conclusion that the proposed partition constitutes series partitioning.

Further, if the Hearings Officer finds the proposed partition constitutes series partitioning, staff is not referring the application to the Hearings Officer for a determination as to

whether the application should be subject to the requirements of DCC 17.36.300, Public Water Supply System, and DCC 17.48.160, Road Development Requirements for Subdivisions. Staff believes the addition of one home on 240 acres does not warrant the requirement for a public water supply system as defined in DCC 17.36.300⁴ or to meet the road development standards for a subdivision. The proposed Parcel 1 has an existing well that will serve the dwelling and Parcel 2 will continue to be devoted to surface mining use. In addition, staff agrees with the applicant that the proposed partition does not justify the imposition of subdivision road standards as stated below:

The resulting Parcel 1 will accommodate only one large tract dwelling, which does not justify the imposition of road standards typically reserved for subdivisions. Furthermore, the roads serving the partition have recently been improved to public road standards due to the dedication in CU-04-6/A-04-10. Thus, the roads are in good condition to serve the large SM and F-1 parcels resulting from the partition.

Therefore, staff is not referring the application to the Hearings Officer for a determination as to whether the application should be subject to the requirements of DCC 17.36.300, Public Water Supply System, and DCC 17.48.160, Road Development Requirements for Subdivisions.

B. Chapter 17.36, Design Standards.

Section 17.36.040, Existing Streets.

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

⁴ DCC defines public water system as follows:

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day or is a facility licensed by the State Health Division. A public water system is either a "community water system," a "noncommunity water system" or a "nontransient, noncommunity water system."

- A. *"Community water system" means a public water system which has 15 or more service connections used by year-round residents, or which regularly serves 25 or more year-round residents;*
- B. *"Noncommunity water system" means a public water system that is not a community water system;*
- C. *"Nontransient, noncommunity water system" or "NTNCWS" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.*

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

FINDING: The proposed partition is accessed via those roads subject to the Bull Springs Road dedication approval. The road, once dedicated, will be designed to meet County road standards and the Bend Fire Department's minimum fire apparatus access road standards.⁵ The County Road Department's comments recommend that Bull Springs Road be dedicated and the realignment of Bull Springs Road with Johnson Market Road be completed prior to final plat approval. In addition, the Road Department recommends the subject parcels be improved to the standards for partitions listed in DCC 17.48.170 (A) which states, "For a parcel size of 10 acres or larger, the minimum road improvement standard shall be 20 feet wide with five inches of aggregate surfacing (cinders are acceptable), the centerline of which coincides with the centerline of the right of way. The applicant believes that no additional improvements to the road are necessary ". . . *the partition will not result in a measurable increase in traffic. Rather, the partition will create only two new parcels, and the use of Parcel 2 will remain the same. Only Parcel 1 will accommodate a new use (one large tract dwelling), and the single new dwelling will not create significant trips. Thus, no additional improvements, beyond those completed as part of the recently approved road dedication (File No. CU-04-6/A-04-10), are necessary to accommodate the partition.*" Staff agrees with the applicant that the addition of the dwelling will have minimal effect on traffic on Bull Springs Road and traffic related to the surface mining use already is established. Therefore, staff recommends the Hearings Officer add a condition requiring the dedication of those roads subject to the Bull Springs Road dedication prior to final plat to ensure the roads are of adequate width to accommodate the traffic generated by the proposed partition as well as implement those standards and recommendations submitted by the applicant.

2. Section 17.36.160, Easements.

A. Utility Easements. Easements shall be provided along property lines when necessary for the placement of overhead or

⁵ Specifically, Condition number 11 of A-04-10, CU-04-6 relative to the Fire Department standards states:

11. *The owners of property adjoining the proposed road dedication shall maintain the dedicated road so that at all times it meets the Bend Fire Department's minimum fire apparatus access road standards. Specifically, the dedicated road shall have an unobstructed width of not less than 20 feet, a uniform all-weather driving surface sufficient to support a 50,000-pound vehicle, a vertical clearance of not less than 13 feet 6 inches, turning radii not less than 45 feet, and gradient not exceeding 12 percent unless a variance is approved by the fire department.*

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

FINDING: The applicant provided the following response to this criterion:

As part of the road dedication in File No. CU-04-6/A-04-10, the Applicant provided access and utility easements within the new public rights-of-way in Bull Springs Road and the Loop Road. Thus, if any additional utility lines are necessary to serve the dwelling in Parcel 1, new utility lines can be located in the conduit and utility trench installed to the dwelling site within the Loop Road right-of-way. Consistent with this criterion, the Loop Road generally follows the existing property line. No new utilities or utility easements are necessary for Parcel 2.

If the Hearings Officer approves the application, staff recommends the applicant be required to verify with the utility companies whether additional utility easements will be necessary for the partition, which all utility easements should be shown on the final mylar.

3. Section 17.36.170, Lots-Size and shape.

The size, width and orientation of lots or parcels shall be appropriate for the location of the land division and for the type of development and use contemplated, and shall be consistent with the lot or parcel size provisions of Titles 18 through 21 of this code:

FINDING: Staff believes the size, width, and orientation of proposed Parcel 1 is consistent with the 80-acre minimum lot size in the F-1 zone as well as the 240-acre large tract dwelling lot size and are appropriate for the location of the land division and the residential and forest uses contemplated. However, as discussed below, staff does not believe the 68-acre size of proposed Parcel 2 complies with the 80-acre minimum in the F-1 zone, and therefore, would not be consistent with the parcel size provisions of the F-1 zone.

4. Section 17.36.180, Frontage.

A. Each lot or parcel shall abut upon a public road for at least 50 feet, except for lots or parcels fronting on the bulb of a cul-de-sac, then the minimum frontage shall be 30 feet, and except for partitions off of U.S. Forest Service or Bureau of Land Management roads.

B. All side lot lines shall be at right angles to street lines or radial to curved streets wherever practical.

FINDING: The proposed partition abuts portions of Bull Springs Road, the Sisters Mainline Road, and the "Loop Road," which portions will be dedicated as part of the road

dedication approval for Bull Springs Road. Specifically, proposed Parcel 1 will abut Bull Springs Road, the Loop Road and the Sisters Mainline Road for at least 50 feet. Proposed Parcel 2 will abut the Sisters Mainline Road for 50 feet at the northern end of the flag lot configuration. Based on this information, staff believes the road frontage standards can be met for each parcel with a condition requiring the dedication of Bull Springs Road per approval CU-04-6/A-04-10.

5. Section 17.36.210, Solar access performance.

A. As much solar access as feasible shall be provided each lot or parcel in every new subdivision or partition, considering topography, development pattern and existing vegetation. The lot lines of lots or parcels, as far as feasible, shall be oriented to provide solar access at ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st. If it is not feasible to provide solar access to the southern building line, then solar access, if feasible, shall be provided at 10 feet above ground level at the southern building line two hours before and after the solar zenith from September 22nd to March 21st, and three hours before and after the solar zenith from March 22nd to September 21st.

FINDING: Staff believes that the proposed parcels sizes of 68 acres and 240 acres are sufficient size to provide adequate solar access for structures built on these parcels.

Section 17.36.260, Fire Hazards

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

FINDING: The proposed partition will have at least two access points, including Bull Springs Road, the Sisters Mainline Road, and the Loop Road.

Section 17.36.290, Individual wells.

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

FINDING: Water for both parcels will be supplied by existing individual wells. The Burden of Proof contains well logs documenting the depth and quantity of water available from these wells.

C. Chapter 17.44, Park Development.

Section 17.44.010, Dedication of land.

- A. *For subdivisions or partitions inside an urban growth boundary, the developer shall set aside and dedicate to the public for park and recreation purposes not less than eight percent of the gross area of such development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.***
- B. *For subdivisions or partitions outside of an urban growth boundary, the developer shall set aside a minimum area of the development equal to \$350 per dwelling unit within the development, if the land is suitable and adaptable for such purposes and is generally located in an area planned for parks.***

FINDING: Staff believes the subject property is not suitable and adaptable for park and recreation purposes and is not generally in an area planned for parks and, therefore, the applicant should not be required to set aside and dedicate land for public for park and recreation purposes.

Section 17.44.020, Fee in lieu of dedication.

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

FINDING: The applicant can comply with this criterion by paying a fee in lieu of dedicating land by the method set forth in this section. Staff agrees with the applicant that since only one dwelling unit is proposed for the property, the park fee would be \$350 to be paid to the Community Development Department before applying for final plat approval.

D. CHAPTER 17.48, DESIGN AND CONSTRUCTION SPECIFICATIONS

- 1. Section 17.48.170, Road Development Requirements- Partitions.

Road improvements within a partition and to a road maintained by a public agency shall be constructed prior to final approval of the partition, depending on the maximum parcel as follows:

- A. *For a parcel size of ten acres or larger, the minimum road improvement standard shall be twenty feet wide with five inches of***

aggregate surfacing (cinders are acceptable), the centerline which coincides with the centerline of the right of way.

FINDING: Staff agrees with the applicant that the roads to be dedicated meet and/or exceed the standards as stated by the applicant below:

The roads serving the partition exceed this standard because the subject roads have been dedicated to the public per File No. CU-04-6/A-04-10. Condition No. 11 of that decision requires the roads to be improved to the following standards:

"...the dedicated road shall have an unobstructed width of not less than 20 feet, a uniform all-weather driving surface sufficient to support a 50,000-pound vehicle, a vertical clearance of not less than 13 feet 6 inches, turning radii not less than 45 feet, and gradient not exceeding 12 percent unless a variance is approved by the fire department."

Thus, per the dedication decision, the roads serving the new parcels will meet the requirements for roads serving parcels of 10 acres or larger.

To ensure this criterion is met, a condition requiring Bull Springs Road to be dedicated prior to final plat approval should be added as well as those road standards for partitions that include a minimum road improvement standard of 20 feet wide with five inches of aggregate surfacing along the subject parcels.

E. DIMENSIONAL STANDARDS OF CHAPTERS 18.36, FOREST USE 1 ZONE (F-1) AND 18.88, WILDLIFE AREA COMBINING ZONE (WA) OF TITLE 18

Section 18.36.090, Dimensional Standards of the F-1 zone.

In an F-1 Zone, the following dimensional standards shall apply:

A. The minimum lot size is 80 acres; or.

FINDING: The proposed partition will create two parcels, Parcel 1 will consist of 240 acres and be entirely zoned F-1 and Parcel 2 will consist of 68 acres with the majority zoned SM and a portion to the north and south zoned F-1. Proposed Parcel 1 exceeds the 80 acre minimum lot size in the F-1 zone. However, the applicant did not address whether proposed Parcel 2 that will consist of 68 acres and is partially zoned SM and F-1 meets the minimum 80 acre lot size in the F-1 zone. In response to this criterion, the applicant states:

The proposed F-1 parcel (Parcel 1) is 240 acres, well in excess of the minimum parcel size.

Staff believes the minor partition results in creating two parcels in the F-1 zone where Parcel 2, while predominantly zoned SM, also is partially zoned F-1 and, therefore, is subject to the dimensional standards of the F-1 zone. As a result, staff believes proposed Parcel 2, consisting of a total of 68 acres, does not meet the 80-acre minimum

lot size in the F-1 zone. Staff requests the Hearings Officer to confirm or reject staff's conclusions.

Section 18.88.050, Dimensional Standards.

In a WA Zone, the following dimensional standards shall apply:

A. In the Tumalo, Metolius, North Paulina and Grizzly deer winter ranges designated in the Comprehensive Plan Resource Element, the minimum lot size for new parcels shall be 40 acres except as provided in subsection D of this section.

FINDING: The property is within the Tumalo Deer Winter Range. The proposal meets these criteria because it proposes to create parcels that exceed 40 acres in size. The proposed parcel sizes of 250 acres (Parcel 1) and 68 acres (Parcel 2) exceed the minimum standards of the WA Zones.

F. CHAPTER 18.52, SURFACE MINING (SM) ZONE

Section 18.52.060, Dimensional standards

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

FINDING: In the prior partition approval (A-02-6), the Hearings Officer made the following findings regarding this criterion, which staff believes is applicable to the subject partition application:

The parties and planning staff disagree on the meaning of the above-underscored language. The applicants and staff argue it limits application of this section to parcels located entirely within the SM Zone, furthering the apparent intent to assure existing mineral and aggregate resources identified in the comprehensive plan will be preserved. Appellant argues the provision also reflects the intent to limit the number of new parcels that surround an SM-zoned parcel and are subject to the Surface Mining Impact Area (SMIA) Zone and its development restrictions. Appellant argues that to carry out this intent, this section must apply to any parcel that is zoned SM in whole or in part. The Hearings Officer finds the plain language of this section supports staff's and the applicants' interpretation.

The record indicates the SM Zone on the subject property is limited to the boundaries of 40-acre SM Site 296. The tentative partition plan shows all of Site 296 and the SM Zone will be included within the boundaries of proposed Parcel 1. Therefore, the Hearings Officer finds the proposed partition will not reduce the size of an existing parcel in the SM Zone. Appellant's sixth assignment of error is denied.

Based on the above, staff believes the proposed partition will not reduce the size of the existing parcel in the SM zone.

COMPLIANCE WITH LARGE TRACT DWELLING CRITERIA

A. Chapter 18.36. FOREST USE ZONE – F-1

Section 18.36.030. Conditional uses permitted.

Y. Single-family dwellings or manufactured homes as specified in DCC 18.116.070, as pursuant to DCC 18.36.050.

FINDING: The applicant is proposing to establish a single-family dwelling on proposed Parcel 1 pursuant to the large tract dwelling criteria of DCC 18.36.050(C). The proposal's conformance with the criteria for a large tract dwelling is addressed below.

Section 18.36.040. Limitations on Conditional Uses.

A use authorized by Section 18.36.030 of this title must meet the following requirements. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.

A. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

FINDING: In reviewing this criterion, staff references the Hearings Officer's findings in the Hogensen decision (A-03-15, CU-03-45) and the subsequent 2004 LUBA decision [*Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78, 83-84 (2004)]. The applicant addressed this criterion on pages 14-15, which staff summarizes below:

Study Area: Based on the Hogensen's Hearings Officer's decision and LUBA decision, the applicant found, and staff agrees, that the study area encompasses the following area:

. . . the appropriate study area for this case includes the subject property, the adjacent parcels on all sides, and the Crown Pacific and USFS lands to the west that rely upon the Sisters Mainline Road and Bull Springs Road for access.

Accepted Forest Practices within the study area: The applicant describes the accepted forest practices in the study area to include:

. . . selective harvesting of trees, hauling logs by truck, burning of slash/debris, prescribed burning of forested areas, aerial chemical spraying, open space/wildlife habitat management, buffers, and outdoor recreational activities. The harvesting, hauling, and burning practices occur predominantly on the Crown Pacific lands to the west. The USFS lands to the west and the private F-1 and F-2 lands to the north, east, and

south are generally used for open space/wildlife habitat management, buffers, outdoor recreational activities, and rural dwellings. The F-1 parcel proposed for the large tract dwelling is used for fire prevention measures, open space, outdoor recreational activity, and conservation and enhancement of wildlife habitat. No active harvesting is currently occurring on the subject parcel due to the current quality and quantity of tree stock. Furthermore, as concluded by the Hearings Officer in Hogensen, the entire study area is not subject to intensive tree harvesting or chemical spraying, and does not have a large inventory of trees for harvest due to low productivity and past thinning operations. (See Hearings Officer's Decision, File No. A-03-15/CU-03-45, p. 7)

Nature of Impacts: The applicant identified the following impacts from the accepted forest practices described above, which staff agrees:

The potential impacts of the more intensive accepted forest practices that could create conflicts with a large tract dwelling include the following: noise and dust from harvesting and hauling of logs; smoke from slash and prescribed burning, and chemical drift from spraying.

Impacts on subject property and surrounding area: The Hearings Officer in the Hogensen case found the questions under this criterion are *"to what extent the presence of the proposed dwelling on the subject property would be impacted by these activities and whether such impacts would result in changes in accepted forest practices on the subject property and land in the study area that would "force a change in, or significantly increase the cost of" conducting these practices."*

The applicant believes the forest practices described above *"are generally concentrated on the Crown Pacific lands to the west. Because the proposed dwelling will be located in the southeastern corner of the site, it will be buffered from these practices by the 240 acres within the subject parcel. Therefore, conflicts are likely to be minimal" even if the applicant and surrounding property owners coordinate the ". . . timing of burning, chemical spraying, etc., such coordination does not constitute a "significant" change in forest practices, nor will it significantly increase the cost of such practices."*

In addition, the applicant states with regards to impacts on forest lands in the nearby area and the subject property:

With respect to the lower intensity open space, wildlife management, fire protection activities, and outdoor recreational activities occurring on the remaining F-1 and F-2 lands in the vicinity and on the subject parcel, the conflicts will also be minimal because such activities do not produce offensive characteristics such as noise and dust and are generally compatible with a single dwelling on a 240-acre parcel.

The minimal disturbance necessary to construct the proposed dwelling and improve the associated driveway will not preclude the continuation of these forestry activities on the large tract dwelling parcel, nor will it preclude selective harvesting if the Applicant chose to pursue more intensive forestry practices in the future. Attached as Exhibit 5 is a

Residential Sites Analysis prepared by a professional forester. Following the direction given by LUBA in Sisters Forest Planning Committee v. Deschutes County, 48 Or LUBA 78, 97-98 (2004); aff'd 198 Or App 311 (2005), the Applicant also worked with the professional forester to develop a Forestry Assistance Stewardship Plan to meet the dwelling siting criteria and to guide future activities on the subject property. (Exhibit 6). Taken together, these documents support the conclusion that the proposed dwelling will not limit forestry practices on the subject parcel or in the surrounding area due to a variety of factors, including the low density nature of the forest, the location of the dwelling site, the wildfire protection measures currently employed and recommended for the property, and the historical harvesting and forest maintenance practices in the study area.

In addition, with respect to potential conflicts on the roads shared by the dwelling and the surrounding F-1 and F-2 parcels, the addition of one dwelling to the area will not produce significant conflicts with forest vehicles. Rather, the minimal trips will be consistent with the current mixture of residential and forest uses that rely upon Bull Springs Road to access A.H. Johnson Road. Furthermore, the improvements to the roads mandated by the recent road dedication will ensure safer travel for all types of vehicles.

Staff agrees with the applicant based on the above, the addition of a single dwelling to the 240-acre parcel will not significantly change or significantly increase the cost of accepted forestry practices.

B. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

FINDING: The proposed dwelling will be located “in a natural clearing” on the property in the southeastern portion of the property. In support of meeting this criterion, the applicant submitted two reports prepared by consultant, John Jackson, “a professional forester with 28 years of experience in fire/fuels management in Central Oregon. Mr. Jackson studied the subject property and the surrounding forest, and produced the attached Alternative Sites Analysis and Forestry Assistance Stewardship Plan. (Exhibits E and F).” The first report describes the scope of work to include the development of a forest management Stewardship Plan and analysis that addresses both forest and fire related management needs and opportunities for the subject property. The second report is a “Forestry Assistance Stewardship Plan” created for the 240-acre proposed Parcel 1. The applicant believes these two reports conclude that the proposed dwelling can be sited in a manner as to not significantly increase fire hazards, fire suppression costs, or risks to fire suppression personnel stated below:

The chosen dwelling site is in a natural clearing. Therefore, the site characteristics create a natural fuel break for the dwelling. In addition, the Forestry Assistance Stewardship Plan details the measures that can be taken by the landowner to reduce fire hazards, including: maintain adequate fuel breaks, reduce “ladder fuels,” manage appropriate stand density, maintain high tree crowns, select appropriate fire-safe building materials, etc. The reports also note that the chosen dwelling site is

adjacent to the historical Old Railroad Grade Road and the recently dedicated public Loop Road. The Loop Road is improved to public road standards, which ensures quick and efficient access for emergency vehicles.

Not only will the Applicant implement the measures recommended in the Forestry Assistance Stewardship Plan, the Applicant must also comply with the fire protection standards of DCC 18.36 and the standards of the Forestland Urban Interface Fire Protection Act. Both sets of standards acknowledge that dwellings can be safely sited in forested areas so long as mitigation measures are taken to reduce fire hazards. The Forestland Urban Interface Fire Protection Act, set forth in ORS 477.015 to 477.061 and OAR 629-044-1000 to 629-044-1110, requires property owners of lands classified under the Act to comply with fire protection standards. The standards generally prescribe size and maintenance requirements for fuel break areas around structures and driveways, requirements regarding the reduction of limbs overhanging structures, storage of flammable materials at a certain distance from structures, removal of potential fuels from under deck areas, etc. As required by the Act, the Applicant will seek certification of compliance following construction of the proposed dwelling. This, combined with compliance with the Forestry Assistance Stewardship Plan and the general fire siting standards of DCC 18.36, will ensure the dwelling does not significantly increase fire hazards in the area.

Consistent with *Sisters Forest Planning Committee v. Deschutes County*, the Applicant expects that this decision will be conditioned upon implementation of the Forestry Assistance Stewardship Plan and the fire safety standards of DCC 18.36.070. If those provisions conflict or if the fire safety standards of DCC 18.36.070 are more detailed or stringent than the Plan, the standards of 18.36.070 shall control, as required by LUBA and the Court of Appeals.

Based on the above as well as the information contained in the two reports by prepared by John Jackson, staff agrees with the applicant that the proposed dwelling will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel and recommends a condition be added to implement the Forestry Assistance Stewardship Plan and the fire safety standards of DCC 18.36.070.

C. Prior to final approval of any use listed in Section 18.36.030, the land owner shall sign and record in the County Clerk's Office a written statement recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules.

FINDING: If approved, the Planning Division will prepare such a statement for signature by the property owner. Staff recommends that a condition of approval be added requiring the owner to sign, notarize and record this statement and submit a copy of the recorded document to the Planning Division prior to issuance of building permits. The applicant agrees to sign and record such a document.

3. Section 18.36.050. Standards for Single-Family Dwellings.

A. General Provisions.

1. Dwellings listed as a conditional use under Section 18.36.050 of this chapter shall meet the following standards:

a. One of the alternative tests set out in subsections (B) (lot of record dwelling), (C) (large tract dwelling), or (D) (template dwelling) of this section;

b. If the lot or parcel is part of a "tract," the remaining undeveloped lots or parcels of the tract shall be consolidated into a single lot or parcel, or the applicant shall sign and record with the County Clerk covenants, conditions and restrictions (on a form substantially similar to that set forth in Section 18.36.140) prohibiting the siting of a dwelling on the undeveloped portions of the tract. Such covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by the County Planning Director, or his authorized representative.

c. No other dwellings shall be located on the tract.

FINDING: The applicant is seeking approval of a large tract dwelling as set forth in subsection 18.36.050(C). The subject parcel will be part of a "tract" because Parcels 1 and 2 resulting from the proposed partition will be in the same ownership.⁶ The applicant agrees to sign and record with the County Clerk a restriction similar to that set forth in DCC 18.36.140 prohibiting the siting of a dwelling within Parcel 2, which staff recommends be added as a condition of approval. Consistent with subsection "c," no other dwelling is located within the subject tract.

d. The applicant shall provide evidence that any domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule.

For purposes of this section, evidence of a domestic water supply means:

1. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor under the purveyor's rights to appropriate water; or

2. A water use permit issued by the Water Resources Department for the use described in the application; or

3. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the

⁶ Deschutes County Code, 18.04, defines tract to mean:

"Tract" as used in DCC 18.16, 18.36 and 18.40, means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

applicant shall submit the well construction report to the county upon completion of the well.

FINDING: In response to this criterion, the applicant states “As allowed by subsection (iii), the water supply for the proposed dwelling is an exempt well per ORS 537.545. The well log for the existing well is attached as Exhibit 4.” Based on this information, staff believes this criterion is satisfied.

e. If road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management or the U.S. Forest Service, then the applicant shall provide proof of long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

FINDING: The proposed dwelling will be accessed by roads subject to the Bull Springs Road dedication. To ensure this criterion is met, staff recommends that Bull Springs Road be dedicated prior to final plat approval.

2. In addition, dwellings listed as a conditional use under Section 18.36.030(Y) of this chapter shall be subject to the following standards or conditions:

- a. The conditional use standards set forth in Section 18.36.040;***
- b. The siting criteria set forth in Section 18.36.060;***
- c. The fire siting standards set forth in Section 18.36.070;***
- d. The fire safety design standards for roads set forth in Section 18.36.080;***
- e. The stocking requirements set forth in Section 18.36.085, if applicable; and***
- f. Any other provisions made applicable by this title or the comprehensive plan.***

FINDING: The standards of Section 18.36.040 have been addressed above. The siting, design, and stocking standards of the other sections are addressed below. The Comprehensive Plan is addressed through the provisions of Title 18, which must, by law, implement the acknowledged comprehensive plan.

3. Dwellings in forest zones shall not be subject to conditional use standards.

C. Large Tract Dwelling. For approval of a single-family dwelling under DCC 18.36.050(C), the subject property shall consist of at least 240 contiguous acres in one ownership.

FINDING: The proposed dwelling will be sited on a 240-acre parcel, which is consistent with this criterion.

4. Section 18.36.060. Siting of dwellings and structures.

All new dwellings and structures approved pursuant to section 18.36.030 or permitted under section 18.36.020 shall be sited in accordance with this section 18.36.060 and section 18.36.070. Relevant physical and locational factors including, but not limited to, topography, prevailing winds, access, surrounding land use and source of domestic water shall be used to identify a site which:

A. Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;

B. Ensures that forest operations and accepted farming practices will not be curtailed or impeded;

FINDING: In response to this criterion, the applicant referenced the 2004 LUBA case that requires the consideration of other potential dwelling sites for this criterion. As a result, the applicant analyzed three sites using physical and locational factors, such as topography, prevailing winds, access, surrounding land uses, domestic water sources, and proximity to roads existing as of August 1992 (due to the WA zone criterion). In addition, the Burden of Proof contains a Residential Sites Analysis conducted by John Jackson, a professional forester, to further evaluate the potential sites based upon the characteristic identified in the siting criteria (reference Exhibit 5 of application). The applicant states the following:

The subject parcel is relatively flat, sloping gently from southwest to northeast. Therefore, topography is not a significant factor. However, the Applicant chose the subject site because it is naturally flat and is located in a clearing in the southeast corner of the property. The aerial photo of the property included in the Alternative Sites Analysis and the Site Plan (Exhibit G) reveal that the site is unique because it provides a large clearing to accommodate a dwelling and ensure adequate fire breaks. However, buffering from surrounding land uses is then provided by the trees surrounding the clearing, which are located within the parcel and can therefore be maintained by the landowner for fire protection, buffering, and wildlife habitat.

Furthermore, the clearing is bisected by an existing road, the historic Old Railroad Grade Road, and is adjacent to the recently dedicated Loop Road. An existing dirt driveway leads to the site, thereby reducing the need for future grading and road construction. Thus, because the site has excellent access for emergency vehicles, the proposed dwelling will not increase risk of wildfire. This minimizes significant impacts on adjacent forest lands. Similarly, the Loop Road runs to the east and south of the site, providing a fire break between the site and the forest parcels to the east and south. Finally, the site is also adjacent to an existing well. This ensures adequate water for fire protection, further minimizing fire risk and reducing impacts on adjacent lands.

With respect to the surrounding land uses, the lands on all sides of the parcel are used for forest uses (timber management, open space, wildlife habitat, etc.) and rural residential uses. Parcel 2, created by the partition requested in this application, is a surface mining parcel. Otherwise, the parcels on all sides of Parcel 1 are relatively homogenous. However, rural

development is concentrated to the north and east, and the largest forest tracts are located to the west. By placing the site on the east side of the parcel, the Applicant has placed the majority of the forestlands within the parcel between the dwelling site and the surrounding forest uses to the west. As noted above, the Loop Road runs along the eastern and southern boundaries of the parcel, providing a fire break and separating the dwelling site from the forest lands to the east and south. Thus, compared to other potential locations within the parcel, a dwelling site on the east end of the parcel will have the fewest impacts on forest uses on surrounding properties. The Applicant considered sites within the northern portion of the parcel. However, those sites do not enjoy the natural clearing shown on Site #2, do not have an existing well, and would require additional clearing for access and the building envelope. In addition, Site #3 would be closer to the forest uses to the west, thereby increasing the potential for conflict and fire danger from the denser fuels on adjacent parcels.

Based on the above, in addition to no nearby lands zoned agricultural, as well as the Residential Sites Analysis conducted by the professional forester John Jackson, staff believes the proposed dwelling site will have the least impact on adjacent forest uses.

C. Minimizes the amount of forest lands used for the building site, road access and service corridors; and

FINDING: The proposed dwelling site is located in a natural clearing bisected by an old logging road. In addition, the site is also adjacent to the Loop Road, which runs along the south and east of the site. Therefore, staff agrees with the applicant that the preferred site will minimize the amount of clearing required for a building site, road access and service corridors.

D. Consistent with the applicable provisions of section 18.36.070, minimizes the risks associated with wildfire.

FINDING: Section 18.36.070, fire siting standards for dwellings, is addressed below. In addition, the applicant has sited the proposed dwelling in a naturally cleared area, which is separated from the majority of the large forest tracts to the west by the forest lands within the subject parcel and the adjacent surface mining parcel as well as the Loop Road that acts as a fire break. If approved, the applicant should be required to implement the fire siting standards in section 18.36.070 as well as those recommendations contained in the Forestry Assistance Stewardship Plan.

Section 18.36.070. Fire siting standards for dwellings and structures.

The following fire siting standards shall apply to all new dwellings and permanent structures (including permitted uses):

A. Access.

1. If a water supply, such as a swimming pool, pond, stream or lake, is available and suitable for fire protection or is required under this section, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall be constructed and maintained to accommodate the maneuvering of fire fighting equipment during the fire season. Permanent signs shall be

posted along the access route to indicate the location of the emergency water source.

FINDING: The applicant states, and staff agrees, the residential parcel contains no emergency surface water source as described in this criterion. The site does contain an existing well, which the applicant has selected in the dwelling site, in part, due to its proximity to the well.

2. Road access to the dwelling or structure shall meet the road design standards described in section 18.36.080 of this chapter.

FINDING: Compliance with the road access standards is addressed below. The applicant also adds "the recently dedicated Loop Road and Bull Springs Road provide public road access to the site, in conformance with the road design standards."

B. Firebreaks.

1. Primary Firebreak. Prior to use, owners of dwellings and structures shall construct a primary firebreak, not less than 10 feet wide, containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials.

2. Secondary Firebreak. Owners of the dwellings and structures shall construct a secondary firebreak of not less than 20 feet outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.

3. Fuel Break. Owners of the dwellings and structures shall maintain a fuel break extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed. The fuel break shall be completed prior to the beginning of the coming fire season.

4. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.

FINDING: In response to the fire break criteria, the applicant provides the following:

As discussed above and in the Alternative Sites Analysis, the proposed dwelling site is located in a clearing approximately 250 feet by 450 feet. Thus, this natural clearing ensures that the dwelling can meet the fire and fuel break standards with minimal disturbance of forestland. Furthermore, consistent with this standard, the Forestry Assistance Stewardship Plan

recommends the maintenance of a 5-acre fuel treatment area around the dwelling. Both the above-quoted standards and the Plan will guide the creation of fire and fuel breaks around the dwelling.

Staff believes if the proposal is approved, that conditions of approval be added reflecting the fire break standards as well as implementing the measures recommended in the Forestry Assistance Stewardship Plan. As previously mentioned, the applicant also intends to comply with the standards of the Forestland Urban Interface Fire Protection Act (ORS 477.015 to 477.061 and OAR 629-044-1000 to 629-044-1110)

C. Single-family dwellings, caretaker residences and private accommodations for fishing shall not be located on hillsides steeper than 30 percent and containing flammable fuels.

FINDING: As indicated on the submitted topographic site plan, the slope of the proposed home site does not exceed 30 percent, which is consistent with this criterion.

D. The applicant for a single-family dwelling, caretaker residence or private accommodations for fishing shall obtain an address from the county address coordinator and shall display that number in a location of the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.

FINDING: Staff recommends adding a condition that reflects the addressing standards above.

E. Structural Standards.

1. All dwellings and structures shall use noncombustible or fire resistant roofing materials. This means roofing material identified as Class A, B or C in the Oregon Uniform Building Code. Roof sprinklers are not an acceptable alternative to this standard.

2. If the dwelling or structure has a chimney, it shall have a spark arrester.

FINDING: The applicant did not provide information regarding the materials used for the proposed dwelling or whether the dwelling would have a chimney. To ensure these criteria are met, staff recommends adding a condition reflecting these standards.

F. Fire Protection. Single-family dwellings, caretaker residences and private accommodations for fishing shall be located upon a parcel for which fire protection services are available or where alternative protective measures are authorized by this subsection.

1. For the purposes of this section fire protection services are available if the parcel is located within the boundaries of a fire protection district or residential fire protection service is provided by contract, as evidenced by a written, signed contract.

FINDING: The subject property is located within the Deschutes County Rural Fire Protection District No. 2. The applicant provided documentation that demonstrates the property has been annexed in the Fire Protection District (reference Exhibit 3).

Section 18.36.080. Fire safety design standards for roads.

The following standards apply to all roads and driveways, except for private roads accessing only commercial forest uses, which access uses permitted under section 18.36.020 or approved under section 18.36.030 of this title.

A. Roads, bridges and culverts shall be designed and maintained to support a minimum gross vehicle weight (GVW) of 50,000 lbs. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 lb. GVW standard shall be provided by a professional engineer registered in Oregon.

B. Access roads shall have an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, and provide an all-weather surface.

C. Turnarounds shall have a minimum of 50 feet of turn radius with an all-weather surface and be maintained for turning of fire fighting equipment.

D. Road grades should not exceed eight percent, with a maximum of 12 percent on short pitches. Variations from these standards may be granted when topographic conditions make these standards impractical and where the local fire protection district states their fire fighting equipment can negotiate the proposed road grade.

FINDING: Dedication of Bull Springs Road will result in the road being built to the above standard, with the exception of the 50-foot turning radius, as specified in Condition number 11 stated below:

11. *The owners of property adjoining the proposed road dedication shall maintain the dedicated road so that at all times it meets the Bend Fire Department's minimum fire apparatus access road standards. Specifically, the dedicated road shall have an unobstructed width of not less than 20 feet, a uniform all-weather driving surface sufficient to support a 50,000-pound vehicle, a vertical clearance of not less than 13 feet 6 inches, turning radii not less than 45 feet, and gradient not exceeding 12 percent unless a variance is approved by the fire department.*

In addition, the applicant "expects that the dwelling approval will include a condition requiring the driveway to comply with these standards as well. Because the driveway is

located within a natural, flat clearing, there are no obstacles to compliance with these standards.” If approved, staff recommends a condition requiring the driveway to meet the fire safety design standards described above, including the 50-foot turning radius.

Section 18.36.085. Stocking requirement.

All dwellings approved under DCC 18.36.050 shall be subject to the provisions of DCC 18.36.085.

A. Stocking Requirement.

1. Dwellings approved under DCC 18.36.050 shall include a condition requiring the owner to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements specified in Department of Forestry administrative rules (Oregon Administrative Rules 629-24-400 et. seq.) in force at the time the approval is granted.

2. If the lot or parcel is more than 30 acres, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules.

FINDING: In response to the above criteria, the applicant states the following:

As detailed in the Alternative Sites Analysis and the Forestry Assistance Stewardship Plan, the majority of the parcel is fully stocked with Ponderosa pine consistent with the site capacity of the land. However, the 35-acre area delineated as “Forest Type 2” in the Plan is understocked due to thermal limitations (the area is within a “frost pocket” with little overstory vegetation to provide thermal protection for seedlings. The Forestry Assistance Stewardship Plan recommends measures to maintain and increase a healthy stock within the parcel, including pre-commercial thinning and brush management to reduce moisture competition, planting of frost-tolerant lodgepole pine in the frost pocket area, etc. (See Section 3, p. 2 of Forestry Assistance Stewardship Plan).

Staff believes that if the dwelling proposal is approved, that a condition be added to reflect the above stocking requirements.

B. Reporting Requirements.

1. The Planning Director or his designee shall notify the County Assessor of any stocking requirement condition at the time the dwelling is approved.

FINDING: The Assessor’s Office received notice of this application and will receive notice of the decision, thus satisfying this criterion.

2. The property owner shall submit a stocking survey report to the County Assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required under Department of Forestry rules. The assessor shall inform the

Department of Forestry in cases where the property owner has not submitted a stocking report or where the survey report indicates that minimum stocking requirements have not been met.

FINDING: As previously mentioned, if approved a condition should be added to reflect the above criterion.

3. Upon notification by the assessor, the Department of Forestry shall determine whether the tract meets minimum stocking requirements of the Forest Practices Act. That decision shall be solely the decision of the Department of Forestry. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to Oregon Revised Statutes 321.359 and impose the additional tax pursuant to Oregon Revised Statutes 321.372.

The tax penalty imposed by the assessor under DCC 18.36.085 shall be the only sanction for failure to meet stocking requirements.

FINDING: In response to this criterion, the applicant states that its professional forester "obtained ODF approval of the Forestry Assistance Stewardship Plan (Exhibit 6) and will continue to work with ODF to confirm compliance with this criterion."

Section 18.36.090. Dimensional standards.

C. Building Height. No nonagricultural building or structure shall be erected or enlarged to exceed 30 feet in height, except as approved under section 18.120.040.

FINDING: The applicant did not address this criterion. However, compliance with this criterion will be verified upon application for the building permit.

Section 18.36.100. Yards and setbacks.

A. The front yard setback shall be 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector and 100 feet from a property line fronting on an arterial.

B. Each side yard setback shall be a minimum of 25 feet, except a parcel or lot with a side yard adjacent to zoned forest land shall have a minimum side yard of 100 feet.

C. Rear yards shall be a minimum of 25 feet, except parcels or lots with rear yards adjacent to zoned forest land shall have a minimum rear yard of 100 feet.

D. The setback from the north lot line shall meet the solar setback requirements in section 18.116.180 of this title.

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 chapter 15.04 of the Deschutes County Code shall be met.

FINDING: Staff believes the applicable setbacks include: a 40-foot front yard setback from the Bull Springs Road dedication and side and rear yards of each 100 feet since all or a portion of the side and rear yard setbacks are adjacent to zoned forest land. The applicant did not address the yard standards in the Burden of Proof. Based on the site plan submitted with the application (Exhibit 7), the proposed building envelope will exceed 100 feet from all property lines. Solar setback can be confirmed at the time of the building permit review; however, staff notes the property is large enough to accommodate solar requirements.

B. Chapter 18.88. WILDLIFE AREA COMBINING ZONE - WA

Section 18.88.040. Uses permitted conditionally.

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

FINDING: The proposed dwelling is permitted as a conditional use in the F-1 zone. Because it is allowed conditionally in the F-1 zone and not a use listed under DCC 18.88.040(B), it is allowed in the WA combining zone.

Section 18.88.060. Siting Standards.

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

FINDING: As previously indicated, the proposed building site exceeds the setback standards of the F-1 zone, therefore meeting the criterion.

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...*

C. *For purposes of DCC 18.88.060(B):*

- 1. *A private road, easement for vehicular access or driveway will conclusively be regarded as having existed prior to August 5, 1992 if the applicant submits any of the following:***
 - a. *A copy of an easement recorded with the County Clerk prior to August 5, 1992 establishing a right of ingress and egress for vehicular use;***
 - b. *An aerial photograph with proof that it was taken prior to August 5, 1992 on which the road, easement or driveway allowing vehicular access is visible;***
 - c. *A map published prior to August 5, 1992 or assessor's map from prior to August 5, 1992 showing the road (but not showing a mere trail or footpath).***
- 2. *An applicant may submit any other evidence thought to establish the existence of a private road, easement for***

vehicular access or driveway as of August 5, 1992 which evidence need not be regarded as conclusive.

FINDING: In response to the WA siting criterion, the applicant states the following:

The attached Residential Sites Analysis contains a 1969 map showing that the preferred dwelling site (Site #2) is located within 300 feet of a road existing as of August, 1992. (Exhibit 5). The subject road is an old railroad grade that was later converted to a logging road, and is referred to as the "Old Railroad Grade Road." In a recent large tract dwelling case regarding property to the north of the subject site, the County determined that the Old Railroad Grade Road was a legitimate road for purposes of compliance with this criterion. (See Hogensen large tract dwelling approval, File No. A-03-15/CU-03-45; Tax Lot 4310, Township 17S, Range 11E). On appeal, LUBA confirmed this. Sisters Forest Planning Committee v. Deschutes County, 48 Or LUBA 78, 97-98 (2004); aff'd 198 Or App 311 (2005).

As stated above, a map published prior to August 5, 1992 showing the Old Railroad Grad Road can be used to conclusively show the road/vehicular access existed prior to August 5, 1992, which staff believes the applicant has provided through the submittal of the 1969 map attached to the Residential Site Analysis study. In addition, reviewing the site plan submitted with the application (Exhibit 7), staff notes that most, but not all, of the proposed building footprint will be located within 300 feet of the Old Railroad Grade Road. If approved, staff believes a condition should be added that requires the applicant to submit a site plan that shows the proposed home, including decks and porches are located entirely within 300 feet from the Old Railroad Grade Road.

Section 18.88.070. Fencing Standards.

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 Burden of Proof did not indicate whether new fencing is proposed as part of the application. To ensure compliance with the WA fencing standards, staff recommends that a condition be added requiring that any fencing established as part of this approval to comply with the standards of this section.

C. **CHAPTER 18.56 SURFACE MINING IMPACT AREA COMBINING ZONE (SMIA)**

Section 18.56.050. Conditional uses permitted.

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

FINDING: The proposed dwelling is a use permitted conditional in the F-1 zone and, therefore, subject to all conditions of the underlying zone as well as the conditions of the SMIA Zone.

Section 18.56.070. Setbacks.

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

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

FINDING: The site plan submitted with the application along with the Assessor's tax map information, shows the proposed building envelope will be located 1,405 feet southeast from the surface mining zone for Surface Mining Site 296.

Section 18.56.100. Site Plan Approval Criteria.

* * *

C. The Planning Director or Hearings Body may grant or deny site plan approval and may require such modifications to the site plan as are determined to be necessary to meet the setbacks, standards and conditions described below.

D. The site plan shall be approved if the Planning Director or Hearings Body finds that the site plan is consistent with the site-specific ESEE analysis in the surface mining element of the Comprehensive Plan and that the proposed use will not prevent the adjacent surface mining operation from meeting the setbacks, standards, and conditions set forth in Sections 18.52.090, 18.52.110, and 18.52.140, respectively.

FINDING: The following findings address the proposal's consistency with the site-specific ESEE analysis for Surface Mining Site No. 296. In addition, these findings will address how the proposed residence will not prevent the mining operation occurring at Surface Mining Site No. 296 from meeting the applicable setbacks, standards, and conditions set forth in Chapter 18.52, Surface Mining zone.

Conformance with ESEE Analysis in the Comprehensive Plan

The “Program to Meet the Goal” of ESEE (Economic, Social, Environmental, and Energy) analysis adopted by the county for Surface Mining Site No. 296 relative to the SMIA zone states the following:

26. *The Board finds that imposition of a Surface Mining Impact Area (SMIA) combining zone as a one—half mile buffer surrounding the SM zone, as set forth in Surface Mining Ordinance 90-014, will further protect the cinder resource and the Board so zones the one-half mile area surrounding the SM zone, except to the extent that such buffer area would extend inside an adjoining county or the urban growth boundary of the City of Bend or Redmond. The Board finds that the SMIA zone limits conflicting uses as follows:*
 - a. *New conflicting “noise-sensitive” and “dust—sensitive” uses, such as single—family dwellings, may be sited within the SMIA zone only if the applicant has signed a waiver of remonstrance precluding protest of any surface mining activities, and closer than one-quarter mile to storage and processing sites only if the applicant can demonstrate that the proposed use will not cause a mining operation to violate the siting standards; and*
 - b. *In all cases new conflicting “noise sensitive” and “dust sensitive” uses must be located no closer than 250 feet to an SM zone.*

The Board finds that these provisions satisfy the ESEE condition that residential and other development be subject to setbacks. The Board finds that such a provision is sufficient to protect the cinder resource from conflicting future development.

FINDING: As a Condition of Approval, the applicant will be required to sign a Waiver of Remonstrance Easement for Surface Mining Site No. 296. In addition, the proposed building envelope will be situated over 1,500 feet from the surface mining activities. In

between the subject property and surface mining operations is dense pine tree growth that aids in buffering the mining operations from the proposed residential use.

Applicable siting standards

FINDING: In response to this criterion, the applicant provides the following:

DCC 18.52.090(A) requires all surface mining activities and uses, including structures, to be located and conducted at least 250 feet from a noise-sensitive or dust-sensitive use or structure. DCC 18.52.090(B) requires storage and processing of mineral and aggregate material, and storage of operational equipment which creates noise and dust, to be at least one-quarter mile from any noise or dust sensitive use or structure existing on the effective date of Ordinance No. 90-014. As noted above and shown on the site plan (Exhibit G), the proposed dwelling site will be approximately 1,730 feet from the SM site. Therefore, the dwelling will not prevent the surface mining operation from meeting the setbacks of DCC 18.52.090.

DCC 18.52.110 sets forth a variety of operating and siting standards for SM uses. The majority of these standards are unrelated to and unaffected by the proposed large tract dwelling on Parcel 1. DCC 18.52.110(B) requires the SM operator to screen the SM uses from noise and dust sensitive uses in existence on the date of the SM ordinance. The proposed dwelling is a new use and therefore the screening requirements do not apply. However, the dwelling is over 1,730 feet from the SM site and is separated from the site by intermittent ponderosa pine clusters. Thus, the dwelling site has been chosen in part due to the fact that is well screened from the SM site.

Finally, DCC 18.52.140 sets forth standards for the crushing, processing, and sale of minerals. The proposed dwelling site will not affect the SM operator's ability to meet these standards.

In addition to those siting standards described above, staff believes the proposed dwelling should be evaluated against the State Department of Environmental Quality (DEQ) standards relative to air quality and noise.

Air Quality

The area of mining activity is located over 1,500 feet from the proposed mine. Based on the distance between the proposed dwelling from the mining activities in the pit and the intervening vegetation consisting of thickly wooded mature pine trees, staff believes the proposed dwelling will not prevent the surface mine from meeting DEQ air quality standards.

Noise

This subsection requires a mining operation to not create noise from vehicles, equipment, or accessory uses which are audible off the site and which exceed DEQ noise control standards. Based on DEQ noise tables, staff estimates the trucks, dozer,

and loader used on the site generate 86 dBA (Decibels, A-weighted scale) of noise on the site.

Noise decreases with distance from a source according to the following noise attenuation formula used by DEQ:

$$20 \log D/50$$

The letter D represents the distance between the source of noise and the location where noise is heard. Staff estimates that, based on the site plan submitted with the application and a year 2000 aerial photograph of the area that shows the subject property and surface mining activities occurring on Site No. 296, the proposed dwelling will be about 1,500 feet from current mining activities. Using the attenuation formula, staff finds the noise level drops by 30 dBA ($20 \log 1,500/50$) by the time noise generated at the mining site reaches the applicant's proposed homesite. Therefore, staff estimates the noise level at the proposed homesite will be 56 dBA (86 dBA - 30 dBA) due to current operations. However, the distance factor does not account for the intervening dense tree cover, which would further reduce the noise levels.

Because of variations in equipment and topography between the mining site and the dwelling site, and atmospheric conditions, the attenuation formula is considered accurate to no more than +/- 2 dBA. Therefore, staff finds the resultant noise level at the proposed homesite due to current mining activity to be between 58 to 56 dBA. Noise generated at this mining site is required to meet the standards found in Table 7 of OAR 340-35-035, for existing industrial sources of noise. This table sets forth the L50, L10, and L1 noise levels between the hours of 7 a.m. and 10 p.m. to be 55 dBA, 60 dBA, and 75 dBA, respectively. (L50, L10, and L1 refer to the level of noise that is expected to occur during 50%, 10%, and 1% in any given hour, or 30 minutes, 6 minutes, or 36 seconds, respectively.)

Due to the type of equipment and the duration of particular phases of activity during mining of cinders and aggregate, the county considers the L10 noise level for medium duration noises to be the appropriate standard to use for evaluating mining operations. The L10 standard is 60 dBA, based on the above mentioned Table 7. As indicated above, staff estimates that noise can be expected to reach a level of up to 58 dBA at the proposed dwelling. This noise level is a potential maximum based on the variability of the attenuation formula.

Based on the above noise attenuation results the proposed dwelling will not prevent the surface mine from meeting DEQ noise standards.

4. Section 18.56.120, Waiver of Remonstrance.

The applicant for site plan approval in the SMIA Zone shall sign and record in the Deschutes County Book of Records a statement declaring that the applicant and his successors will not now or in the future complain about the allowed surface mining activities on the adjacent mining site.

FINDING: As a Condition of Approval, the applicant shall be required to sign a Waiver of Remonstrance Easement, prepared by the County, record the document in the Deschutes County Book of Records, and submit a copy of the recorded document to the Planning Division prior to the issuance of any building or placement permits.

IV. CONCLUSION & RECOMMENDATION:

In conclusion, staff believes the applicant has not demonstrated compliance with the dimensional standards of the F-1 zone showing proposed Parcel 2 meets the 80-acre minimum lot size in F-1 zone. If the Hearings Officer agrees, then staff recommends the proposed partition and related conditional use application be denied.

Other issues raised by staff include:

- Whether DCC 17.22.020(4) regarding the requirement for an access permit is mandatory if the applicant will not be creating any new access points to a public road. If the Hearings Officer finds this criterion is mandatory, then staff recommends adding a Condition of Approval requiring driveway access permits be obtained prior to final plat approval.
- Does the proposed partition constitute series partitioning?

If the Hearings Officer approves the application, staff has added recommended conditions below.

VI. RECOMMENDED CONDITIONS OF APPROVAL IF APPLICATION IS APPROVED:

- Approval is based upon the tentative plat submitted. Any substantial changes in the plat submitted for final approval and residential site plan will require a new application.
- The final plat shall be prepared in accordance with Title 17 of the County Code. The plat must be prepared by a licensed land surveyor. All property corners and public rights-of-way must be located and monumented, and a final map submitted to the County Surveyor. The final plat shall include the exact lot sizes for all three parcels.
- All easements of record and rights-of-way shall be noted on the final plat. Any necessary easements requested by a public utility shall also be shown on the final plat.
- The final plat shall contain a statement of water rights.
- All advalorem taxes, fees and other charges that have become a lien upon the entire parcel shall be paid. The final plat shall be signed by the County Assessor and County Tax Collector.
- The applicant shall pay a parks fee of \$350.00 to the Planning Division prior to final plat approval.

- The applicant shall contact the Property Address Coordinator for new addresses prior to final plat approval.
- Prior to final plat approval, Bull Springs Road shall be dedicated to the public as authorized by Conditional Use Permit, A-04-10/CU-04-6.
- Prior to signing of the final plat by the County Road Department, the following shall be satisfied:
 - a. Dedication of Bull Springs Road (CU-04-6/A-04-10) must be completed prior to final plat approval for this application.
 - b. The realignment of Bull Springs Road with Johnson Market Road (CU-04-6/A-04-10) shall be completed prior to final plat approval for this application
 - c. Bull Springs Road along the subject parcels will need to be improved to the standard for partitions listed in DCC 17.48.170 (A) which states, "For a parcel size of 10 acres or larger, the minimum road improvement standard shall be 20 feet wide with five inches of aggregate surfacing (cinders are acceptable), the centerline of which coincides with the centerline of the right of way.
 - d. The surveyor or engineer submitting the plat shall submit information showing the location of the existing road in relationship to the road right-of-way, on behalf of the applicant to the County Road Department. This information can be submitted on a worksheet and does not necessarily have to be on the final plat. All existing road facilities and new road improvements are to be located within legally established or dedicated right-of-ways. In no case shall a road improvement be located outside of a dedicated road right-of-way. If research reveals that inadequate right-of-way exists or that the existing roadway is outside of the legally established or dedicated right-of-way, additional right-of-way will be dedicated as directed by the Deschutes County Road Department to meet current County Standards.
- The applicant/owner shall implement the July 2005 Forestry Assistance Stewardship Plan prepared by John Jackson and submitted as Exhibit 6 to the application.
- The following fire and fuel breaks shall be constructed and in place prior to occupancy of the dwelling:
 - a. *Primary Firebreak.* The applicant shall construct a primary firebreak, not less than 10 feet wide, containing nonflammable materials. This may include lawn, walkways, driveways, gravel borders or other similar materials.
 - b. *Secondary Firebreak.* The applicant shall construct a secondary firebreak of not less than 20 feet outside the primary firebreak. This firebreak need not be bare ground, but can include a lawn, ornamental shrubbery or

individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall be removed.

- c. *Fuel Break.* The applicant shall maintain a fuel break extending a minimum of 100 feet in all directions around the secondary firebreak. Individual and groups of trees within the fuel break shall be separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of larger trees. All trees shall be pruned up to at least eight feet in height. Dead fuels shall be removed.
 - d. No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney. If the dwelling has a chimney it shall have a spark arrester.
- The following access and property identification requirements shall be constructed and in place prior to occupancy of the dwelling:
 - a. Construction of the driveway with an all-weather surface (asphalt, gravel, etc.), and the specified vertical and horizontal clearance shall be completed prior to final inspection of the building.
 - b. Access roads shall have an unobstructed horizontal clearance of not less than 20 feet and an unobstructed vertical clearance of not less than 13.5 feet, and provide an all-weather surface.
 - c. Turnarounds shall have a minimum of 50 feet of turn radius with an all-weather surface and be maintained for turning of fire fighting equipment. The driveway turnaround shall be identified on the plot plan submitted for the building permit.
 - d. The applicant shall obtain an address from the county address coordinator and shall display that number in a location of the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, shall be painted in a contrasting or visible color and shall comply with all other applicable standards for signs.
- The dwelling shall be built with a noncombustible or fire resistant Class A, B or C roofing material.
- The applicant shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules.
- Prior to the issuance of a building permit for the dwelling, the applicant shall submit a revised site plan that shows the dwelling, including decks and porches, are located entirely within 300 feet from the Old Railroad Grade Road.

- The applicant shall comply with the fencing standards for Wildlife Area Combining Zone if new fencing is proposed as part of this development proposal.
- The applicant shall sign a Waiver of Remonstrance Easement for Surface Mining Site No. 296, prepared by the County, and record the Waiver in the County Clerk's Office. A copy of the recorded waiver shall be submitted to the Planning Division prior to issuance of building or placement permits for the dwelling.
- Prior to the issuance of a building permit, the applicant/land owner shall sign and record in the County Clerk's Office a written statement recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules and submit a copy of the recorded document to the Planning Division.
- Prior to the issuance of a building permit, the applicant/owner shall sign and record with the County Clerk covenants, conditions and restrictions prohibiting the siting of a dwelling on the undeveloped portions of the tract. Such covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by the County Planning Director, or his authorized representative.
- A current Title Report shall be submitted with the final plat application.
- [Obtain driveway access permits prior to final plat approval.]

Dated this 20th day of December 2005

Mailed this 21st day of December 2005

owner	address	cityStZip	type	cdd id
BULL SPRINGS RANCH LLC	18525 BULL SPRINGS RD	BEND, OR 97703	FD	23-118-PS

Attachment B

Legal Description of Property - Updated

Application for a Permit to Use Groundwater – Bull Springs Ranch, LLC

EXHIBIT C

**247-21-000117-LL
ADJUSTED PARCEL 2**

A parcel of land located in the SE1/4 of Section 21, the SE1/4 and SW1/4 of Section 22, the NW1/4 of Section 27 and the NE1/4 of Section 28, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described below as follows:

Parcel 2, Partition Plat 2016-22, Deschutes County, Oregon.

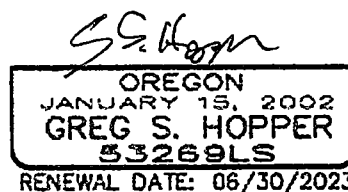
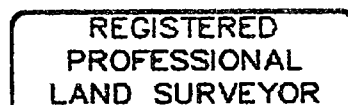
Excepting Therefrom (TRANSFER PARCEL - 247-19-000729-LL): Beginning at a 5/8" iron rod with yellow plastic cap marked HWA at the southwest corner of Parcel 3, Partition Plat 2016-22 on the boundary common to said Parcels 2 and 3; thence along said common boundary, North 89°56'23" East a distance of 568.35 feet to a 5/8" iron rod with a yellow plastic cap marked LS 53269; thence leaving said line, South 26°39'16" West a distance of 329.37 feet to a 5/8" iron rod with a yellow plastic cap marked LS 53269; thence South 89°56'58" West a distance of 421.65 to a point on the west boundary of said SW1/4 which is North 00°12'23" East a distance of 1.00 foot from a 5/8" iron rod with a yellow plastic cap marked LS 53269; thence along said west boundary, North 00°12'23" East a distance of 294.15' to the point of beginning, the terminus of this description.

Further Excepting therefrom (TRANSFER PARCEL B - 247-21-000117-LL): Beginning at a 5/8" iron rod with yellow plastic cap marked LS 53269 on the boundary common to Parcel 1 and Parcel 2, of said Plat which bears South 89°55'41" West a distance of 753.21 feet from a 5/8" iron rod with a yellow plastic cap marked HWA at the northeast corner of said Parcel 2; thence South 00°04'19" East a distance of 1023.60 feet to a 5/8" iron rod with yellow plastic cap marked LS 53269; thence North 90°00'00" West a distance of 643.35 feet to a 5/8" iron rod with yellow plastic cap marked LS 53269; thence North 00°00'00" East a distance of 1022.79 feet to a 5/8" iron rod with yellow plastic cap marked LS 53269 on said common boundary; thence North 89°55'41" East a distance of 642.07 feet to the point of beginning,, the terminus of this description.

Together With (TRANSFER PARCEL A - 247-21-000117-LL): That portion of Parcel 1, Partition Plat 2016-22, located in the SE1/4 of Section 21, Township 17 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, being more particularly described below as follows:

Beginning at a 5/8" iron rod with yellow plastic cap marked HWA at the southwest corner of Parcel 3, Partition Plat 2016-22 on the boundary common to said Parcel 1 and Parcel 2, of said Plat; thence along said common boundary, North 89°57'13" West a distance of 1914.77 feet to a 5/8" iron rod with a yellow plastic cap marked HWA; thence North 00°08'38" East a distance of 343.41 feet to a 5/8" iron rod with a yellow plastic cap marked LS 53269; thence South 89°57'13" East a distance of 1915.15feet to a point on the west boundary of said Parcel 3; thence along said west boundary, South 00°12'23" West a distance of 343.41 feet to the point of beginning, the terminus of this description.

See Record of survey filed in the office of the Deschutes County Surveyor pertaining to Deschutes County Land Use File 247-21-000117-LL.



4-359

PARTITION 247-15-000668-MP

PARTITION PLAT # PP 2016-22

LOCATED IN: A PORTION OF PARCELS 1, 2 AND 3 PARTITION PLAT 2002-90 IN SECTIONS 21, 22, 23, 27 AND 28
ALL IN TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M., DESCHUTES COUNTY, OREGON

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK 2016-39129
\$73.00
01078631201600391290010016 09/23/2016 12:18:11 PM
D-PP Cnt=1 Stn=1 BN
\$25.00 \$11.00 \$21.00 \$10.00 \$5.00

SURVEYOR'S CERTIFICATE:

I, PATRICK GAGE COLE, A REGISTERED PROFESSIONAL LAND SURVEYOR FOR THE STATE OF OREGON, BEING DULY SWORN, DEPOSE AND SAY THAT THIS SURVEY WAS PERFORMED BY ME, OR UNDER MY SUPERVISION IN COMPLIANCE WITH OREGON REVISED STATUTES CHAPTERS 92, 93 AND 209 IN JUNE AND JULY OF 2016 AT THE REQUEST OF TODD TAYLOR AND THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH LEGAL MONUMENTS THE LAND REPRESENTED ON THIS PARTITION PLAT OF "247-15-000668-MP" LOCATED IN A PORTION OF PARCELS 1, 2 & 3, PARTITION PLAT 2002-90 IN SECTIONS 21, 22, 23, 27 AND 28, ALL IN TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, THAT A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "HWA" EXISTS AT THE "INITIAL POINT" AND THE PROPERTY BEING PLATTED IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, BEING THE EASTERLY MOST NORTHEASTERLY CORNER OF SAID PARCEL 1, THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF A.H. JOHNSON ROAD, THE FOLLOWING 1 CURVE AND 1 COURSE:

172.39 FEET ALONG A CURVE TO THE LEFT WITH A RADIUS OF 616.62 FEET, THE CHORD OF WHICH BEARS SOUTH 09°05'57" WEST A DISTANCE OF 171.83 FEET;
SOUTH 01°05'24" WEST A DISTANCE OF 555.40 FEET TO THE EASTERLY MOST CORNER ON THE SOUTH BOUNDARY LINE OF SAID PARCEL 1; THENCE ALONG SAID SOUTH BOUNDARY LINE, THE FOLLOWING 4 COURSES:

NORTH 89°49'23" WEST A DISTANCE OF 169.59 FEET;
NORTH 89°51'03" WEST A DISTANCE OF 1331.30 FEET;
SOUTH 89°55'41" WEST A DISTANCE OF 1321.83 FEET;
SOUTH 89°55'41" WEST A DISTANCE OF 330.31 FEET TO AN ANGLE POINT ON THE BOUNDARY OF SAID PARCEL 1 AND ON THE EASTERLY RIGHT-OF-WAY LINE OF THE SISTERS MAINLINE ROAD PER VOLUME 2006-62935, DESCHUTES COUNTY OFFICIAL RECORDS;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING 1 COURSE AND 1 CURVE:

SOUTH 00°13'24" WEST A DISTANCE OF 1427.34 FEET;
713.27 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 590.00 FEET, THE CHORD OF WHICH BEARS SOUTH 34°51'24" WEST FOR A DISTANCE OF 670.62 FEET TO THE SOUTH BOUNDARY LINE OF SAID PARCEL 1;

THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY LINE ALONG SAID SOUTH BOUNDARY LINE, THE FOLLOWING 2 COURSES:

SOUTH 89°58'09" WEST A DISTANCE OF 610.24 FEET;
SOUTH 89°57'44" WEST A DISTANCE OF 292.95 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID SISTERS MAINLINE ROAD;

THENCE LEAVING SAID SOUTH BOUNDARY LINE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, 764.09 FEET ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 590.00 FEET, THE CHORD OF WHICH BEARS SOUTH 40°44'00" WEST A DISTANCE OF 711.80 FEET; THENCE LEAVING SAID NORTHWESTERLY RIGHT-OF-WAY LINE, NORTH 89°57'13" WEST A DISTANCE OF 3801.02 FEET;

THENCE NORTH 00°08'38" EAST A DISTANCE OF 4489.26 FEET TO THE NORTH BOUNDARY LINE OF PARCEL 3 OF SAID PARTITION PLAT 2002-90;

THENCE ALONG SAID NORTH BOUNDARY LINE OF SAID PARCEL 3, SOUTH 89°51'22" EAST A DISTANCE OF 1919.76 FEET; THENCE ALONG THE NORTH AND EAST BOUNDARY LINES OF SAID PARCEL 1 THE FOLLOWING 2 COURSES:

NORTH 89°55'38" EAST A DISTANCE OF 661.32 FEET;
SOUTH 00°15'48" WEST A DISTANCE OF 538.14 FEET;

THENCE LEAVING SAID EAST BOUNDARY LINE, SOUTH 35°34'40" EAST A DISTANCE OF 147.33 FEET TO THE NORTH BOUNDARY LINE OF SAID PARCEL 1; THENCE ALONG SAID NORTH BOUNDARY LINE, NORTH 89°55'05" EAST A DISTANCE OF 81.07 FEET; THENCE SOUTH 35°34'40" EAST A DISTANCE OF 76.03 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SISTERS MAINLINE ROAD; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, THE FOLLOWING 4 CURVES AND 3 COURSES:

379.65 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 367.00 FEET, THE CHORD OF WHICH BEARS SOUTH 65°12'49" EAST FOR A DISTANCE OF 362.95 FEET;
785.35 FEET ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 2533.00 FEET, THE CHORD OF WHICH BEARS SOUTH 85°58'01" EAST FOR A DISTANCE OF 782.20 FEET;
1366.22 FEET ALONG THE ARC OF A REVERSE CURVE TO THE LEFT WITH A RADIUS OF 2897.00 FEET, THE CHORD OF WHICH BEARS NORTH 89°24'18" EAST FOR A DISTANCE OF 1353.59 FEET;
338.81 FEET ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 233.00 FEET, THE CHORD OF WHICH BEARS SOUTH 62°26'51" EAST FOR A DISTANCE OF 309.74 FEET;
SOUTH 20°47'23" EAST A DISTANCE OF 54.17 FEET;
NORTH 69°12'37" EAST A DISTANCE OF 45.72 FEET;
NORTH 68°35'34" EAST A DISTANCE OF 123.46 FEET;

THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 68°35'34" EAST A DISTANCE OF 57.46 FEET;
THENCE NORTH 71°16'13" EAST A DISTANCE OF 74.68 FEET; THENCE NORTH 87°01'53" EAST A DISTANCE OF 51.72 FEET; THENCE NORTH 00°13'35" EAST A DISTANCE OF 9.81 FEET TO THE NORTHERLY BOUNDARY LINE OF SAID PARCEL 1;

THENCE ALONG THE NORTHERLY BOUNDARY LINE OF SAID PARCEL 1 THE FOLLOWING 4 CURVES AND 5 COURSES:

354.81 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 600.08 FEET, THE CHORD OF WHICH BEARS SOUTH 77°32'31" EAST A DISTANCE OF 349.66 FEET;
SOUTH 60°36'12" EAST A DISTANCE OF 237.83 FEET;
248.85 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 509.12 FEET, THE CHORD OF WHICH BEARS SOUTH 74°36'22" EAST FOR A DISTANCE OF 246.38 FEET;
271.64 FEET ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 720.96 FEET, THE CHORD OF WHICH BEARS SOUTH 77°48'55" EAST FOR A DISTANCE OF 270.03 FEET;
SOUTH 67°01'18" EAST A DISTANCE OF 18.12 FEET;
NORTH 89°55'03" EAST A DISTANCE OF 253.68 FEET;
SOUTH 89°51'20" EAST A DISTANCE OF 1331.19 FEET;
NORTH 00°12'20" EAST A DISTANCE OF 66.00 FEET;
SOUTH 89°40'51" EAST A DISTANCE OF 204.74 FEET TO THE POINT OF BEGINNING, THE TERMINUS OF THIS DESCRIPTION.

EXCEPTING THEREFROM: BULL SPRINGS ROAD AND THE SISTERS MAINLINE ROADS PER DEEDS OF DEDICATION RECORDED IN VOLUME 2006, PAGE 62934 AND VOLUME 2006, PAGE 62935, DESCHUTES COUNTY OFFICIAL RECORDS.

SUBJECT TO: ALL EASEMENTS, RESTRICTIONS AND RIGHT-OF-WAYS OF RECORD AND THOSE COMMON AND APPARENT ON THE LAND.

CONTAINS 542.73 ACRES (GROSS), 528.64 ACRES (NET), MORE OR LESS, LYING OUTSIDE PUBLIC ROADS.

DECLARATION:

BULL SPRINGS RANCH, LLC, AN OREGON LIMITED LIABILITY COMPANY, AS VESTEE OF THE LAND ON THE PARTITION PLAT OF "247-15-000668-MP" AND MORE PARTICULARLY DESCRIBED IN THE SURVEYOR'S CERTIFICATE HEREUNTO ATTACHED, HAS CAUSED SAID LAND TO BE PLATTED AS SHOWN ON SUCH PLAT AND DECLARES THE PARTITION PLAT OF "247-15-000668-MP" TO BE PREPARED AND PROPERLY PARTITIONED IN ACCORDANCE WITH O.R.S. CHAPTER 92 AS LOCATED IN SECTIONS 21, 22, 23, 27 AND 28, ALL IN TOWNSHIP 17 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON.

SURVEYOR'S NARRATIVE:

WE WERE RETAINED BY TODD TAYLOR OF TAYLOR NORTHWEST LLC TO PREPARE A FINAL PARTITION PLAT PER FINDINGS AND DECISION OF THE DESCHUTES COUNTY DEVELOPMENT DEPARTMENT, FILE NUMBER 247-15-000668-MP, DATED 5/17/2016. THE SUBJECT PROPERTY WAS RECORDED IN VOLUME 2013, PAGE 011456, RECORDED ON MARCH 3, 2013, DESCHUTES COUNTY OFFICIAL RECORDS. THE BOUNDARY FOR THE SUBJECT PROPERTY IS DEPICTED IN A RECORD OF SURVEY (LOT LINE ADJUSTMENT LL-13-6 AND LL-13-7) ON FILE WITH THE DESCHUTES COUNTY SURVEYORS OFFICE PER CS18504 (r2) RECORDED MARCH 26, 2013. THE DESCRIPTION IN THE SURVEYOR'S CERTIFICATE ON THIS PAGE REFLECTS THE BOUNDARY SHOWN FOR THIS SURVEY.

THE BASIS OF BEARINGS FOR THIS PLAT IS BASED UPON THE BOUNDARY LINE BETWEEN THE PROPERTIES IDENTIFIED AS 171100 2722 AND 171100 2732 OF THE ABOVE MENTIONED RECORD OF SURVEY BY HICKMAN, WILLIAMS & ASSOCIATES, INC. THIS BEARING BASIS IS: N89°57'13"W. ALL MONUMENTS WERE FOUND AND HELD FOR POSITION PER CS18504 (r1).

THE INTERIOR LINES OF THE PROJECT WERE LOCATED AND MONUMENTED PER INSTRUCTIONS BY THE CLIENT AND IN ACCORDANCE WITH THE ABOVE REFERENCED APPROVALS.

PLAT INDEX:

SHEET 1: SURVEYOR'S CERTIFICATE
DECLARATION
SURVEYOR'S NARRATIVE
SHEET 2: PLAT SIGNATURES
SHEET 3: PLAT BOUNDARY RESOLUTION
SHEET 4: PLAT EASEMENT DETAILS

REGISTERED
PROFESSIONAL
LAND SURVEYOR

9/25/2016

OREGON
JULY 10, 2007
PATRICK GAGE COLE
79157

EXPIRES: 12/31/17

PREPARED BY

HWA SURVEYORS, ENGINEERS
& PLANNERS
HICKMAN, WILLIAMS & ASSOCIATES, INC.

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

SHEET
1 OF 4
150910P1-P2

PARTITION 247-15-000668-MP

LOCATED IN: A PORTION OF PARCELS 1, 2 AND 3 PARTITION PLAT 2002-90 IN SECTIONS 21, 22, 23, 27 AND 28
ALL IN TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M., DESCHUTES COUNTY, OREGON

DECLARATION SIGNATURES:

BY: [Signature]
TODD TAYLOR, MEMBER
BULL SPRINGS RANCH, LLC

8/5/16
DATE

ACKNOWLEDGMENT:

STATE OF OREGON }
COUNTY OF DESCHUTES } S.S.

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON August 5 2016,
BY TODD TAYLOR, MEMBER, BULL SPRINGS RANCH, LLC, VESTEE.

[Signature]
(NOTARY'S WRITTEN NAME)

Wendy Randall
(NOTARY'S PRINTED NAME)

NOTARY PUBLIC - OREGON

COMMISSION NO. 932559

MY COMMISSION EXPIRES: October 2, 2018
(MONTH NAME)

BY: [Signature]
LORRI TAYLOR, MEMBER
BULL SPRINGS RANCH, LLC

8/5/16
DATE

ACKNOWLEDGMENT:

STATE OF OREGON }
COUNTY OF DESCHUTES } S.S.

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON August 5 2016,
BY LORRI TAYLOR, MEMBER, BULL SPRINGS RANCH, LLC, VESTEE.

[Signature]
(NOTARY'S WRITTEN NAME)

Wendy Randall
(NOTARY'S PRINTED NAME)

NOTARY PUBLIC - OREGON

COMMISSION NO. 932559

MY COMMISSION EXPIRES: October 2, 2018
(MONTH NAME)

REGISTERED
PROFESSIONAL
LAND SURVEYOR

[Signature] 8/4/16

OREGON
JULY 10, 2007
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BEND, OREGON 97701
PHONE: 541.389.9351 FAX: 541.388.5416

APPROVALS:

THE PARTITION PLAT OF "PARTITION 247-15-000668-MP", AS LOCATED IN DESCHUTES COUNTY, OREGON, HAS BEEN EXAMINED AND APPROVED.

[Signature] 8-25, 2016.
DESCHUTES COUNTY SURVEYOR

[Signature] 7/20, 2016.
DESCHUTES COUNTY PLANNING DIRECTOR

[Signature] 08/25, 2016.
DESCHUTES COUNTY DIRECTOR OF ROAD DEPARTMENT

[Signature] 9/11, 2016.
DESCHUTES COUNTY DIRECTOR OF ENVIRONMENTAL HEALTH

I HEREBY CERTIFY THAT ALL TAXES ARE PAID AS OF THIS DATE

Wayne Lamy by Andrea Perkon 8/26, 2016.
DESCHUTES COUNTY TAX COLLECTOR

I HEREBY CERTIFY THAT ALL AD VALOREM TAXES AND SPECIAL ASSESSMENTS, FEES AND OTHER CHARGES REQUIRED BY LAW TO BE PLACED ON THE 2016-2017 TAX ROLL WHICH BECAME A LIEN ON THIS PARTITION OR WILL BECOME A LIEN DURING THIS TAX YEAR HAVE BEEN PAID TO ME.

[Signature] 8/26, 2016.
DESCHUTES COUNTY ASSESSOR

[Signature] 9-22, 2016.
DESCHUTES COUNTY COMMISSIONER

SIGNATURE BY THE DESCHUTES COUNTY BOARD OF COMMISSIONERS CONSTITUTES ACCEPTANCE BY THE COUNTY OF ANY DEDICATION MADE HEREIN TO THE PUBLIC.

[Signature] 8/26, 2016.
STATE WATERMASTER

WATER RIGHTS NOTE:

19 ACRES OF WATER RIGHTS EXIST WITHIN THE BOUNDARIES OF THIS PLAT.
19.51 ac, permit 617587

BY: [Signature] 8/26/16
DATE

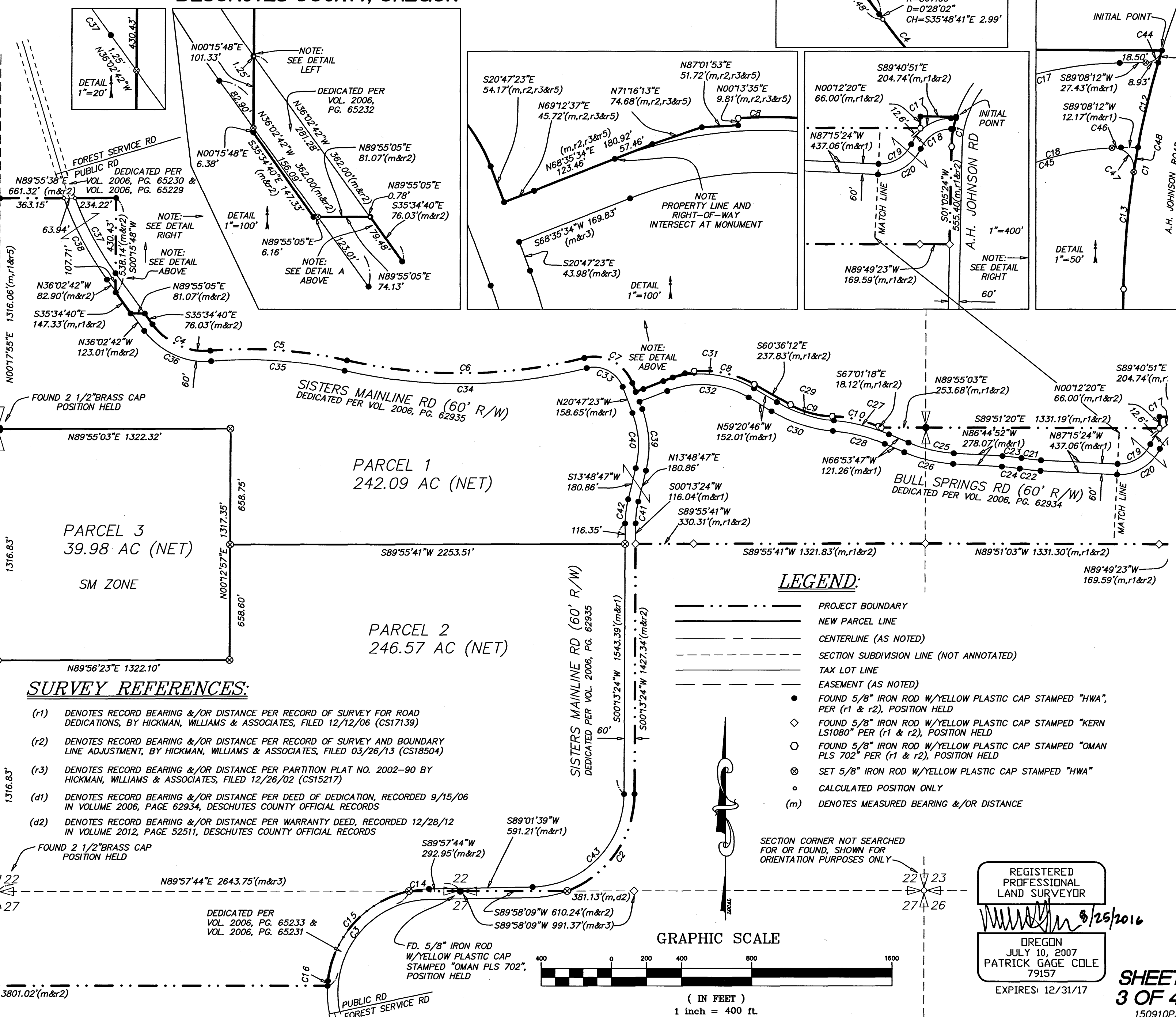
PARTITION 247-15-000668-MP

LOCATED IN: A PORTION OF PARCELS 1, 2 AND 3 PARTITION PLAT 2002-90 IN SECTIONS 21, 22, 23, 27 AND 28 ALL IN TOWNSHIP 17 SOUTH, RANGE 11 EAST, W.M.,
DESCHUTES COUNTY, OREGON

CURVE	LENGTH	RADIUS	DELTA	CHORD
C1(m,r1&r2)	172.39'	616.62'	16°01'06"	S09°05'57"W 171.83'
C2(m,r1&r2)	713.27'	590.00'	69°16'00"	N34°51'24"E 670.62'
C3(m)	764.09'	590.00'	74°12'06"	S40°44'00"W 711.80'
C4(m,r1&r2)	379.65'	367.00'	59°16'17"	S65°12'49"E 362.95'
C5(m,r1&r2)	785.35'	2533.00'	17°45'52"	N85°58'01"W 782.20'
C6(m,r1&r2)	1366.22'	2897.00'	27°01'14"	N89°24'18"E 1353.59'
C7(m,r1&r2)	338.81'	233.00'	83°18'57"	N62°26'51"W 309.74'
C8(m,r1&r2)	354.81'	600.08'	33°52'38"	N77°32'31"W 349.66'
C9(m,r1&r2)	248.85'	509.12'	28°00'21"	S74°36'22"E 246.38'
C10(m,r1&r2)	271.64'	720.96'	21°35'15"	N77°48'55"W 270.03'
C11(m&r1)	8.84'	616.62'	0°49'18"	S16°41'52"W 8.84'
C12(m)	61.94'	616.62'	5°45'18"	S13°24'34"W 61.91'
C13(m)	83.68'	616.62'	7°46'30"	S04°58'39"W 83.61'
C14(m&r1)	115.26'	590.00'	11°11'36"	S83°25'51"W 115.08'
C15(m,r1&r2)	736.44'	590.00'	71°30'59"	S42°04'34"W 689.55'

CURVE	LENGTH	RADIUS	DELTA	CHORD
C16(m&r2)	27.65'	590.00'	2°41'07"	S04°58'31"W 27.65'
C17(m&r1)	285.58'	255.00'	64°10'04"	S57°03'10"W 270.89'
C18(m&r1)	218.39'	195.00'	64°10'04"	N57°03'10"E 207.15'
C19(m&r1)	230.66'	195.00'	67°46'28"	N58°51'22"E 217.45'
C20(m&r1)	301.64'	255.00'	67°46'28"	N58°51'22"E 284.36'
C21(m&r1)	111.71'	970.00'	6°35'55"	S83°57'27"E 111.65'
C22(m&r1)	118.62'	1030.00'	6°35'55"	S83°57'27"E 118.55'
C23(m&r1)	109.47'	1030.00'	6°05'22"	N83°42'11"W 109.42'
C24(m&r1)	103.09'	970.00'	6°05'22"	N83°42'11"W 103.04'
C25(m&r1)	266.78'	770.00'	19°51'04"	S76°49'19"E 265.45'
C26(m&r1)	287.57'	830.00'	19°51'04"	S76°49'19"E 286.13'
C27(m&r1)	324.52'	1030.00'	18°03'08"	N75°55'21"W 323.18'
C28(m&r1)	305.62'	970.00'	18°03'08"	N75°55'21"W 304.36'
C29(m&r1)	344.08'	770.00'	25°36'10"	S72°08'50"E 341.22'
C30(m&r1)	370.89'	830.00'	25°36'10"	S72°08'50"E 367.81'
C31(m&r1)	536.10'	590.00'	52°03'41"	N85°22'36"W 517.85'
C32(m&r1)	481.58'	530.00'	52°03'41"	N85°22'36"W 465.18'
C33(m&r1)	251.57'	173.00'	83°18'57"	N62°26'51"W 229.98'
C34(m&r1)	1394.51'	2957.00'	27°01'14"	N89°24'18"E 1381.63'
C35(m&r1)	766.74'	2473.00'	17°45'52"	N85°58'01"W 763.68'
C36(m&r1)	438.24'	427.00'	58°48'15"	S65°26'50"E 419.26'
C37(m&r1)	489.05'	1820.00'	15°23'46"	S28°20'49"E 487.58'
C38(m&r1)	527.65'	1880.00'	16°04'51"	S28°20'49"E 525.92'
C39(m&r1)	356.32'	590.00'	34°36'10"	N03°29'18"W 350.93'
C40(m&r1)	320.08'	530.00'	34°36'10"	N03°29'18"W 315.24'
C41(m&r1)	125.71'	530.00'	13°35'23"	S07°01'05"W 125.41'
C42(m&r1)	139.94'	590.00'	13°35'23"	S07°01'05"W 139.61'
C43(m&r1)	821.46'	530.00'	88°48'15"	N44°37'32"E 741.67'

CURVE	LENGTH	RADIUS	DELTA	CHORD
C44(m&d1)	15.33'	12.19'	72°01'41"	N53°07'21"E 14.34'
C45(m)	211.99'	195.00'	62°17'16"	S56°06'45"W 201.70'
C46(m&d1)	6.40'	195.00'	1°52'48"	S88°11'47"W 6.40'
C47(m&d1)	26.60'	15.00'	101°36'31"	N41°56'21"W 23.25'
C48(m&d1)	17.94'	616.62'	1°40'00"	S09°41'54"W 17.94'



SURVEY REFERENCES:

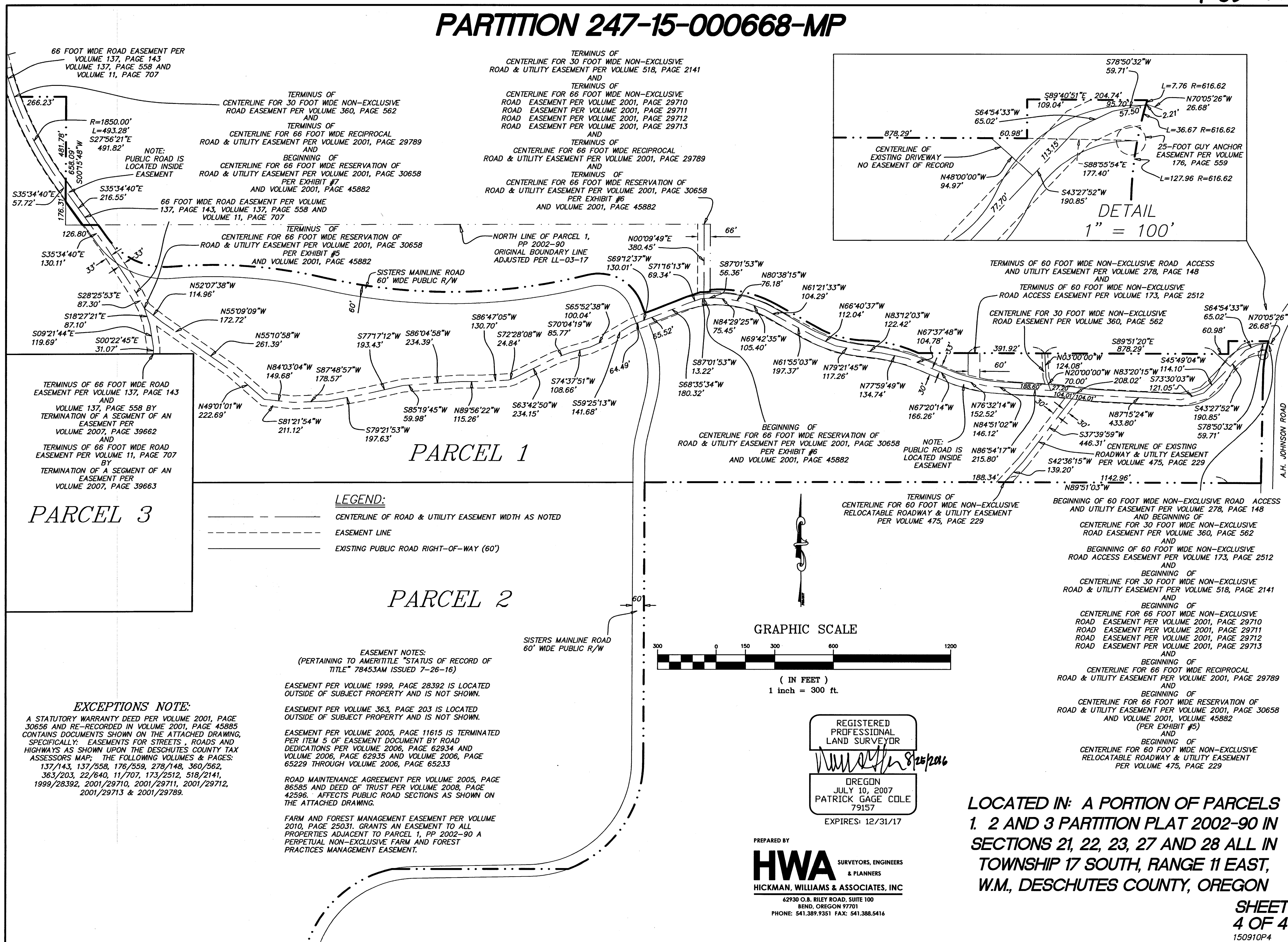
- (r1) DENOTES RECORD BEARING &/OR DISTANCE PER RECORD OF SURVEY FOR ROAD DEDICATIONS, BY HICKMAN, WILLIAMS & ASSOCIATES, FILED 12/12/06 (CS17139)
- (r2) DENOTES RECORD BEARING &/OR DISTANCE PER RECORD OF SURVEY AND BOUNDARY LINE ADJUSTMENT, BY HICKMAN, WILLIAMS & ASSOCIATES, FILED 03/26/13 (CS18504)
- (r3) DENOTES RECORD BEARING &/OR DISTANCE PER PARTITION PLAT NO. 2002-90 BY HICKMAN, WILLIAMS & ASSOCIATES, FILED 12/26/02 (CS15217)
- (d1) DENOTES RECORD BEARING &/OR DISTANCE PER DEED OF DEDICATION, RECORDED 9/15/06 IN VOLUME 2006, PAGE 62934, DESCHUTES COUNTY OFFICIAL RECORDS
- (d2) DENOTES RECORD BEARING &/OR DISTANCE PER WARRANTY DEED, RECORDED 12/28/12 IN VOLUME 2012, PAGE 52511, DESCHUTES COUNTY OFFICIAL RECORDS

PREPARED BY
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REGISTERED PROFESSIONAL LAND SURVEYOR

8/25/2016
OREGON
JULY 10, 2007
PATRICK GAGE COLE
79157
EXPIRES: 12/31/17

PARTITION 247-15-000668-MP



**LOCATED IN: A PORTION OF PARCELS
1, 2 AND 3 PARTITION PLAT 2002-90 IN
SECTIONS 21, 22, 23, 27 AND 28 ALL IN
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SHEET
4 OF 4
150910P4