



Est. 2003

CASCADES ACADEMY

INDEPENDENT SCHOOL PK-12

March 10, 2015

Oregon Water Resources Department (OWRD)
725 Summer Street NE, Suite A
Salem, OR 97301-1271

RE: Application for a Permit to Use Groundwater
Cascades Academy of Central Oregon (CACO)

Dear OWRD:

Enclosed please find an application for a permit to use groundwater.

The application requests an increased rate of 51 gpm (0.12cfs) to the existing permitted rate of 24 gpm under Permit G-16947. The combined rates will allow a total production rate of 75 gpm from the well for ease of operating the school's water and fire systems. No additional volume of water beyond the existing volume listed under Permit G-16947 will be required.

CACO is aware of the Deschutes Basin Mitigation Program requirements and has already provided sufficient mitigation credits associated with the schools existing permit. Since the school is requesting no additional volume of water, no mitigation credits are required. The application fee of \$2,200 is enclosed with this application.

Please do not hesitate to call me at (541) 382-0699 if you have any questions or need additional information.

Sincerely,

Scott Oncken
Facilities Systems Manager

Enclosures

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SALEM, OR

Application for a Permit to Use Ground Water



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

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Water-Use Permit Application Processing

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1. Completeness Determination

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The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050 (www.oregon.gov/owrd/law). The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$200. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

3. Public Notice

Within 7 days of the mailing of the initial review, the Department gives public notice of the application in the weekly notice published by the Department at www.oregon.gov/owrd. The public comment period is 30 days from publication in the weekly notice.

4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$350.00 for the applicant and \$700.00 for non-applicants. Protests are filed on approximately 10% of Proposed Final Orders. If a protest is filed, the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

6. Final Order Issued

If no protests are filed, the Department issues a Final Order consistent with the PFO. If the application is approved, a permit is issued that specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.

Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.615)

Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

- SECTION 1: applicant information and signature
- SECTION 2: property ownership
- SECTION 3: well development
- SECTION 4: water use
- SECTION 5: water management
- SECTION 6: storage of groundwater in a reservoir
- SECTION 7: use of stored groundwater from the reservoir
- SECTION 8: project schedule
- SECTION 9: within a district
- SECTION 10: remarks

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Attachments:

- Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map. Example: A copy of the deed, land sales contract or title insurance policy.
- Fees - Amount enclosed: \$2,200.00
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.

Provide a map and check that each of the following items is included:

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other _____

Application for a Permit to Use Ground Water



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

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant Information

NAME		PHONE (HM)	
PHONE (WK)	CELL		FAX
ADDRESS			
CITY	STATE	ZIP	E-MAIL*

Organization Information

NAME CASCADE ACADEMY OF CENTRAL OREGON (CACO) ATTN: SCOTT ONCKEN – FACILITY MANAGER		PHONE 541-382-0699	FAX
ADDRESS 19860 TUMALO RESERVOIR ROAD			CELL
CITY BEND	STATE OR	ZIP 97701	E-MAIL*

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME BRUCE BRODY-HEINE		PHONE	FAX
ADDRESS 2600 NW CROSSING DRIVE			CELL 541 – 390-0591
CITY BEND	STATE OR	ZIP 97701	E-MAIL* BBHEINE@GSIWS.COM

Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

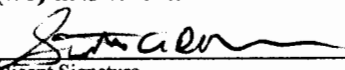
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By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land-use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water-right holders to get water to which they are entitled.

I (we) affirm that the information contained in this application is true and accurate.


Applicant Signature

Scott Oncken – Facility Manager
Print Name and title if applicable

3-11-15
Date

Applicant Signature

Print Name and title if applicable

Date

For Department Use		
App. No. <u>G1-10028</u>	Permit No. _____	Date _____

SECTION 2: PROPERTY OWNERSHIP

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- Yes
 - There are no encumbrances.
 - This land is encumbered by easements, rights of way, roads or other encumbrances.
- No
 - I have a recorded easement or written authorization permitting access.
 - I do not currently have written authorization or easement permitting access.
 - Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
 - Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

Cascades Academy of Central Oregon
 19860 Tumalo Reservoir Road
 Bend, OR 97701

You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3. Any property on which the water is to be used as depicted on the map.

See Attachment B

SECTION 3: WELL DEVELOPMENT

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
DESC 59549	Deschutes River	850 ft	56 feet

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials (*attach additional sheets if necessary*).

Existing Well: OWRD Well Log – DESC 59549

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SECTION 3: WELL DEVELOPMENT, CONTINUED

Total maximum rate requested: **51 gpm¹** (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

The table below must be completed for each source to be evaluated or the application will be returned. If this is an existing well, the information may be found on the applicable well log. (If a well log is available, please submit it in addition to completing the table.) If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner to obtain the necessary information.

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	PROPOSED USE			
										SOURCE AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)
Well 1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	DESC 59549	<input type="checkbox"/>	8" 6" liner	2' to 498' 476 - 676'	636' to 676'	0 to 498'	510 ft bgs	Deschutes Aquifer	676'	51 gpm ¹ 0.114 cfs	0 ¹
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									

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G-16947

* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.
 ** A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.
 *** Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.

Note 1: This application request an increase of 51 gpm to the existing permitted rate of 24 gpm under Permit G-16947, and requests no additional volume of water beyond the existing volume listed under Permit G-16947. The combined rates will allow a total production rate of 75 gpm from the well.

SECTION 4: WATER USE

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Commercial	Year round	0 ¹
Irrigation	Irrigation Season	0 ¹

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.

Note 1: This application requests an increase of 51 gpm to the existing permitted rate of 24 gpm under Permit G-16947, and requests no additional volume of water beyond the existing volume listed under Permit G-16947. The combined rates will allow a total production rate of 75 gpm from the well for ease of operating the schools water system. The original application and permit includes 3 acres of irrigation, and 0.016 cfs for commercial use.

For irrigation use only:

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

Primary: 0.0 Acres (3 acres are part of the original application and Permit G-16947) Supplemental: _____ Acres

List the Permit or Certificate number of the underlying primary water right(s): _____

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

- If the use is **municipal or quasi-municipal**, attach **Form M**
- If the use is **domestic**, indicate the number of households: _____
- If the use is **mining**, describe what is being mined and the method(s) of extraction: _____

SECTION 5: WATER MANAGEMENT

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A. Diversion and Conveyance

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

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Pump (give horsepower and type): 15 hp submersible

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Other means (describe): _____

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water. The water will be pumped from the well into the adjacent storage tank, from which the water will be pumped to the school and the irrigated areas.

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

The water will be pumped from the well into the adjacent storage tank, from which the water will be pumped to the school and the irrigated areas.

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.

The pipelines will be buried and the irrigation water will be applied through either drip or sprinkler systems. Irrigation will be completed in the early and morning or evening hours as possible to minimize evaporation losses.

SECTION 6: STORAGE OF GROUND WATER IN A RESERVOIR - NA -

If you would like to store ground water in a reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Reservoir name: _____ Acreage inundated by reservoir: _____

Use(s): _____

Volume of Reservoir (acre-feet): _____ Dam height (feet, if excavated, write "zero"): _____

Note: If the dam height is greater than or equal to 10.0' above land surface AND the reservoir will store 9.2 acre feet or more, engineered plans and specifications must be approved prior to storage of water.

SECTION 7: USE OF STORED GROUND WATER FROM THE RESERVOIR - NA -

If you would like to use stored ground water from the reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Annual volume (acre-feet): _____

USE OF STORED GROUND WATER	PERIOD OF USE

SECTION 8: PROJECT SCHEDULE

Date construction will begin: Within five years of permit issuance

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Date construction will be completed: Within five years of permit issuance

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Date beneficial water use will begin: Within five years of permit issuance

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SECTION 9: WITHIN A DISTRICT - NA -

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name	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*).

This application request an increase of 51 gpm to the existing permitted rate of 24 gpm under Permit G-16947, and requests no additional volume of water beyond the existing volume listed under Permit G-16947. The combined rates will allow a total production rate of 75 gpm from the well.

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ATTACHMENT 1

Legal Property Description

G1-18028

Cascades Academy of Central Oregon Property Legal Description:

Real property located in Deschutes County, Oregon described as follows:

That part of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 6, Township 17 South, Range 12 East of the Willamette Meridian, Deschutes County, Oregon, lying between the East line of Tumalo Reservoir Market Road and the West line of the Old Bend-Sisters Highway.

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ATTACHMENT 2

Well Log DESC 59549

6-18028

STATE OF OREGON WATER SUPPLY WELL REPORT (as required by ORS 537.765 & OAR 690-205-0210)

DESC 59549 8/15/2012

WELL I.D. LABEL# L 109021 START CARD # 1017117 ORIGINAL LOG #

(1) LAND OWNER Owner Well I.D. First Name C&S CONSTRUCTION Last Name Company CASCADE ACADEMY OF CENTRAL OREGON Address 1506 NE 1ST ST UNIT 1 City BEND State OR Zip 97701

(2) TYPE OF WORK [X] New Well [] Deepening [] Conversion [] Alteration (complete 2a & 10) [] Abandonment (complete 5a)

(2a) PRE-ALTERATION Dia + From To Gauge Stil Plstc Wld Thrd Casing: Seal:

(3) DRILL METHOD [X] Rotary Air [] Rotary Mud [] Cable [] Auger [] Cable Mud [] Reverse Rotary [] Other

(4) PROPOSED USE [] Domestic [] Irrigation [] Community [] Industrial/ Commercial [] Livestock [] Dewatering [] Thermal [] Injection [X] Other COMMERCIAL AND IRRIGATION

(5) BORE HOLE CONSTRUCTION Special Standard (Attach copy) Depth of Completed Well 676.00 ft. BORE HOLE SEAL sacks/lbs

Table with columns: Dia, From, To, Material, From, To, Amt, lbs

How was seal placed: Method [] A [] B [X] C [] D [] E Backfill placed from ft. to ft. Material Filter pack from ft. to ft. Material Size Explosives used: [] Yes Type Amount

(5a) ABANDONMENT USING UNHYDRATED BENTONITE Proposed Amount Actual Amount

(6) CASING/LINER Casing Liner Dia + From To Gauge Stil Plstc Wld Thrd Shoe Inside Outside Other Location of shoe(s) Temp casing Yes Dia From To

(7) PERFORATIONS/SCREENS Perforations Method MACHINE Screens Type Material Perf/ Casing/ Screen Screen Liner Dia From To width length slots # of pipe size

(8) WELL TESTS: Minimum testing time is 1 hour Pump [] Bailer [] Air [X] Flowing Artesian [] Yield gal/min Drawdown Drill stem/Pump depth Duration (hr)

Temperature 55 °F Lab analysis [] Yes By Water quality concerns? [] Yes (describe below) TDS amount

(9) LOCATION OF WELL (legal description) County DESCHUTES Twp 17.00 S N/S Range 12.00 E E/W WM Sec 6 SW 1/4 of the NE 1/4 Tax Lot 701 Tax Map Number Lot Lat Long DMS or DD DMS or DD Street address of well (Nearest address) 19860 TUMALO RESERVOIR ROAD BEND OR 97701

(10) STATIC WATER LEVEL Date SWL(psi) + SWL(ft) Existing Well / Pre-Alteration Completed Well 8/9/2012 510

WATER BEARING ZONES Depth water was first found 350.00 SWL Date From To Est Flow SWL(psi) + SWL(ft)

(11) WELL LOG Ground Elevation Material From To SAND COBBLES 0 1 LAVA HARD 1 30 PUMICE BROWN 30 36 BASALT 36 70 PUMICE BROWN 70 76 BASALT TUFF PUMICE MIX 76 110 LAVA 110 130 PUMICE BROWN 130 170 BASALT BROKEN CASING 170 208 BASALT SOLID 208 228 SAND CINDERS 228 240 BASALT 240 254 LAVA GRAY HARD 254 314 BASALT RED BROWN 314 353 LAVA GRAY HARD 353 370 BASALT CLAY SEAMS 370 395 BASALT GRAY 395 415 BASALT CLAY SEAMS 415 440 BASALT CINDERS 440 485

Date Started 7/31/2012 Complete 8/9/2012 (unbonded) Water Well Constructor Certification I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. License Number 758 Date 8/15/2012 Signed THOMAS R PECK (E-filed)

(bonded) Water Well Constructor Certification I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. License Number 1720 Date 8/15/2012 Signed JACK ABBAS (E-filed)

G-10020

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ATTACHMENT 3

Land Use Form

G1-10020

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

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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: **CASCADE ACADEMY OF CENTRAL OREGON (CACO)** **ATTN: SCOTT ONCKEN – FACILITY MANAGER**

Mailing Address: **19860 TUMALO RESERVOIR ROAD**

BEND
City

Oregon
State

97701
Zip

Daytime Phone: **541-382-0699**

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:
17S	12E	6	SW NE	701		<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	School
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

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

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Deschutes County	APR 01 2015
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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: 51.0 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 _____

Briefly describe:

This application request an increase of 51 gpm to the existing permitted rate of 24 gpm under Permit G-16947, and requests <u>no</u> additional volume of water beyond the existing volume listed under Permit G-16947. The combined rates will allow a total production rate of 75 gpm from the well.
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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 and site plan review	DCC 18.32, 18.56, 18.84, 18.116, 18.124, 18.128	<input checked="" type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> 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.

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SALEM, OR

Name: _____ Title: Anthony Ragaine, Senior Planner
 Signature: Anthony Ragaine Phone: (541) 612-4739 Date: March 19, 2015
 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: _____

DECISION OF DESCHUTES COUNTY HEARINGS OFFICER



FILE NUMBERS: CU-10-31, SP-10-20, LR-10-9, LM-10-64, SMA-10-6

APPLICANT: Cascades Academy of Central Oregon
2150 N.E. Studio Road, Suite 2
Bend, Oregon 97701

PROPERTY OWNERS: William B. Boos Jr., Kendra L. Boos, Peter King, Danielle Easy
Nye, Mark Stamler, Robert Smith, Nora Takla, Thomas Felton
Wimberly III, Julianne Stack Wimberly, and MJP Special LLC
c/o Craig Ladkin
60550 Tekampe Road
Bend, Oregon 97702

APPLICANT'S ATTORNEY: Tia M. Lewis
Schwabe, Williamson & Wyatt
360 S.W. Bond Street, Suite 400
Bend, Oregon 97702

APPLICANT'S AGENT/ENGINEER: Keith D'Agostino, P.E.
D'Agostino Parker LLC
231 Scalehouse Loop, Suite 203
Bend, Oregon 97702

APPLICANT'S ENGINEER: Hennebery Eddy Architects
921 S.W. Washington Street, Suite 250
Portland, Oregon 97205

REQUEST: The applicant requests approval to establish a private school on the MUA-10 zoned subject property through a conditional use permit, and site plan, lot-of-record, landscape management, and surface mining impact area review.

STAFF REVIEWER: Anthony Raguine, Senior Planner

HEARING DATE: March 1, 2011

RECORD CLOSED: March 22, 2011

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G-10020

I. APPLICABLE STANDARDS AND CRITERIA:

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

1. Chapter 18.04, Title, Purpose, and Definitions

*** Section 18.04.030, Definitions**

2. Chapter 18.32, Multiple Use Agricultural Zone – MUA-10

*** Section 18.32.030, Conditional Uses Permitted**

*** Section 18.32.040, Dimension Standards**

*** Section 18.32.050, Yards**

*** Section 18.32.060, Stream Setbacks**

3. Chapter 18.56, Surface Mining Impact Area Combining Zone – SMIA

*** Section 18.56.020, Location**

*** Section 18.56.050, Conditional Uses Permitted**

*** Section 18.56.070, Setbacks**

*** Section 18.56.080, Use Limitations**

*** Section 18.56.090, Specific Use Standards**

*** Section 18.56.100, Site Plan Review and Approval Criteria**

*** Section 18.56.110, Abbreviated SMIA Site Plan Review**

*** Section 18.56.120, Waiver of Remonstrance**

4. Chapter 18.84, Landscape Management Combining Zone – LM

*** Section 18.84.020, Application of Provisions**

*** Section 18.84.040, Uses Permitted Conditionally**

*** Section 18.84.050, Use Limitations**

*** Section 18.84.080, Design Review Standards**

*** Section 18.84.090, Setbacks**

*** Section 18.84.095, Scenic Waterways**

5. Chapter 18.116, Supplementary Provisions

*** Section 18.116.030, Off-Street Parking and Loading**

*** Section 18.116.031, Bicycle Parking**

6. Chapter 18.124, Site Plan Review

*** Section 18.124.030, Approval Required**

*** Section 18.124.060, Approval Criteria**

*** Section 18.124.070, Required Minimum Standards**

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7. **Chapter 18.128, Conditional Use**

* **Section 18.128.015, General Standards Governing Conditional Uses**

* **Section 18.128.190, Schools**

II. FINDINGS OF FACT:

- A. Location:** The subject property located at 19860 Tumalo Reservoir Road and is further identified as Tax Lot 701 on Deschutes County Assessor's Map 17-12-06.
- B. Zoning and Plan Designation:** The subject property is zoned Multiple Use Agricultural (MUA-10) and is located within Landscape Management (LM) and Surface Mining Impact Area (SMLA) Combining Zones.
- C. Site Description:** The subject property is 19.9 acres in size, irregular in shape and vacant. It is located in Tumalo west of the Deschutes River, and is bounded on the west by Tumalo Reservoir Road and on the east by O.B. Riley Road. The property slopes down to the east and southeast toward the river, and more steeply to the northeast through a dry natural ravine. Vegetation consists of a moderately dense cover of mature juniper trees and native shrubs and grasses.
- D. Surrounding Zoning and Land Uses:** The subject property is bordered on the north by land zoned Exclusive Farm Use-Tumalo/Bend/Redmond Subzone (EFU-TRB) that is undeveloped or developed with small-scale farming and rural residential uses. Farther to the north is land zoned Surface Mining (SM) and developed with SM Site 370, as well as land within the Tumalo Rural Community that is zoned Tumalo Residential (TU R-5), and developed with rural residential uses. To the east and south is undeveloped land zoned EFU-TRB and Flood Plain (FP) and owned by the Oregon Parks and Recreation Department (OPRD). Farther east is land zoned Open Space and Conservation (OS&C), owned by OPRD and developed with Tumalo State Park. U.S. Highway 20 is located approximately 650 feet east of the subject property. On the west side of the highway is the headquarters and aggregate material sales yard for Knife River Corporation, the owner/operator of SM Site 370. To the west of the subject property is land zoned MUA-10), some of which is undeveloped and some developed with the Tumalo Rim Subdivision and rural residential uses.
- E. Procedural History:** The subject applications were submitted on December 20, 2010 and were accepted by the county as complete on January 18, 2011. Therefore, the 150-day period for issuance of a final local land use decision under ORS 215.178 would have expired on June 15, 2011. A public hearing on the applications was scheduled for March 1, 2011. On that day, the Hearings Officer conducted a site visit to the subject property and vicinity accompanied by Senior Planner Anthony Raguine and Senior Transportation Planner Peter Russell. At the public hearing the Hearings Officer disclosed her observations and impressions from the site visit, received testimony and evidence, left the written evidentiary record open through March 15, 2011, and allowed the applicant through March 22, 2011 to submit final argument pursuant to ORS 197.763. The record

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closed on March 22, 2011. Because the applicant agreed to extend the written record from March 1 through March 22, 2011, under Section 22.24.140 of the county's land use procedures ordinance, the 150-day period was tolled for 22 days and now expires on July 7, 2011. As of the date of this decision there remain 71 days in the extended 150-day period.¹

G. Proposal: The applicant currently operates a private pre-K and K-12 school called Cascades Academy in a 17,000-square-foot facility at 2150 N.E. Studio Road in Bend. The school currently has 112 students, 12 full-time teachers and 6 part-time teachers. The applicant wishes to expand enrollment but lacks sufficient capacity at its current location. Therefore, the applicant submitted the subject conditional use, site plan, lot of record, landscape management, and surface mining impact area applications to establish a new school on the subject property. The school would continue to offer academic instruction for pre-kindergarten, kindergarten, and grades 1-12. The proposed school would have the capacity for up to 225 students, including up to 40 pre-K students and up to 45 high school students. The new school would include three structures:

- a 28,000-square-foot main building with classrooms, teaching labs, library, faculty and staff offices, storage and mechanical rooms, and common gathering areas;
- a 10,900-square-foot building with a gymnasium, recreational uses, and other ancillary uses; and
- a 625-square-foot teaching pavilion along the natural dry ravine in the northern portion of the property.

In addition, the school site would include an access drive from Tumalo Reservoir Road connecting to internal access driveways, parking areas, pedestrian walkways, as well as a playground area, landscaping, a well and water holding tanks, an on-site sewage disposal system, and an on-site surface water drainage and retention system.

G. Public/Private Agency Comments: The Planning Division sent notice of the applicant's proposal to a number of public and private agencies and received responses from: the Deschutes County Building Division (building division), Property Address Coordinator, Environmental Soils Division, Road Department (road department), County Engineer, and Senior Transportation Planner; the Bend Fire Department (fire department); the Oregon Department of Transportation (ODOT); the Oregon Health Division; and OPRD. These comments are set forth verbatim at pages 2-8 of the staff report and/or are included in the record. The following agencies did not respond to the request for comments: the

¹ The Hearings Officer disclosed at the public hearing that I observed the subject property from Tumalo Reservoir and O.B. Riley Roads but did not traverse the subject property on foot because of snow cover and hazardous ground conditions. Opponent Nunzie Gould argues I should have conducted a second site visit in better conditions in order to walk the property. I disagree. There is nothing in the applicable statutes or the county code provisions that requires a site visit. The only requirement, established by case law, is that I disclose my site visit observations and impressions and provide an opportunity for rebuttal. *Carrigg v. City of Enterprise*, 48 Or LUBA 328 (2004). That was done in this case.

Cascades Academy

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Deschutes County Assessor, and the Oregon Department of Environmental Quality (DEQ). Agency comments are addressed in the findings below.

- H. Public Notice and Comments:** The Planning Division mailed individual written notice of the applicant's proposal and the public hearing to the owners of record of all property located within 250 feet of the subject property. The record indicates these notices were mailed to 7 property owners. In addition, notice of the public hearing was published in the Bend "Bulletin" newspaper, and the subject property was posted with a notice of proposed land use action sign. As of the date the record in this matter closed, the county had received 20 letters from the public in response to these notices. In addition, 7 members of the public testified at the public hearing. Public comments also are addressed in the findings below.
- I. Lot of Record:** Based on the findings set forth below, the Hearings Officer has found the subject property is a legal lot of record.

III. CONCLUSIONS OF LAW:

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

LOT OF RECORD

1. Chapter 18.04, Title, Purpose and Definitions

a. Section 18.04.030, Definitions

As used in DCC Title 18, the following words and phrases shall mean as set forth in DCC 18.04.030.

*** * ***

"Lot of record" means

- A. A lot or parcel at least 5,000 square feet in area and at least 50 feet wide, which conformed to all zoning and subdivision or partition requirements, if any, in effect on the date the lot or parcel was created, and which was created by any of the following means:**
- 1. By partitioning land as defined in ORS 92;**
 - 2. By a subdivision plat, as defined in ORS 92, filed with the Deschutes County Surveyor and recorded with the Deschutes County Clerk;**
 - 3. By deed or contract, dated and signed by the parties to**

the transaction, containing a separate legal description of the lot or parcel, and recorded in Deschutes County if recording of the instrument was required on the date of the conveyance. If such instrument contains more than one legal description, only one lot of record shall be recognized unless the legal descriptions describe lots subject to a recorded subdivision or town plat;

- 4. By a town plat filed with the Deschutes County Clerk and recorded in the Deschutes County Record of Plats; or**
- 5. By the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel.**

B. The following shall not be deemed to be a lot of record:

- 1. A lot or parcel created solely by a tax lot segregation because of an assessor's roll change or for the convenience of the assessor.**
- 2. A lot or parcel created by an intervening section or township line or right of way.**
- 3. A lot or parcel created by an unrecorded subdivision, unless the lot or parcel was conveyed subject to DCC 18.04.030.**
- 4. A parcel created by the foreclosure of a security interest.**

FINDINGS: The record indicates the subject property is at least 5,000 square feet in size and at least 50 feet wide. The applicant states the subject property was lawfully created by a deed dated May 3, 1967 (Volume 153, Page 141), a copy of which is included in the record. This deed separately describes Tax Lot 701, the subject property as follows:

That part of the Southwest ¼ or the Northeast ¼ of Section 6 lying between the east line of the Tumalo Reservoir Market Road and the west line of the Old Bend-Sisters Highway, Twp. 17 S., R. 12, E.W.M. (approx. 20.28 A.).

The county adopted its first zoning ordinance, PL-5, on November 1, 1972, which among other things established minimum lot sizes for new parcels. The staff report concludes, and the Hearings Officer agrees, that because the subject property was created by a deed recorded prior to the effective date of the county's first zoning ordinance, no zoning was in effect at that time, and therefore the subject property was lawfully created on May 3, 1967 and constitutes a single legal lot of record.

MUA-10 ZONE STANDARDS

2. Chapter 18.32, Multiple Use Agricultural – MUA-10

a. Section 18.32.030, Conditional Uses Permitted

* * *

- X. Private or public schools, including all buildings essential to the operation of such a school.**

FINDINGS: The applicant proposes to establish a private school on the subject property. Section 18.04.030 defines “school, private” as:

*** * * any licensed or accredited private entity that offers instruction or training for any academic, technical or identified occupational objective.**

The applicant submitted into the record a copy of its 2010-2011 accreditation as a K-12 school issued by the Northwest Accreditation Commission. Based on this information, the Hearings Officer finds Cascades Academy is an accredited private school. The applicant’s burden of proof demonstrates its existing school, and its proposed school on the subject property, are for the purposes of academic instruction. Therefore, I find the applicant’s proposal constitutes a private school that is a conditional use in the MUA-10 Zone.

b. Section 18.32.040, Dimensional Standards

* * *

- D. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height.**

FINDINGS: The applicant’s submitted elevation drawings show the highest point on any of the structures would be 29 feet 11 inches. However, as discussed in detail in the LM Zone findings below, incorporated by reference herein, the Hearings Officer has found the height of the main building is actually 33.5 feet and therefore does not satisfy this criterion. I have found the applicant will be required as a condition of approval to submit a revised site plan and elevation drawings demonstrating the main school building does not exceed 30 feet in height, measured as required for structures in the LM Zone.

c. Section 18.32.050, Yards

- A. The front setback from the property line shall be a minimum of 20 feet for property fronting on a local street right-of-way, 30 feet from a property line fronting on a collector right-of-way, and 80 feet from an arterial right-of-way unless other provisions for combining access are provided and approved by**

the County.

- B. Each side yard shall be a minimum of 20 feet. For parcels or lots created before November 1, 1979, which are one-half acre or less in size, the side yard setback may be reduced to a minimum of 10 feet. For parcels or lots adjacent to property receiving special assessment for farm use, the adjacent side yard for a dwelling shall be a minimum of 100 feet.
- C. Rear yards shall be a minimum of 25 feet. Parcels or lots with rear yards adjacent to property receiving special assessment for farm use, the rear yards for a dwelling shall be a minimum of 100 feet.
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.

FINDINGS: The subject property has frontage on Tumalo Reservoir and O.B. Riley Roads, both classified as rural collector roads and therefore requiring 30-foot front yard setbacks, 20-foot side setbacks and 25-foot rear yard setbacks. According to the applicant's submitted site plan, the front yard setbacks would be approximately 225 feet from Tumalo Reservoir Road and approximately 200 feet from O.B. Riley Road. In addition, the south side yard setback would be approximately 600 feet, the east side yard setback would be approximately 420 feet, and the rear yard (north) setback would be approximately 300 feet. As discussed above, the maximum permitted structure height is 30 feet. The staff report states this building height would require a 72-foot solar setback from the north property lot line, and the applicant proposes a 300-foot setback from that boundary. For these reasons, the Hearings Officer finds the applicant's proposal satisfies the standards in this section.

d. **Section 18.32.060, Stream Setbacks**

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

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location

of these facilities closer to the stream or lake, but in no case closer than 25 feet.

- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.**

FINDINGS: The applicant's submitted site plan shows the proposed on-site sewage disposal facilities -- including septic tank, distribution facilities, and drain fields -- would be located at least 180 feet from the ordinary high water mark (OHWM) of the Deschutes River. The site plan also shows all school buildings would be located at least 340 feet from the OHWM. Therefore, the Hearings Officer finds the applicant's proposal satisfies these standards.

For the foregoing reasons, and with imposition of the condition of approval described above, the Hearings Officer finds the applicant's proposal will satisfy all standards in the MUA-10 Zone.

SMIA ZONE STANDARDS

3. Chapter 18.56, Surface Mining Impact Area Combining Zone – SMIA

a. Section 18.56.020, Location

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

FINDINGS: The record indicates the subject property is located approximately 1,300 feet from SM Site 370. Therefore, it is within one-half mile (2,640 feet) of the site's boundaries, making the applicant's proposal subject to the applicable SMIA Zone provisions.

b. 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.

FINDINGS: The proposed private school is a conditional use in the underlying MUA-10 Zone and therefore is a conditional use in the SMIA Zone.

c. 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.

FINDINGS: The Hearings Officer has found the applicant's proposal satisfies all minimum setbacks in the MUA-10 Zone. Section 18.04.030 includes the following relevant definitions:

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

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

The proposed school constitutes both a dust- and noise-sensitive use under these definitions. The applicant's submitted site plan shows that at their closest points the proposed private school buildings would be located at least 1,600 feet from SM Site 370, exceeding both the required minimum 250-foot and quarter-mile (1,320-foot) setbacks established in this section. The referenced criteria in Section 18.56.100 are addressed below.

d. Section 18.56.080, Use Limitations

No dwellings or additions to dwellings or other noise-sensitive or dust-sensitive uses or structures shall be erected in any SMIA Zone without first obtaining site plan approval under the standards and

criteria set forth in DCC 18.56.090 through 18.56.120.

FINDINGS: Because the applicant's proposed school is both a dust- and noise-sensitive use, it is subject to the referenced criteria, addressed in the findings below.

e. Section 18.56.090, Specific Use Standards

The following standards shall apply in the SMIA Zone:

New dwellings, new noise-sensitive and dust-sensitive uses or structures, and additions to dwellings or noise and dust-sensitive uses or structures in existence on the effective date of Ordinance No. 90-014 which exceed 10 percent of the size of the existing dwelling or use, shall be subject to the criteria established in DCC 18.56.100.

FINDINGS: Because the proposed school is a new noise- and dust-sensitive use, it is subject to the referenced criteria, address in the findings below.

f. Section 18.56.100, Site Plan Review and Approval Criteria

A. Elements of Site Plan. A site plan shall be submitted in a form prescribed by the Planning Director or Hearings Body detailing the location of the proposed noise-sensitive use, the location of the nearby surface mine zone and operation, if any, and other information necessary to evaluate the approval criteria contained in DCC 18.56.100.

FINDINGS: The Hearings Officer finds the submitted site plan includes sufficiently detailed information to allow me to evaluate the proposed school under the criteria in this section.

B. Site plan review and approval, pursuant to the County Uniform Land Use Action Procedures Ordinance, shall be required for all uses in the SMIA Zone prior to the commencement of any construction or use.

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 above.

FINDINGS: The applicant submitted a detailed site plan as required by this section. As discussed in the findings below, the Hearings Officer has found the submitted site plan satisfies all applicable SMIA and general site plan approval criteria.

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 DCC 18.52.090, 18.52.110 and 18.52.140, respectively.

FINDINGS: This paragraph requires compliance with the site-specific ESEE (economic, social, environmental and energy) analysis for SM Site 370 set forth in the county's comprehensive plan. However, the staff report states, and the Hearings Officer agrees, that the applicant's proposal qualifies for the abbreviated site plan review authorized under Section 18.56.110, addressed in the findings below.

- E. Public notice shall be as set forth in DCC Title 22, the Uniform Development Procedures Ordinance, except that in all cases notice of the receipt of an SMIA application shall be sent to the mine owners and/or operators whose SM-Zoned site triggered the SMIA review.**

FINDINGS: Notice of the applicant's proposal was mailed to the owners of all property located within 250 feet of the subject property, which did not include Knife River Corporation, the owner/operator of the SM-zoned parcel. However, the record indicates the staff report was mailed to Knife River. The staff report includes the date and time of the public hearing as well as a list of the applicable criteria and a detailed description of the applicant's proposal. Although notice through the staff report technically did not meet the requirement of this paragraph, the Hearings Officer finds it was adequate to apprise the mine owner/operator of the applicant's proposal and to afford it the opportunity to comment on the application.

g. Section 18.56.110, Abbreviated SMIA Site Plan Review

- A. A new or enlarged noise- or dust-sensitive use to which DCC 18.56.110 applies that is at least one-quarter mile from an SM Zone and that has at least two dwellings or other noise- or dust-sensitive uses between it and the SM zone is presumed to meet the approval criteria set forth in DCC 18.56.100(D), and shall be processed under DCC 18.56.110.**
- B. Abbreviated SMIA site plan review shall require the submission of an application in a form prescribed by the Planning Director or Hearings Body and such documentation as is necessary to demonstrate conformance with DCC 18.56.110(A).**
- C. Unless the underlying zoning at the SMIA site would require additional review of the proposed use for some other land use permit, abbreviated site plan review shall be conducted (1) administratively without prior public notice; (2) with public**

notice of the Findings and Decision mailed consistent with DCC 18.56.100(E), to all persons entitled to receive notice; and (3) with an appeal period and procedures as set forth in DCC Title 22, the Uniform Development Procedures Ordinance. Appellants may submit evidence to overcome the presumption set forth in DCC 18.56.110(A).

FINDINGS: At its closest point the subject property is at least 1,600 feet from SM Site 370, and therefore is more than one-quarter mile (1,320 feet) from the SM Zone. In addition, the record indicates two dwellings are located between the subject property and the mine site (on Tax Lot 4600 on Assessor's Map 16-12-31D, and on Tax Lot 302 on Assessor's Map 17-12-06). Therefore, the Hearings Officer finds the proposed school is presumed to meet the approval criteria in Section 18.56.100(D) – i.e., that it “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.” No evidence rebutting that presumption was submitted.

h. 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 surface mining site.

FINDINGS: The burden of proof states the applicant will execute and record a waiver of remonstrance, and the Hearings Officer finds the applicant will be required to do so as a condition of approval.

For the foregoing reasons, the Hearings Officer finds the applicant's proposal satisfies all applicable criteria in the SMIA Zone.

LM ZONE STANDARDS

4. Chapter 18.84, Landscape Management Combining Zone – LM

a. Section 18.84.020, Application of Provisions

The provisions of DCC 18.84 shall apply to all areas within one-fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management

roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.

FINDINGS: The subject property is located within one-quarter mile (1,320 feet) of Highway 20 and within 660 feet of the Deschutes River – both designated LM corridors. Therefore, the Hearings Officer finds the applicant’s proposal is subject to the provisions of the LM Zone.

b. Section 18.84.040, Uses Permitted Conditionally

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

FINDINGS: The proposed school is a conditional use in the underlying MUA-10 Zone and therefore is a conditional use in the LM Zone.

c. Section 18.84.050, Use Limitations

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

FINDINGS: The proposed school would consist of three new structures requiring building permits, and therefore the Hearings Officer finds the applicant’s proposal is subject to LM site plan review and approval. The staff report states, and based on my site visit observations I agree, that portions of the proposed new structures would be visible from the Deschutes River and Highway 20.

d. Section 18.84.080, Design Review Standards

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

A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in

accordance with the Oregon Forest Practices Act, or agricultural use of the land.

FINDINGS: The applicant's burden of proof states in relevant part:

"As demonstrated on the Site Plan(s) the proposal seeks to preserve existing trees and shrubs to the maximum extent feasible. The preliminary Grading Plan for the site identifies proposed site grading areas and demonstrates that only areas absolutely necessary for construction of site elements will be graded and disturbed. Proposed formal landscape areas are minimized to preserve the existing vegetation. The proposed buildings, parking areas, hardscape areas, and utilities have been located to avoid and preserve trees and shrubs where practical. In particular, the parking area design shows significant customization to preserve trees with variable dimensions and frequent 'planter islands' to work around the existing trees. Care will be taken during the construction process to preserve existing trees, roots, and vegetation to be retained.

The proposed buildings and site improvement areas have been positioned internal to the subject property and distant from the easterly boundaries of the property, to preserve very substantial existing tree and shrub cover screening between the development areas and Highway 20 and the Deschutes River, to the maximum extent feasible. The buildings are at least 200 feet from the easterly boundary of the site. Existing vegetation within the neighboring Oregon State Parks Land, and other lands to the east of the site, further provide and enhance screening. Locating the buildings further west on the site, would be higher in elevation, as the site grade increase to the west, and would reduce the screening effect of the existing vegetation, thus the buildings have been sited to maximize the screening value of the retained trees and shrubs."

In her March 8, 2011 comments on the proposal, opponent Nunzie Gould argued in relevant part:

"There will be trees removed some of which are old growth junipers being older than the pre-settlement date of 1870. It is important in the LM review that existing trees buffer the planned built environment and that the park lands [Tumalo State Park] are not factored into this buffering. Being familiar with construction, it is questionable whether the trees identified on BOP [burden of proof] p. 48 A2.1 will survive construction, landscaping and/or the loss of moisture from building footprint, parking and driveway pavement. The trauma from construction is usually not cured by irrigation."

The Hearings Officer finds the vegetation within Tumalo State Park has not been proffered or considered as part of the vegetative screening of the proposed school required by this paragraph. I understand Ms. Gould's concern about the survival of preserved trees in or near a construction site, and that trees can be damaged and ultimately killed by root cutting and soil compaction above the root system. To address these legitimate concerns, I find the applicant will be required as a condition of approval to protect all retained trees during construction, and specifically to

install temporary fencing around the drip line of each retained tree that could be affected by excavation and/or the movement of construction vehicles and equipment so that the roots of the retained trees and the soils within the drip line are not damaged.

The staff report states, and the Hearings Officer agrees, that the applicant's submitted site plan demonstrates the existing tree and shrub cover that would screen the school buildings and other improvements from the Deschutes River and Highway 20 will be retained except where removal is necessary for construction.

For the foregoing reasons, and with imposition of the above-described condition of approval, the Hearings Officer finds the applicant's proposal satisfies the requirements of this paragraph.

- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.**

FINDINGS: The applicant's burden of proof (Sheet A4.2) shows the main school building and gymnasium building will have exterior finishes of natural wood siding, beige masonry block base, light grey, non-reflective metal panel accents, and grey metal roofing. The burden of proof states the proposed teaching pavilion would be open-sided with natural wood post-and-beam construction and the same grey metal roofing proposed for the main building. The Hearings Officer finds these finishes constitute earth tones that will blend with the surrounding vegetation and landscape, consisting of a moderately dense cover of mature juniper trees, native brush and grasses, lava rock outcrops, and tan/brown colored soils.

- C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. This subsection shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.**

FINDINGS: The applicant's burden of proof (Sheet A4.2) proposes that the main building, gymnasium, and teaching pavilion have roofs made of non-reflective grey metal. The Hearings Officer finds this roof material will blend with the surrounding landscape and vegetation.

- D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.84.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such**

structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.

FINDINGS: The applicant's burden of proof states in relevant part:

"The proposed buildings and site improvement areas have been positioned internal to the subject property and distant from the easterly boundaries of the property, to preserve very substantial existing tree and shrub cover screening between the development areas and Highway 20 and the Deschutes River, and to reduce visual impacts to the maximum extent feasible. The buildings are at least 200 feet from the easterly boundary of the site. Existing vegetation within the site, and the neighboring Oregon State Parks Land, and other lands to the east of the site, further provide and enhance screening. Given the substantial height of the existing trees and vegetation, both on the site and on the neighboring Parks land, and the existing topography, visibility of the proposed structures from the river itself is expected to be almost non-existent. The proposed buildings will be located almost one quarter mile from the closest point of Highway 20.

Locating the buildings farther west on the site, would be higher in elevation, as the site topography increases to the west, and would reduce the screening effect of the existing vegetation. Siting the buildings farther east on the property would result in removal of important screening vegetation on the site. Thus the buildings have been sited central to the site, to maximize the screening value of the retained trees and shrubs and the surrounding vegetation, and to reduce visual impacts to the Highway and river."

Based on the Hearings Officer's review of the submitted site and landscape plans and my site visit observations, I find the applicant's proposed site design and building locations will effectively take advantage of existing vegetative cover to reduce visual impacts from the school on both Highway 20 and the Deschutes River, thus satisfying the criteria in this paragraph.

- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flagpoles or other projections from the roof of the structure. DCC 18.84.080 shall not apply to agricultural structures located at least 50 feet from a rimrock. (Emphasis added.)**

FINDINGS: The applicable LM features are Highway 20 to the east and the Deschutes River to the east and south. The proposed school includes three structures subject to the 30-foot height limit: the main school building, the gymnasium building, and the teaching pavilion. Staff and the applicant have raised questions about the proper methodology for measuring the height of these buildings – i.e., the two points between which the maximum building height is measured –

because of the interplay of several code provisions addressing building height generally and in the LM Zone in particular. Therefore, the Hearings Officer will address those questions first.

1. Code Language.

Section 18.04.030 defines building height as “the vertical distance from grade to the highest point of the roof.” This section also defines “grade” in part as “the average of the finished ground elevations of all walls of a building.” Under these definitions, building height *generally* is measured from the building site’s average finished -- i.e., post-construction -- grade to the highest point of the building’s roof.

Building height measurement for structures in the LM Zone is addressed in both Section 18.84.080(E) and the rest of the “grade” definition in Section 18.04.030. The operative language in the two provisions is as follows:

Structures shall not exceed 30 feet in height measured from the natural grade on the sides(s) facing the road, river or stream. (Section 18.84.080(E), emphasis added.)

For purposes of height determination in the Landscape Management Combining Zone, grade shall be the average of natural ground elevations prior to construction for the wall closest to and facing the road, river or stream. (Section 18.04.030, emphasis added.)

Both provisions require height measurement at the part of the building “facing” the LM feature and from the “natural” – i.e., preconstruction – grade. They differ in two respects:

- Section 18.84.080(E) refers to the natural grade while Section 18.04.030 refers to the *average* natural grade;
- Section 18.84.080(E) refers to the *side(s)* facing the LM feature while Section 18.04.030 refers to the *wall* closest to and facing the LM feature.

The question is whether these differences put these two provisions in conflict so that the Hearings Officer must conduct an analysis of their text, context and legislative history to determine the drafter’s intent. I find they do not. To the contrary, although both provisions address height measurement for structures in the LM Zone, I find the “grade” definition in Section 18.04.030 is consistent with, but more specific than, the language in Section 18.84.080(E).

The “grade” definition identifies the pertinent natural grade as the *average* of the natural ground elevations at a particular location. And the definition identifies the point along the building side facing the LM feature at which the average ground elevations are to be determined as the *wall closest* to the LM feature. The terms “side” and “wall” are not defined in Title 18. According to *Webster’s New World Dictionary, College Edition*, their ordinary definitions are:

*“Side. * * * (3)(a) any of the lines or surfaces that bound or limit something; as,*

a square has four sides, a cube six; (b) any bounding line or surface of an object other than the ends or top and bottom; (c) either of the two bounding surfaces of an object that are distinguished from the front, back, top and bottom. "

*"Wall. 1. an upright structure of wood, stone, brick, etc., serving to enclose, divide, support, or protect; specifically, (a) such a structure forming a side or inner partition of a building; (b) such a continuous structure serving to enclose an area, separate fields, etc.; * * *."(Emphasis added.)*

The Hearings Officer finds from the above-underscored language that these terms both connote the exterior vertical surface(s) of a building. Because the definition of "wall" includes an interior "partition," it also is possible the term "wall" means a distinct *portion* of a building's side, such as where a side is broken up by multiple architectural features created by separate walls. In either case, the "grade" definition is still consistent with, but more specific than, the provisions of Section 18.84.080(E).

In summary, the Hearings Officer finds these code provisions specify that height measurement for structures in the LM Zone is to be made from the highest point of the entire building (including all wings and sections) to the average natural ground elevation at the building's wall (side or segment of side where there are multiple walls) closest to and facing the LM feature.

2. Application of Height Measurement Methodology.

Consistent with the above findings, staff argues the height of the three proposed school buildings must be measured from the average natural ground elevation at the wall closest to the river and highway. The submitted site plan shows the main school building has a u-shaped configuration consisting of a main section with a north-south orientation and two classroom wings with east-west orientations that are closer to the river and highway.² As to this building, the staff report states:

"In this case, staff believes the walls that are closest to and facing the Deschutes River and Highway 20 are the classroom wing walls. Consequently, staff believes that only the natural grade line associated with the classroom wing walls can be used as one of the measuring points, and that the natural grade associated with the main school building [main section] cannot be used. The second measuring point is the highest point of the roof. In this case, staff believes the highest point of the roof exists on the main school building [main section] and not the classroom wings. Based on staff's methodology, the east face of the school building would have a maximum height of approximately 31 feet."

In his March 8, 2011 memorandum, Keith D'Agostino concluded that using staff's measurement methodology the height of the main school building actually would be 33.5 feet, as follows:

"As shown on that same East Section View, the average natural grade elevation

² A copy of the site plan is attached to this decision as Exhibit A.
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at the east walls of the classroom wings is approx. 3,222.0. Compared to the roof ridge of the main wing of the building, (the non-classroom wings), the building height would be 33.5 feet, not 31 feet as suggested in the staff report. Compared to the maximum roof ridge elevation of the classroom wings (el. 3,251.5), the maximum classroom wing building height is 29.5 feet as noted."

Undoubtedly for this reason, Mr. D'Agostino argues the Hearings Officer should use a different methodology, measuring the building height for each section of the building based on the natural ground elevation at *each wall* on the east side of the main school building. According to Mr. D'Agostino, using that methodology the classroom wings would have a maximum height of 28 feet and 29 feet six inches, and the main section of the main school building would have a maximum height of 29 feet. He argues this measurement methodology is appropriate and justified for the following reasons:

"If the main building [main section] was detached/separated from the classroom wing by a few inches, all buildings would be within the 30 foot height limit regardless of which calculation methodology is used and there would be no change in how the buildings appear relative to the LM features. To detach the classroom wings, however, or otherwise separate the main building [main section] from the classroom wings, would necessitate numerous design challenges and inefficiencies in the building and site design.

* * *

*It might be important to note that the issue of height determination, in this case, is likely to be completely benign to the users of the applicable LM features. As noted in earlier testimony, the subject building will already be largely invisible to River users, due to the area topography and the significant preserved tree and vegetation buffers. The building will not be visible from the Tumalo State Park day use area, most of the campgrounds, and areas along the river. With respect to the highway, the significant distance to the highway, over a quarter mile, combined with the preserved tree and vegetation buffers, will again render the height determination in this case benign. * * *"* (Bold emphasis in original.)

Mr. D'Agostino also argued it would be difficult and cost-prohibitive for the applicant to redesign the site and main school building in order to lower it 3.5 feet in order to bring it within the 30-foot height maximum using staff's measurement methodology.

The Hearings Officer understands the applicant's reluctance to redesign the school in order to lower the height of the main school building. Nevertheless, I find the applicant's proposed height measurement methodology is not supported by the applicable code language. And although the applicant may be correct that a 3.5-foot difference in the height of the main school building would have little if any effect on its appearance from the river and highway, I find such considerations are not relevant in determining building height.

3. Building Height Calculations.

Using the measurement methodology described above, the Hearings Officer makes the following findings concerning the height of the proposed school buildings.

Teaching Pavilion. The applicant did not submit elevation drawings for this structure. The submitted site plan shows it would be 25 feet square and 18 feet tall and would be located on a relatively level area northwest of the main school building. Based on this information, the Hearings Officer finds this structure will satisfy the 30-foot height limitation in the LM Zone.

Gymnasium Building. The applicant submitted elevation drawings for this structure. Sheet A3.3, depicting the east elevation, shows a natural ground elevation of 3,227 feet on the east side with a building height of 27 feet 11 inches. Sheet A3.4, depicting the south elevation, shows natural ground elevations of 3,227.9 and 3,229 and building heights of 27 feet 11 inches from the upper elevation and 29 feet 11 inches from the lower elevation. Therefore, the Hearings Officer finds the gymnasium building also will satisfy the 30-foot height limitation in the LM Zone.

Main School Building. The applicant submitted elevation drawings for this structure. Sheet A3.1, depicting the east elevation, shows a natural ground elevation of 3,222 at the east exterior walls of the classroom wings and the elevation of the highest point of the building as 3,255.5. Therefore, the building height measured on the closest wall of the building is 33.5 feet (3,255.5 minus 3,222). Sheet A3.2, depicting the south elevation, shows a natural ground elevation of 3,226 feet at the southeast corner of the classroom wing which is the closest wall to the river and highway. Therefore, the building height measured at this closest wall is 29.5 feet.

Based on this information and calculations, the Hearings Officer finds the teaching pavilion and gymnasium building will satisfy the 30-foot maximum building height in the LM Zone, but that the main school building will not. Therefore, I find the applicant will be required as a condition of approval to submit a revised site plan and building elevation drawings demonstrating the height of the main school building, measured as required in this decision, will not exceed 30 feet.

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

FINDINGS: The Hearings Officer finds this criterion is not applicable because the proposed school is not a residential or commercial use, and the proposed driveway access is on Tumalo Reservoir Road and not on Highway 20, the designated LM road.

- G. **New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.**

FINDINGS: The applicant's burden of proof states all exterior lighting will be designed and installed to satisfy this standard. The Hearings Officer finds the applicant will be required as a condition of approval to install all exterior lighting in conformance with the Outdoor Lighting

Ordinance in Chapter 15.10 of the county code.

- H. The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged.**

FINDINGS: As discussed above, existing vegetation on the subject property consists of a moderately dense cover of native trees, shrubs and grasses. The applicant proposes to retain all existing native vegetation not required to be removed for construction of the school buildings and other improvements. The staff report states, and the Hearings Officer concurs, that in light of the number of trees and density of existing vegetation that will be retained, it is not necessary for the applicant to establish introduced landscaping to provide additional vegetative screening.

- I. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.) are permitted.**

FINDINGS: The applicant does not propose any signs that would be visible from the Deschutes River or Highway 20. The submitted site plan shows a 32-square-foot monument sign proposed to be installed at the driveway entrance to the school off Tumalo Reservoir Road. The Hearings Officer finds that because of its location on the western side of the subject property, completely screened from the river, it will conform to this criterion. I find that as a condition of approval the applicant must to apply for and obtain a sign permit from the county for the entrance sign.

- J. A conservation easement as defined in DCC 18.04.030 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Whychus Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because the subject property is not adjacent to any of the named waterways.

e. Section 18.84.090, Setbacks

- A. Except as provided in DCC 18.84.090, minimum setbacks shall**

be those established in the underlying zone with which the LM Zone is combined.

FINDINGS: As discussed above, the Hearings Officer has found the applicant's proposal satisfies all minimum required setbacks in the underlying MUA-10 Zone.

B. Road Setbacks. All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road right-of-way unless the Planning Director or Hearings Body finds that:

1. A location closer to the designated road would more effectively screen the building from the road or protect a distant vista; or
2. The depth of the lot makes a 100-foot setback not feasible; or
3. Buildings on both lots abutting the subject lot have front yard setbacks of less than 100 feet and the adjacent buildings are within 100 feet of the lot line of the subject property, and the depth of the front yard is not less than the average depth of the front yards of the abutting lots.

If the above findings are made, the Planning Director or Hearings Body may approve a less restrictive front yard setback which will be appropriate to carry out the purpose of the zone.

FINDINGS: The site plan shows Highway 20 is approximately 650 feet east of the subject property. Therefore, the Hearings Officer finds the applicant's proposal satisfies these criteria.

C. River and Stream Setbacks. All new structures or additions to existing structures shall be set back 100 feet from the ordinary high water mark of designated streams and rivers or obtain a setback exception in accordance with DCC 18.120.030. For the purpose of DCC 18.84.090, decks are considered part of a structure and must conform with the setback requirement.

The placement of on-site sewage disposal systems shall be subject to joint review by the Planning Director or Hearings Body and the Deschutes County Environmental Health Division. The placement of such systems shall minimize the impact on the vegetation along the river and shall allow a

dwelling to be constructed on the site as far from the stream or lake as possible. Sand filter systems may be required as replacement systems when this will allow a dwelling to be located further from the stream or to meet the 100-foot setback requirement.

FINDINGS: The submitted site plan shows all proposed school structures would be located at least 340 feet from the Deschutes River, therefore satisfying the criteria in this paragraph. The applicant proposes to provide sewage treatment through an on-site septic system. The record indicates this system will require a Water Pollution Control Facility (WPCF) permit from DEQ, and applying for and obtaining such a permit will be made a condition of approval.

D. Rimrock Setback. New structures (including decks or additions to existing structures) shall be set back 50 feet from the rimrock in an LM Zone. An exception to this setback may be granted pursuant to the provisions of DCC 18.84.090(E).

FINDINGS: Section 18.04.030 defines "rimrock" as:

*** * * any ledge, outcropping or top or overlying stratum of rock, which forms a face in excess of 45 degrees, and which creates or is within the canyon of the following rivers and streams: (1) Deschutes River, (2) Crooked River, (3) Fall River (4) Little Deschutes River (5) Spring River (6) Paulina Creek (7) Whychus Creek and (8) Tumalo Creek. For the purpose of DCC Title 18, the edge of the rimrock is the uppermost rock ledge or outcrop of rimrock. (Emphasis added.)**

Section 18.04.030 does not define "canyon." The ordinary definition of that term is "a narrow chasm with steep walls, formed by running water." *Webster's New Collegiate Dictionary*. The staff report states, and based on the Hearings Officer's site visit observations I concur, that the subject property is not within a canyon of the Deschutes River. To the contrary, I find that in this part of Tumalo the river is located at the bottom of a wide flood plain that is mostly without slopes 45 degrees or steeper. Therefore, I find this criterion is not applicable.

f. Section 18.84.095, Scenic Waterways

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

FINDINGS: The applicant's burden of proof states the school has been designed to comply with the approval criteria for structures within a designated state scenic waterway as defined in Oregon Administrative Rules (OAR) Chapter 736, Division 40. In a February 25, 2011 electronic mail message, Keith D'Agostino stated the applicant's representatives have met with OPRD representatives and plan to submit an application for approval of the school to OPRD which administers the state scenic waterway program. The Hearings Officer finds that as a condition of approval the applicant will be required to obtain, and provide to the Planning Division written

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documentation of, OPRD's approval of the applicant's proposal.

For the foregoing reasons, and with imposition of the above-described conditions of approval, the Hearings Officer finds the applicant's proposal will satisfy all applicable LM Zone standards.

SUPPLEMENTARY PROVISIONS

5. Chapter 18.116, Supplementary Provisions

a. Section 18.116.030, Off-street Parking and Loading

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

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

* * *

2. Restaurants, office buildings, hotels, motels, hospitals and institutions, schools and colleges, public buildings, recreation or entertainment facilities and any similar use which has a gross floor area of 30,000 square feet or more shall provide off-street truck loading or unloading berths subject to the following table:

Sq. Ft. of Floor Area	No. of Berths Required
Less than 30,000	0
30,000-100,000	1
100,000 and Over	2

3. A loading berth shall contain space 10 feet wide, 35 feet long and have a height clearance of 14 feet. Where the vehicles generally used for loading exceed these dimensions, the required length of these berths shall be increased. (Emphasis added.)

FINDINGS: The Hearings Officer finds the loading berth standards in this section are based on the size of individual buildings. Therefore, because none of the proposed school buildings would be 30,000 square feet, no loading berth is required. Nevertheless, the applicant has proposed a loading berth on the west side of the main school building, and the submitted site plan shows this loading berth would meet the dimensional standards in this section.

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

* * *

4. **Places Of Public Assembly.**

Use	Requirements
Preschool, nursery or kindergarten	2 spaces per teacher
Elementary or junior high schools	1 space per 4 seats or 8 feet of bench length in auditorium or assembly room, whichever is greater, plus 1 space per employee.
High schools	1 space for each 6 students or 1 space per 4 seats or 8 feet of bench length in the main auditorium, whichever is greater, plus 1 space per employee

FINDINGS: The proposed school would provide academic instruction for students from pre-kindergarten through high school. The applicant's burden of proof describes the anticipated breakdown for the student and staff population at build-out as follows:

<u>Use</u>	<u>Requirements</u>	<u>Total Spaces Required</u>
<i>Pre-School and Kindergarten</i>		
•	45 students	None

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•	3 staff	2 spaces/teacher or 6 spaces
<i>1st Grade – 8th Grade (Elementary or Junior High School)</i>		
•	120 students	1 space/4 seats or 30 spaces
•	10 staff	1 space/emp. or 10 spaces
<i>9th Grade – 12th Grade (High School)</i>		
•	60 students	1 space/6 stud. or 10 spaces
•	5 staff	1 space/employee or 5 spaces
<u>TOTAL</u>		
•	225 students	40 spaces
•	18 staff	21 spaces

The submitted site plan shows 61 off-street parking spaces, therefore satisfying these standards.

E. General Provisions. Off-Street Parking

* * *

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

FINDINGS: The Hearings Officer finds the applicant will be required as a condition of approval to maintain off-street parking spaces for parking operable vehicles and not for vehicle storage.

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

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

FINDINGS: The staff report states, and the Hearings Officer concurs based on my review of the Cascades Academy
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submitted site plan and my site visit observations, that the proposed parking areas would not be adjacent to any residential uses. Therefore, I find this criterion is not applicable.

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

FINDINGS: The submitted site plan shows the proposed locations of light poles and fixtures for the off-street parking areas. The applicant's burden of proof states the parking lot light fixtures will be pointed down and shielded. As discussed above, the Hearings Officer has found the parking areas are not adjacent to any residential zone or uses. I also have found the applicants will be required as a condition of approval to install all exterior lighting in compliance with the county's outdoor lighting ordinance.

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

FINDINGS: The Hearings Officer finds from the submitted site plan that the design and configuration of the off-street parking areas will assure that vehicles are not required to back onto Tumalo Reservoir Road, therefore satisfying this criterion.

4. **Areas used for standing and maneuvering of vehicles shall be paved surfaces adequately maintained for all weather use and so drained as to contain any flow of water on the site. An exception may be made to the paving requirements by the Planning Director or Hearings Body upon finding that:**
 - a. **A high water table in the area necessitates a permeable surface to reduce surface water runoff problems; or**
 - b. **The subject use is located outside of an unincorporated community and the proposed surfacing will be maintained in a manner which will not create dust problems for neighboring properties; or**
 - c. **The subject use will be in a Rural Industrial Zone or an Industrial District in an unincorporated community and dust control measures will occur on a continuous basis which will mitigate any adverse impacts on surrounding properties.**

FINDINGS: The applicant proposes that all vehicular access, maneuvering and standing areas will be paved. The submitted site plan shows that using the natural topography of the subject property, surface water runoff would be directed to a retention basin in the northeast corner of the property. The applicant proposes to provide calculations to the Deschutes County Engineer demonstrate that the retention basin has adequate capacity to contain stormwater runoff on-site. Staff states, and the Hearings Officer concurs, that compliance with this criterion can be assured through imposition of conditions of approval requiring the applicant to provide drainage calculations and analyses to the County Engineer for approval and to continuously maintain the drainage basin to the capacity detailed in the drainage plan.

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

FINDINGS: Table 1, Off-Street Parking Lot Design, is located at the end of Chapter 18.116 and requires a minimum 24-foot-wide access aisle for two-way vehicular traffic. The submitted site plan shows all parking lot aisles and access driveways would be 24 feet wide, therefore satisfying this criterion.

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

FINDINGS: The applicant proposes a single access driveway from Tumalo Reservoir Road that will connect to two internal access aisles within the off-street parking area providing two-way travel throughout the parking area. The applicant proposes to install curbs along the access driveway from Tumalo Reservoir Road to the parking area and to clearly delineate the service drive through signage. In addition, where access aisles are located adjacent to pedestrian walkways, the applicant proposes to install curbs to separate vehicles and pedestrians. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

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

FINDINGS: The submitted site plan shows the required clear vision area at the intersection of

Tumalo Reservoir Road and the site's access driveway. The applicant proposes to maintain this clear vision area free from obstructions, and the Hearings Officer finds the applicant will be required to do so on a continuous basis as a condition of approval.

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

FINDINGS: The submitted site plan shows the off-street parking area would be located 15 feet from the Tumalo Reservoir Road right-of-way which is also the closest property line. The applicant argues no curb or bumper rail is required for the parking area because this 15-foot distance is sufficient to prevent a motor vehicle from encroaching on the right-of-way. Nevertheless, the staff report states, and the Hearings Officer agrees, that the plain language of this paragraph requires a curb or bumper rail for those parking spaces along Tumalo Reservoir Road. Therefore, I find the applicant will be required as a condition of approval to install curbs or bumper rails along those parking spaces.

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

(SEE TABLE 1 AT END OF CHAPTER 18.116)

FINDINGS: The submitted site plan shows all parking stalls and aisles satisfy the standards set forth in Table 1, including stall dimensions of 9 feet wide by 20 feet long.

b. Section 18.116.031, Bicycle Parking

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

A. Number and Type of Bicycle Parking Spaces Required.

* * *

2. Special Minimum Standards.

* * *

- c. **Schools. Schools, both public and private, shall provide one bicycle parking space for every 25 students, half of which shall be sheltered.**

B. Bicycle Parking Design.

1. General Description.

- a. Sheltered Parking. Sheltered parking may be provided within a bicycle storage room, bicycle locker, or racks inside a building; in bicycle lockers or racks in an accessory parking structure; underneath an awning, eave, or other overhang; or by other facility as determined by the Hearings Body or Planning Director that protects the bicycle from direct exposure to the elements.**

FINDINGS: The applicant's burden of proof states the proposed school's maximum capacity would be 225 students. This enrollment would require 9 bicycle spaces. The applicant proposes to provide 8 outdoor covered spaces and an additional 15 spaces within the gymnasium, for a total of 23 covered bicycle spaces. The Hearings Officer finds the applicant's proposal satisfies the criteria in this section.

2. Location.

- a. Required bicycle parking that is located outdoors shall be located on-site within 50 feet of main entrances and not farther from the entrance than the closest motor vehicle parking space.**
 - i. Bicycle parking shall be located in areas of greatest use and convenience to bicyclist.**
 - ii. Such bicycle parking shall have direct access to both the public right of way and to the main entrance of the principal use.**
 - iii. Bicycle parking shall not impede or create a hazard to pedestrians.**
 - iv. Parking areas shall be located so as not to conflict with clear vision areas as prescribed in DCC 18.116.020.**

FINDINGS: The submitted site plan shows a five-foot-wide paved path providing direct access from Tumalo Reservoir Road to the bicycle parking spaces which would be located within 50 feet of the main entrance to the main school building and not within a clear vision area. The staff

report notes bicyclists using this paved path would be required to cross pedestrian traffic coming from the parking lot in front of the main building entrance in order to access the bicycle spaces. For this reason, staff recommends the site plan be revised to move the bicycle parking to the south side of the pedestrian walkway in front of the main building entrance.

In response to staff's recommendation, the applicant submitted an electronic mail message dated February 28, 2011 from one of the applicant's architects, Dan Petrescu, stating placement of the outdoor bicycle parking spaces near the main building entrance was a conscious design decision intended to allow the bicycle parking spaces to function more efficiently and to be covered by the same entry canopy as the building entrance. Mr. Petrescu stated placement of the bicycle parking spaces in the location recommended by staff would potentially create more conflicts between bicycles and vehicles picking up students at the vehicle drop-off lane. He proposed to resolve this issue by the posting of signage. The Hearings Officer finds this is an acceptable means of minimizing conflicts between bicyclists and vehicles. In her final argument dated March 22, 2011, the applicant's attorney Tia Lewis suggested the following condition of approval language:

"The Applicant shall install a sign or signs in the front of the main school building requiring students to walk their bikes where the pedestrian/bike path crosses the driveway to reduce potential pedestrian and bicycle conflicts."

The Hearings Officer finds this language is appropriate and will be included in a condition of approval.

- b. Bicycle parking facilities shall be separated from motor vehicle parking and drive areas by a barrier or sufficient distance to prevent damage to the parked bicycle.**

FINDINGS: The submitted site plan shows the outdoor bicycle spaces would be located at least 20 feet from the proposed vehicular drop-off lane in front of the main building. In addition, the drop-off lane would include a curb, thereby reducing the chance that a vehicle would encroach upon the adjacent walkway and bicycle parking. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

- c. Where bicycle parking facilities are not directly visible and obvious from the public right(s) of way, entry and directional signs shall be provided to direct bicyclists from the public right of way to the bicycle parking facility. Directions to sheltered facilities inside a structure may be signed, or supplied by the employer, as appropriate.**

FINDINGS: Based on the submitted site plan the Hearings Officer finds the outdoor bicycle parking facilities would not be directly visible or obvious from Tumalo Reservoir Road due to

distance and intervening topography and vegetation. Therefore, I find the applicant will be required as a condition of approval to install signs directing bicyclists from the road to both the outdoor and indoor bicycle parking facilities.

3. Dimensional Standards.

- a. **Each bicycle parking space shall be at least two by six feet with a vertical clearance of seven feet.**
- b. **An access aisle of at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.**
- c. **Each required bicycle parking space shall be accessible without moving another bicycle.**

FINDINGS: The Hearings Officer finds the submitted site plan demonstrates the proposed bicycle parking spaces and access aisles satisfy these criteria.

4. Surface. The surface of an outdoor parking facility shall be surfaced in the same manner as the motor vehicle parking area or with a minimum of one-inch thickness of aggregate material. This surface will be maintained in a smooth, durable, and well-drained condition.

FINDINGS: The submitted site plan shows the outdoor bicycle parking spaces would be surfaced with concrete. The Hearings Officer finds this surface satisfies this criterion.

5. Security.

- a. **Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (i.e., a "rack") upon which the bicycle can be locked. Structures that require a user-supplied lock shall accommodate both cables and U-shaped locks and shall permit the frame and both wheels to be secured (removing the front wheel may be necessary). All bicycle racks, lockers, or other facilities shall be permanently anchored to the surface of the ground or to a structure.**

FINDINGS: The applicant's burden of proof states all bicycle parking facilities would have racks anchored to the ground or to structures. The outdoor racks at the main building entrance would accommodate locks, and the indoor racks would be located within a lockable enclosure –

i.e., the building. The Hearings Officer finds these facilities satisfy the criteria in this paragraph.

- b. Lighting shall be provided in a bicycle parking area so that all facilities are thoroughly illuminated and visible from adjacent sidewalks or motor vehicle parking.**

FINDINGS: The applicant's burden of proof states outdoor bicycle parking facilities would be illuminated so they are visible from adjacent sidewalks or vehicle parking spaces. As discussed in the findings above, the Hearings Officer has found that as a condition of approval all exterior lighting shall be installed in compliance with the county's outdoor lighting ordinance.

For the foregoing reasons, and with imposition of the conditions of approval discussed above, the Hearings Officer finds the applicant's proposal satisfies all applicable supplementary provisions.

SITE PLAN APPROVAL CRITERIA

6. Chapter 18.124, Site Plan Review

a. Section 18.124.030, Approval Required

A. No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.

B. The provisions of DCC 18.124.030 shall apply to the following:

* * *

5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards;

FINDINGS: The Hearings Officer finds the applicant's proposal is subject to site plan review because it proposes a new land use and new buildings that require parking facilities.

b. Section 18.124.060, Approval Criteria

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

A. The proposed development shall relate harmoniously to the

natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.

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

FINDINGS: The natural environment of the subject property consists of an undeveloped parcel with varying topography and a moderate cover of mature juniper trees and natural brush and grasses throughout. The most prominent feature on the subject property is a dry ravine on the northern portion of the property that slopes from west to east. The applicant proposes to site the school buildings in the eastern portion of the property in order to take advantage of the existing topography and vegetation so as to minimize visual impacts from Tumalo Reservoir Road and O.B. Riley Road. The staff report estimates, and based on the Hearings Officer's review of the submitted site plan I agree, that 60 to 70 percent of the subject property would remain undeveloped and undisturbed.

The staff report states, and based on the submitted site plan and the Hearings Officer's site visit observations I agree, that the proposed structures would be visible to some extent from one or both roads, but they would not obstruct any existing views. As also discussed above, the applicant will be required as a condition of approval to retain, preserve and protect all trees not required to be removed for construction of buildings and other improvements. The applicant proposes to use the dry ravine as part of its on-site surface water drainage and retention system, but does not propose any significant change to the property's topography. For these reasons, I find the applicant's proposal satisfies these criteria.

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

FINDINGS: The Hearings Officer finds the primary safety issues presented by the applicant's proposal are potential conflicts between pedestrians, bicycles and vehicles, and potential fire hazards. The submitted site plan shows that where access aisles and parking spaces are adjacent to pedestrian walkways, the aisles and parking spaces have curbs to safely separate vehicles and pedestrians. However, as discussed above, I have found the applicant will be required as a condition of approval to install signage directing students to dismount and walk their bikes across the access driveway where it is crossed by the bicycle/pedestrian pathway in order to minimize pedestrian/bicycle/vehicle conflicts.

With respect to fire hazards, the fire department submitted detailed comments relating to compliance with fire code requirements. The only question raised by the fire department concerns fire fighting water supply. The fire department's original comments stated in relevant part:

“Water Supply - 2010 Oregon Fire Code - Appendix B

The required water supply for fire suppression for this building cannot be determined until total square footage and building construction type are determined. Please contact the Bend Fire Department to determine the required water supply for fire suppression.

Fire-Flow Requirements for Buildings – 2010 Oregon Fire Code -Appendix B

A reduction of fire flow may be allowed for this project if an approved fire suppression system is installed. No commodities, furniture, goods, merchandise, wares, materials or possessions shall be stored or used within this structure until the fire sprinkler or suppression system is completed, tested and operational, unless otherwise approved by both the Fire Marshal and Building Official.

Fire Hydrants – 2010 Oregon Fire Code Section 507.5.1 through 507.5.6 and Appendix C

The minimum amount of fire hydrants needed on this site cannot be determined until the required water supply has been determined. Please contact the Bend Fire Department to determine the required water supply for fire suppression.”

* * *

Additional Comments: Contact the Bend Fire Department for approval of water supply for fire suppression and fire apparatus access.” (Bold emphasis in original.)

The applicant submitted a February 25, 2011 memorandum reciting the results of a meeting between the applicant’s engineer Keith D’Agostino and Larry Medina and Gary Marshal of the fire department at which agreement was reached concerning water supply. The memorandum states in relevant part:

- “3. For the proposed project and buildings (without automatic sprinkler systems) the minimum water supply requirement for the project would be dictated by the larger main building, and would be 136,895 gallons (per attached D’Agostino Parker memorandum Feb. 23, 2011). With automatic sprinkler systems, the AHJ [authority having jurisdiction – i.e., Bend Fire Department] has discretion to reduce minimum water supply requirements, per NFPA [National Fire Protection Association] 1142 4.4.*
- 4. Both of the proposed buildings, the main school building and the gymnasium, will be equipped with automatic sprinkler systems per NFPA 13 and NFPA 1142 4.4. Thus the AHJ will allow an approx. 50% reduction in minimum water supply requirement to 70,000 gallons for the project.*

5. *The project will include a water well supply, enclosed storage facility, pumping system, and backup power (generator) elements to provide the minimum water supply as required.*
6. *The pumping system shall be able to provide a minimum of 1000 gallons per minute to the site, at 20 psi residual pressure at any site hydrant location, and at minimum pressures required to meet the automatic sprinkler system requirements per NFPA 13.* (Bold emphasis in original.)

The record includes a March 1, 2011 electronic mail message from Larry Medina confirming his acceptance of these water supply requirements. The Hearings Officer finds the applicant will be required as a condition of approval to comply with the fire department's requirements set forth in its original transmittal and Mr. D'Agostino's February 11, 2011 memorandum.

Finally, the submitted site plan shows most of the existing tree cover and vegetation will be preserved, and the proposed buildings will be set back substantial distances from all property lines and adjacent roads. Therefore, the Hearings Officer finds the applicant's proposal will offer appropriate opportunities for privacy and transitions from public to private spaces.

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

FINDINGS: The submitted site plan shows pedestrian walkways from the parking areas to the school buildings would satisfy accessibility requirements of the Americans with Disabilities Act (ADA). The Hearings Officer finds compliance with all applicable ADA requirements will be reviewed and confirmed by the building division during building plan and permit review, thereby assuring compliance with this criterion.

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

FINDINGS: The applicant proposes a single entrance driveway from Tumalo Reservoir Road. In its comments on the applicant's proposal, the road department stated in relevant part:

"The County met with the applicant's engineer to discuss access to the parcel. A location on Tumalo Reservoir Road was found that met the applicable American Association of State Highway and Transportation Officials (AASHTO) sight distance standards for intersecting driveways."

The internal pedestrian, bicycle and vehicle circulation patterns are discussed in detail in the findings above. The Hearings Officer has found the applicant will be required as a condition of

approval to install signage instructing students to dismount and walk their bicycles across the access driveway where it crosses the pedestrian pathway in order to minimize pedestrian/bicycle/vehicle conflicts. However, I have found that in all other respects the proposed access aisles that create an internal loop road with a vehicle drop-off near the main building entrance, coupled with the pedestrian and bicycle pathways, are adequate to assure safe separation of vehicles, bicycles and pedestrians. For the same reasons, I find this internal circulation system will be harmonious with the proposed school buildings. As discussed in the findings above, the subject property is surrounded by vacant properties, and the closest off-site structure would be approximately 1,100 feet from the proposed parking area. Therefore, I find the internal access drives and parking area would have no impact on neighboring structures.

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

FINDINGS: The applicant proposes an on-site surface water drainage system that would direct surface water down the natural dry ravine on the subject property to a retention basin within the ravine near the northeast corner of the property. Keith D'Agostino testified at the public hearing that the retention basin would be located 170 to 180 feet from the Deschutes River.

In his January 10, 2011 comments on the applicant's proposal, County Engineer George Kolb stated in relevant part:

"The Preliminary Grading and Drainage Plan shows a stormwater retention/detention basin located in a ravine on the north edge of the property. A portion of the basin is shown to be in the public ROW so the applicant will need to revise the location of the basin so it is entirely on the applicant's property. If this basin fills up, water will run under the roadway and go onto property owned by the State of Oregon Parks and Recreation Department. Applicant will need to contact both the State of Oregon Parks and Recreation Department and the Department of State Lands to determine if this is an acceptable solution. Having the overflow go off the applicants property does not meet DCC 18.124.060(F) which states, 'Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets or surface and subsurface water quality.'" (Bold emphasis italicized in original.)

In response to these comments, the applicant submitted a memorandum dated January 26, 2011 from Keith D'Agostino to George Kolb explaining that the designated location of the drainage basin on the preliminary drainage plan was an oversight and that the drainage basin would be located completely outside the O.B. Riley Road right-of-way. Mr. D'Agostino also stated that in addition to retaining project-related runoff, the drainage basin would provide the added benefit of serving as a debris and sediment trap, which does not currently exist, thereby reducing debris and sediment loading within the county's existing culvert under O.B. Riley Road.³

³ With respect to OPRD notification, as discussed in the findings below, the applicant submitted into the record a letter from OPRD stating it has no material concerns about the applicant's proposal.

The record indicates the applicant and the County Engineer agreed to imposition of the following conditions of approval:

"The applicant shall provide a drainage plan stamped by a professional engineer registered in the State of Oregon, certifying that the surface water drainage system has been designed to retain project-related surface runoff on-site.

The applicant shall maintain the drainage basin to the capacity detailed in the drainage plan."

The Hearings Officer finds this approval will be subject to these conditions of approval.

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

FINDINGS: The applicant's burden of proof states no outdoor storage areas are proposed. The submitted site plans shows outdoor equipment such as the electric transformer, water storage tanks, and water well would be located at least 200 feet from the closest property line. The site plan also shows the proposed parking area includes retention of a number of trees both within and surrounding the parking area that will effectively screen it from nearby roads and adjoining properties. The site plan also shows the proposed teaching pavilion and playground will be located and screened so as to minimize their off-site visibility. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

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

FINDINGS: The submitted site plan shows the only above-ground utility installations would be the electric transformer and water well. As discussed above, these installations would be located at least 200 feet from the closest property line, and would be well screened from neighboring properties by retained trees and vegetation. For these reasons, the Hearings Officer finds the applicant's proposal satisfies this criterion.

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

FINDINGS: The proposal's compliance with the standards in each zone is addressed in the findings above.

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

FINDINGS: The Hearings Officer has found the applicant will be required as a condition of approval to install all exterior lighting in compliance with the county's outdoor lighting ordinance.

K. Transportation access to the site shall be adequate for the use.

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

FINDINGS: Transportation access to the site would be from a driveway off Tumalo Reservoir Road. In its initial comments on the applicant's proposal the road department stated the sight distance at the driveway intersection would be adequate and safe. The road department also stated:

1. *Tumalo Reservoir Road is classified as a rural collector with an ADT [average daily vehicle trips] of approximately 739 (2008 count). Right-of-way (ROW) width is 60 feet (established 1926). Existing width of the roadway is currently 25 feet. Minimum road design standards for a rural Collector are a 28-foot width with 2-foot shoulders and drainage swales. Tumalo Reservoir Road will have to be widened out to 14 feet from centerline for pavement width with 2 feet of gravel shoulder per requirements in Title 17, Table "A", rural collector standards. This improvement will be along the applicant's property fronting Tumalo Reservoir Road.*
2. *O.B. Riley Road is classified as a rural collector with an ADT of approximately 1182 (2009 count). Existing width is 30 feet."(Emphasis added.)*

The applicant has agreed, and will be required as a condition of approval, to improve the abutting segment of Tumalo Reservoir Road by widening the eastern travel lane to 14 feet of pavement with two feet of gravel shoulders along the subject property's entire frontage on the road.

Opponents question whether the addition of school-generated traffic onto nearby transportation

facilities – in particular the O.B. Riley Road/Cook Avenue/Highway 20 intersection -- will exceed the capacity of those facilities and/or cause unacceptable safety hazards. The applicant submitted a transportation impact analysis (TIA) and several supplemental technical letters addressing the proposal's impacts on affected transportation facilities. The TIA and letters are discussed in the findings below, along with a letter reviewing the applicant's TIA prepared by Ferguson & Associates, Inc., and submitted by opponent Nunzie Gould.

1. TIA. The applicant's burden of proof includes a TIA dated November 19, 2010 and prepared by Casey Bergh, PE, and Joe Bessman, PE, of Kittelson & Associates, Inc. (hereafter "Kittelson"). The TIA analyzed potential traffic impacts from the proposed school at full buildout in 2012 and in 2017 on three nearby intersections:

- O.B. Riley Road/Tumalo Reservoir Road;
- Tumalo Reservoir Road/Johnson Road; and
- Highway 20/Cook Avenue/O.B. Riley Road.

The TIA predicted that at full enrollment capacity/buildout the school would generate 558 new average daily vehicle trips (ADTs) of which 176 (74 in, 102 out) would occur during the weekday afternoon *school* peak hour (2:00 to 4:00 p.m.) and 38 (16 in, 22 out) would occur during the weekday p.m. peak hour (4:00 to 6:00 p.m.). The TIA projected that the majority of school-generated trips (63%) would travel to and from the school on O.B. Riley Road to the south, that 31% of trips would use Johnson Road to the southwest, and that the remaining 3% of trips would use Tumalo Reservoir Road to the west.⁴ The TIA projects that five school-related trips will use the O.B. Riley Road/Cook Avenue/Highway 20 intersection during the *school* p.m. peak, and only one school-related trip will use the intersection during the regular p.m. peak hour.

The TIA concluded that with the addition of school-generated traffic, the two affected Tumalo Reservoir Road intersections would operate at acceptable levels of service in both 2012 and 2017. However, the TIA noted that the O.B. Riley Road/Cook Avenue/Highway 20 intersection currently operates at unacceptable levels of service, and concluded that with or without the addition of school-generated traffic this intersection would continue to exceed ODOT's mobility standards in 2012 and 2017. The TIA noted the county and ODOT are evaluating options for long-term improvements to this intersection.⁵

In his January 10, 2011 comments on the applicant's proposal, Senior Transportation Planner

⁴ A copy of Kittelson's trip generation diagram, Figure 6 from the TIA, is attached to this decision as Exhibit B.

⁵ Opponent Nunzie Gould submitted into the record diagrams showing possible long term improvements to the O.B. Riley Road/Cook Avenue/Highway 20 intersection, and argued that the applicant's proposal should not be considered or approved unless and until a long-term solution is developed and constructed. Comments in the record from Senior Transportation Planner Peter Russell indicate it may be several years before a long-term solution is selected and funding for it is identified and secured. The Hearings Officer finds I have no authority to deny the applicant's proposal or to delay its consideration solely on the basis of speculation as to how its traffic might affect, or be affected by, potential future intersection improvements.

Peter Russell stated in relevant part:

"I have read the traffic study for SP-10-20 which is a proposed 225-pupil K-12 school near Johnson Market/Tumalo Reservoir Road at 17-12-06, TL 701. During the pre-application process I had thought we had said the applicant would have to conduct an a.m. analysis of traffic given this is a school. The submitted TIA only covers the school's afternoon hours and the 4-6 p.m. peak of the roadway. The applicant will also have to pay transportation System Development Charge (SDC) based on its mix of students.

Schools have similar a.m. peaks to other land uses but their p.m. peak is typically outside the 4-6 p.m. peak. I agree with the traffic study's methodology and conclusions in terms of its analysis of both the school's p.m. peak as well as the facility's 4-6 p.m. peak. The a.m. peak still needs to be analyzed. Additionally, the applicant is sending traffic to an already failing intersection at US 20 in Tumalo. The applicant will need to address this issue or obtain a letter from ODOT saying the agency has no opposition to the proposed development. While I recognize the school will only send five vehicles in the p.m. peak hour to the intersection, the issue is compliance with 17.16.115(H)(2) which requires for state highway intersections the County defer to ODOT's mobility standard. The US 20/OB Riley-Cook Ave intersection currently exceeds the ODOT mobility standard even without the few vehicles the school will send to that location."

James Bryant, ODOT Principal Planner, submitted comments dated January 20, 2011 stating:

"We have reviewed the November 19, 2010 Traffic Impact Analysis (TIA) for the project prepared by Kittelson & Associates. We note that the report identifies that the US 20/OB Riley/Cook intersection currently does not meet ODOT mobility standards and predicts that the intersection will further degrade and exceed capacity by 2012, even without the project. With the project, the intersection will degrade further, even from the minimal number of trips anticipated. No mitigation is identified in the TIA for this intersection."

2. January 27, 2010 Technical Letter. In response to the comments from Mr. Russell and Mr. Bryant, Kittelson submitted a letter dated January 27, 2010, that included an analysis of a.m. peak hour traffic impacts. It projected the school would generate 182 weekday a.m. peak hour trips (111 in and 71 out), with only five trips using the O.B. Riley/Cook Avenue/Highway 20 intersection during this period. The letter also addressed ODOT's concerns with further degradation of this intersection as follows:

"It is expected that the school will be built-out and occupied by 2012. ODOT requires an assessment of impacts at build-out to identify whether the system can operate acceptably with occupancy. For intersections that exceed mobility standards under a 'no-build' scenario, such as US 20/Cook, ODOT requires additional traffic not further degrade intersection performance at a 'significant' level, defined as a v/c [volume-to-capacity] ratio change of more than 0.01. The

resultant 2012 no-build design hour conditions and build conditions are illustrated in Exhibits 7 and 8 for the 30th highest hour using the weekday p.m. peak hour volumes.

** * **

As shown in the exhibits, intersection degradation with the additional trip on the northbound approach changes the critical southbound volume-to-capacity ratio from 1.42 to 1.43. The northbound approach, which is impacted by the single trip, also changes in v/c ratio from 1.17 to 1.18. The resultant v/c ratio change is not 'significant' per ODOT standards because the v/c ratio is projected to change by 0.01; marginally less than ODOT's threshold of more than 0.01."

The letter suggested that if ODOT or the county should conclude this minimal impact on the O.B. Riley/Cook Avenue/Highway 20 intersection requires mitigation, the northbound approach to the intersection on Highway 20 could be re-striped to provide a "separate left- and shared through/right-turn lane and a separate right-turn lane." The letter states this mitigation would be appropriate for the following reasons:

"While increasing delays for the northbound right-turn (13.4 seconds per vehicle to 42.9 seconds per vehicle) this restriping will reduce the overall northbound approach delay considerably (200.7 seconds per vehicle to 105.4 seconds per vehicle, or savings of nearly 3 vehicle hours of delay) and will restore the northbound v/c ratio to 1.17, resulting in no change in v/c ratio to the approach affected by the site-generated traffic. The critical southbound approach will remain at a v/c ratio of 1.43 with this change with a slightly higher per-vehicle delay.

The restriping improvement could be provided through a financial contribution to ODOT (ODOT in turn could use the funding to revise the striping as part of its routine striping maintenance) or the restriping could be constructed by the Applicant prior to site occupancy through a condition of development approval. It is expected that removal and conversion of the thermoplastic arrows present at the intersection would cost between \$2,000 and \$5,000, with the higher estimate reflective of contractor mobilization costs if this were to be conducted as a stand-alone project."

In an electronic mail message dated February 22, Peter Russell stated he concurred with the methodology, conclusions and recommendations in Kittelson's January 27, 2011 letter. In electronic mail messages dated February 22 and 23, 2011, James Bryant of ODOT responded to the Kittelson letter as follows:

"ODOT concurs with Mr. Russell's concurrence with the 1/27/11 supplemental. The addition of one additional pk-hr trip has de minimus impact to the operation of the intersection even though the analysis shows a .01 degradation in the v/c with the additional single trip. Accordingly, ODOT has no adverse comments on

the proposed lane use action.

* * *

ODOT requires no mitigation but would consider the proffered mitigation if the county wanted it or if the applicant wants to voluntarily contribute the improvement."

In an electronic mail message dated February 24, 2011, County Engineer George Kolb stated the county's preference would be for the applicant to provide funds to the county to re-stripe the O.B. Riley/Cook Avenue/Highway 20 intersection if/when it is required, and that the re-stripping cost would be \$1,872 (\$910 for materials and \$872 for labor).

3. March 8, 2011 Ferguson Letter. Opponent Nunzie Gould submitted into the record a letter dated March 8, 2011 from Scott Ferguson, P.E., of Ferguson & Associates, Inc. The stated purpose of the letter was as follows:

"As requested, the traffic study prepared for the Cascade Academy school project near Tumalo was reviewed in light of your concerns about the intersection of O.B. Riley Road/Cook Avenue and Highway 20. In the review, we considered the trip generation assumptions, the methodology for developing the forecast, the trip distribution and assignment assumptions, and the conclusions. We also reviewed the supplemental letter which presented some information on traffic assignments at the intersection of O.B. Riley Road/Cook Avenue and Highway 20 during the morning and afternoon peaks and suggested mitigation at the intersection."

Mr. Ferguson provided the following summary of his conclusions from his review:

"The traffic study prepared for the project was sound in its forecast of trip generation and overall approach to the study; however, neither the original study nor the update addressed impacts of the school peaks at the intersection of O.B. Riley Road/Cook Avenue and Highway 20; the assumption that no traffic to/from Bend would use Highway 20 is suspect; and the proposed mitigation is questionable."

Mr. Ferguson provided a detailed discussion of his concerns with the Kittelson TIA and January 27, 2011 technical letter, and based on that discussion made the following recommendations:

"The applicant did not meet the burden of proof related to its traffic impacts because the traffic study did not sufficiently demonstrate its claim that it would meet ODOT mobility standards at the intersection of O.B. Riley Road/Cook Avenue and Highway 20. Furthermore, the impacts on this intersection are dependent on the questionable assumption that no drivers to and from Bend would use US 20. Strong evidence that some drivers would travel on US 20 to and from Bend is presented above. To adequately address impacts, the study would need to be revised to:

1. *Present a more realistic trip distribution scenario. If a gravity model formulation were used to assess route choice (looking simply at the travel time/distance to the intersection of O.B. Riley Road and US 20) somewhere between 13 and 19.5 percent of the traffic assigned to O.B. Riley Road would take US 20. (This equates to 16 to 22.5 percent of the total trips to and from the school site.) This level of diversion might be lower than projected above if there are a significant number of students and staff members who live at locations where O.B. Riley Road will actually be the shorter travel time. If this is the case, the data should be presented as evidence (in some aggregated form to protect the privacy of students' families and of staff).*
2. *Update the calculations at the intersection of O.B. Riley Road/Cook Avenue and Highway 20 so that it includes additional traffic which would use US 20 to travel to and from Bend.*
3. *Revisit the suggested mitigation measures. Concerns were expressed about the proposed re-striping above in this letter. If the proposed re-striping is still sufficient to meet ODOT's 'don't make it worse' policy, it is suggested that this mitigation proposal be given additional review by other professionals (including ODOT). If it is determined that the restriping does not make sense (despite what the calculations may indicate) it is suggested that the applicant provide instead a cash contribution.*
4. *Provide an a.m. peak analysis and an afternoon school peak analysis of operations at the intersection of O.B. Riley Road/Cook Avenue and Highway 20.*
5. *Provide calculations which demonstrate that the suggested traffic mitigation would be sufficient to off-set impacts and vet the traffic mitigation with ODOT. Alternative mitigation might also be considered such as constructing a street between O.B. Riley Road and Bailey Road, which is not being considered in the development plans for an interchange project in Tumalo. Such a connection could reduce the demand at the study intersection."*

4. March 15, 2011 Technical Letter. Kittelson responded to questions and concerns raised by Ms. Gould and Mr. Ferguson through this letter, stating trip generation was projected based on the addresses and travel patterns of current Cascades Academy students, most of whom live in Bend on the west side of the Bend Parkway (US 97). The letter also stated Kittelson assumed future enrollment would follow existing student living and travel patterns, that trip distribution projections considered most likely travel routes based on distance, intersection delays, and typical travel speeds, and that the most direct and fastest route from Bend to the subject property would be along O.B. Riley Road west and south of Highway 20, and not along US 20 to the O.B. Riley/Cook Avenue intersection. The letter explained the analysis studied traffic during the

weekday p.m. peak hour period, rather than the earlier *school* peak period, because that is what ODOT requires for traffic analyses concerning its facilities. The letter also stated:

*"The analysis was prepared consistent with ODOT's Analysis Procedures Manual (APM) as required by ODOT. The US 20/Cook Avenue intersection analysis within the report was provided at the County's request, as the impact of site-generated trips at the intersection do [sic] not meet either ODOT or Deschutes County study requirements (approximately 1 trip is forecast from the school whereas ODOT requires study where impacts exceed 50 or more weekday p.m. peak hour trips and Deschutes County requires an assessment when an intersection experiences 25 or more p.m. peak hour trips)."*⁶

5. Trip Distribution. The Hearings Officer understands Mr. Ferguson's concerns about inasmuch as the O.B. Riley/Cook Avenue/Highway 20 intersection currently does not meet ODOT mobility standards. However, I find there is nothing unreasonable about Kittelson's decision to base its trip distribution projections on current student residences and travel patterns as well as distances and current traffic speeds on available travel routes. Those assumptions are entirely consistent with the county's requirements for TIAs. Section 17.16.115(G), which establishes minimum standards for TIAs, states in Paragraph (7) that trip distribution assumptions are to be based on "historical data, existing and future travel characteristics, and capacity constraints." Moreover, Kittelson's assumptions were reviewed and found acceptable by both the county's senior transportation planner and ODOT, whose facility is at issue.

The Hearings Officer finds that even if Mr. Ferguson is correct that a "more realistic" trip distribution would shift as many as 22.5% of the total trips assigned to O.B. Riley Road to the Highway 20 intersection (79 ADTs),⁷ the Hearings Officer finds it is not realistic to assume, as Mr. Ferguson apparently does, that all of the shifted trips would use the intersection during evening peak hours. For example, the TIA states peak school-generated traffic volumes would be during the afternoon (school) peak hour from 2:00 p.m. to 4:00 p.m. This is logical considering the record indicates students are picked up beginning at 3:15 p.m., and teachers and school staff typically arrive and depart in the hour immediately before and after the school sessions – i.e., between 3:15 and 4:15 p.m.. Therefore, other than for the infrequent and occasional afternoon/early evening events at the school, I find school-generated traffic during the p.m. peak hour is likely to be minimal and limited to a handful of school staff who may be staying late.

6. Mitigation. The Hearings Officer also understands Mr. Ferguson's concerns about the proposed intersection mitigation inasmuch as both his and Kittelson's analyses suggest the proposed mitigation could worsen the function of the O.B. Riley/Cook Avenue/Highway 20 intersection for certain movements. And ODOT's comments on the proposed mitigation are not resounding in their support. As set forth above, Mr. Bryant stated:

⁶ Section 17.16.115, made applicable to the applicant's proposal under Section 18.124.060(J), provides that for purposes of a TIA the traffic study area shall include the nearest intersecting collector or arterial roads to the development that would experience an increase of 25 additional peak hour trips.

⁷ The TIA projects 558 ADTs, of which 63% (352) trips would use O.B. Riley Road, and 22.5% of 352 is 79 ADTs.

“ODOT requires no mitigation but would consider the proffered mitigation if the county wanted it or if the applicant wants to voluntarily contribute the improvement.” (Emphasis added.)

I find this comment suggest ODOT is ambivalent about the proposed mitigation but is willing to look at it. As noted above, George Kolb submitted a cost estimate for the re-striping, and stated the county would prefer that the applicant make a cash contribution in that amount rather than doing the re-striping work. However, he did not state that the county wants the mitigation or believes it is necessary.

Section 18.124.060(K)(2) of this section states “mitigation for transportation-related impacts shall be required” as part of site plan review. However, Section 17.16.115(I), made applicable to this application through Section 18.124.060(K), states in relevant part:

2. **At the County Engineer’s discretion, if there are pre-existing safety deficiencies and/or capacity failures at relevant intersections or road frontages within the impact analysis area, then no additional development shall be allowed until a solution that accounts for the proposed project’s additional impacts is funded or built.** (Emphasis added.)

The County Engineer has not required mitigation. The proposed mitigation is for an ODOT facility, ODOT has concluded based on Kittelson’s TIA that any impact from school-generated traffic on the O.B. Riley/Cook Avenue/Highway 20 intersection would be “de minimus,” and that no mitigation is required. Under these circumstances, the Hearings Officer finds the most appropriate course of action is to assure ODOT’s approval of the mitigation before the applicant is required to pay the county for the cost of the re-striping. Accordingly, I find that as a condition of approval the applicant will be required to submit to ODOT and the county for their review and approval detailed plans for the proposed mitigation, and to pay the county the amount identified by George Kolb as the cost of re-striping only if ODOT approves the proposed mitigation. If ODOT does not approve the proposed re-striping mitigation, no mitigation will be required.

For the foregoing reasons, and with imposition of the condition of approval described above, the Hearings Officer finds transportation access to the site will be adequate for the proposed school.

c. Section 18.124.070, Required Minimum Standards

* * *

B. Required Landscaped Areas.

1. **The following landscape requirements are established for multi-family, commercial and industrial developments, subject to site plan approval:**

- a. **A minimum of 15 percent of the lot area shall be landscaped.**

- b. **All areas subject to the final site plan and not otherwise improved shall be landscaped.**

FINDINGS: The staff report states the criterion in Subsection (1) of this section is not applicable because the proposed school is not a multi-family, commercial or industrial development. Title 18 does not define the terms "commercial" and "commercial development." The ordinary definition of the term "commercial" includes "made or done primarily for sale or profit." Section 18.04.030 defines "commercial use" as:

*** * * the use of land primarily for the retail sale of products or services, including offices. It does not include factories, warehouses, freight terminals or wholesale distribution centers.**

The Hearings Officer understands tuition is charged for Cascades Academy students. Nevertheless, in the context of the definition of "commercial use," I find a private school that charges tuition is not in the business of "retail sale of products or services," and therefore is not a "commercial development" for purposes of Section 18.124.070.

2. **In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas:**

- a. **A parking or loading area shall be required to be improved with defined landscaped areas totaling no less than 25 square feet per parking space.**

FINDINGS: The submitted site plan shows 61 vehicle parking spaces. Therefore, under this criterion 1,525 square feet of landscaping is required in and around the parking and vehicle drop-off areas. The Hearings Officer finds the submitted landscape plan (Sheet L1.1) shows at least 5,000 square feet of landscaping consisting of natural vegetation within and adjacent to these areas. In addition, significant amounts of native landscaping will surround the parking and drop-off areas. Therefore, I find the applicant's proposal satisfies this criterion.

- b. **In addition to the landscaping required by DCC 18.124.070(B)(2)(a), a parking or loading area shall be separated from any lot line adjacent to a roadway by a landscaped strip at least 10 feet in width, and from any other lot line by a landscaped strip at least five feet in width.**

FINDINGS: The submitted site plan shows the parking area would be located adjacent to Tumalo Reservoir Road. The submitted landscape plan shows a landscaped strip at least 30 feet in width between the parking area and the road, therefore satisfying this criterion.

- c. **A landscaped strip separating a parking or loading area from a street shall contain:**

- 1) **Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.**
- 2) **Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.**
- 3) **Vegetative ground cover.**

FINDINGS: The submitted landscape plan shows the required landscape strip separating the parking area from Tumalo Reservoir Road would include retained juniper trees, introduced juniper trees, and various shrubs and grasses. The Hearings Officer finds the applicant will be required as a condition of approval to assure the introduced landscaping in this strip satisfies the size, height and separation requirements in this paragraph.

- d. **Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.**
- e. **The landscaping in a parking area shall have a width of not less than five feet.**

FINDINGS: The submitted landscape plan shows landscaping would be located in defined areas uniformly distributed throughout the parking area, and all such areas would be at least five feet in width. Therefore, the Hearings Officer finds the applicant's proposal satisfies these criteria.

- f. **Provision shall be made for watering planting areas where such care is required.**
- g. **Required landscaping shall be continuously maintained and kept alive and attractive.**

FINDINGS: The Hearings Officer finds that as a condition of approval the applicant will be required to water, where appropriate, and continuously maintain and keep alive all required landscaping.

- h. **Maximum height of tree species shall be considered when planting under overhead utility lines.**

FINDINGS: The Hearings Officer finds this criterion is not applicable because no overhead utility lines exist or are proposed.

C. Nonmotorized Access

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

FINDINGS: The proposal's compliance with the bicycle parking requirements is addressed in the findings above.

2. **Pedestrian Access and Circulation:**

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

FINDINGS: As discussed in the findings above, the Hearings Officer has found the proposed school is not a commercial, office, or multi-family development. Therefore I find this criterion is not applicable.

- b. **Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On-site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi-family, public or park use.**

FINDINGS: The submitted site plan shows pedestrian walkways would connect to the parking area, main school building, gymnasium, teaching pavilion, and Tumalo Reservoir Road. The staff report states there are no existing or planned transit facilities, commercial or multi-family developments adjacent to the property.

The subject property is bordered on the south by a small triangular parcel owned by OPRD. The staff report states, and the Hearings Officer concurs, that since this property is undeveloped no pedestrian walkway connection from the subject property to this property is necessary or appropriate. In addition, I agree with staff that it would not be appropriate – and could create safety hazards – to require a pedestrian connection to another vacant OPRD-owned parcel located across O.B. Riley Road to the east.

- c. **Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and**

landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.

FINDINGS: The submitted site plan shows pedestrian walkways will directly connect pedestrians to the school buildings and parking areas. The walkways will be paved and 5, 6 or 7 feet wide depending on their location. The proposed walkways in the parking areas would be 6 feet wide. The Hearings Officer finds this walkway width is sufficient because I have required as a condition of approval that the applicants install concrete bumpers or curbs to prevent parked vehicles from obstructing any walkways.

- d. Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.**

FINDINGS: The submitted site plan shows only one pedestrian walkway crossing of vehicle aisle within the parking area. The site plan shows this crossing would be delineated by the use of concrete paving rather than the asphalt paving used throughout the parking area. For these reasons, the Hearings Officer finds access aisle/driveway crossings have been minimized and the single proposed crossing will be clearly identified through the use of different paving material.

- e. To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings.**

FINDINGS: The submitted site plan shows a maximum slope of five percent for the pedestrian walkway connecting the parking area to the main building entrance, therefore satisfying this criterion. As discussed in the findings above, the Hearings Officer has found compliance with this and other ADA accessibility requirements will be reviewed and confirmed at the time of building plan review and permitting.

For the foregoing reasons, and with imposition of the conditions of approval discussed above, the Hearings Officer finds the applicant's proposal satisfies all applicable site plan approval criteria.

CONDITIONAL USE APPROVAL CRITERIA

7. Chapter 18.128, Conditional Use

Cascades Academy
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a. Section 18.128.015, General Standards Governing Conditional Uses

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

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

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

FINDINGS:

1. Site. The subject property is approximately 20 acres in size. The applicant's burden of proof and submitted site plan indicate approximately six acres (30%) of the site would be developed with school facilities, and the remainder of the property would be left in its natural state. Most of the site slopes gently from west to east with a steeper slope along the dry ravine near the northeast corner of the property. The site has a moderate cover of mature juniper trees as well as native shrubs and grasses, most of which will be retained on the site. The property is bounded by two county collector roads.

2. Design. The proposed school's design would site the proposed buildings near the center of the property to facilitate better topographic and vegetative screening from the adjacent roads as well as the Deschutes River and Highway 20. As discussed above, the site plan shows all trees and other vegetation not required to be removed for construction will be retained. The submitted building elevation drawings show the proposed school buildings will have relatively low profiles, and the main school building will be stepped down the slope to conform to the site's topography. However, as discussed above, the Hearings Officer has found the applicant will be required as a condition of approval to revise the submitted site plan and elevation drawings to reduce the 33.5-foot height of the main school building to 30 feet. I have found the proposed parking areas and vehicle, bicycle and pedestrian facilities will provide adequate and safe internal circulation.

3. Operating Characteristics. The applicant's burden of proof includes the following description of the operating characteristics of the proposed school:

"CACO offers a general school program/term that extends from September to June each calendar year. A more limited (summer school) program may be operated during the summer months between June and September. The programs are operated Monday through Friday on a weekly basis. Classes and programs are not typically operated/or offered on weekends. Typical hours of operation are from 7:30am to 3:15pm daily. Teachers and school staff typically arrive and depart in the immediate hours before or after the school sessions.

The school program, and relatively small student population, does not include the

sort of athletic programs, or team sport events that are typical of public schools. No sporting events or other large gathering events that might be typical at public schools or large private schools, are included in the CACO school program. As demonstrated on the Site Plan, there are no large sport or activity fields that would accommodate such events or activities. A small outdoor playground and half-court ball field are provided in the Site Plan for the limited needs of the CACO program/users. Those facilities are located adjacent to the buildings and screened and buffered to the surrounding roads and properties by existing vegetation to remain, the buildings themselves, and the substantial setbacks provided.

The proposed school facility does not include a food cooking kitchen. No stoves or standard cooking ovens etc. are proposed. The main building includes a small workroom/kitchen area where microwave ovens, coffeemakers, and similar small appliances, may be included for minimal pre-packaged or prepared foods storage and handling. The school does not offer cafeteria services. With the limited operations, material and supply deliveries to the facility will be minimal, and are typically accomplished via small utility truck type vehicles, that will be inconsequential to the surrounding area.

As noted earlier herein, CACO will be providing and developing its own private water system to serve the site. With the limited formal landscaping of the site, water demands and needs will be very modest, and will be easily supplied and furnished by a small private well and distribution system, with negligible/imperceptible impact to any surrounding properties, existing neighboring infrastructure, or natural resources. Similarly the site size, soils, and topography can readily accommodate on-site sewage disposal in accordance with applicable County and State DEQ requirements. Deschutes County Site Evaluation #F 23051 17-12-0660-701, dated August 29, 2006, confirms that development of an adequate on-site sewage disposal system is feasible."

As discussed in the findings above, the maximum capacity of the proposed school is 225 students, including 40 pre-kindergarten students and up to 45 high school students. The current staff complement is 18 and that number obviously will increase as student enrollment increases.

The Hearings Officer finds the property is sufficiently large to accommodate all elements of the proposed use while retaining large undisturbed areas and much of the existing topography and native vegetation. The parking lot will be of adequate size to accommodate the school's parking needs, and the proposed pedestrian, bicycle and vehicle aisles will provide adequate and safe circulation within the site. Therefore, I find the subject property is suitable for the proposed school considering the site and the design and operating characteristics of the school.

2. Adequacy of transportation access to the site; and

FINDINGS: Access to the site would be from a driveway off Tumalo Reservoir Road, a designated rural collector road. As discussed above, the record indicates the design capacity for a

rural collector road is 9,600 ADTs. The record includes the results of a 2008 traffic count for this segment of Tumalo Reservoir Road showing 739 ADTs. According to the applicant's TIA, the proposed school will add 558 ADTs, which will maintain the traffic levels well below the design capacity Tumalo Reservoir Road. The road department has found the sight distance at the intersection of the access driveway and Tumalo Reservoir Road will be adequate to allow safe ingress and egress. In addition, the applicant has agreed, and will be required as a condition of approval, to improve the abutting segment of Tumalo Reservoir Road by widening the eastern travel lane to 14 feet of pavement with two feet of gravel shoulders.

As discussed in detail in the findings above, opponents have questioned whether the addition of school-generated traffic to the nearby O.B. Riley/Cook Avenue/Highway 20 intersection will exceed the capacity of that intersection and/or cause unacceptable safety hazards. Based on the findings above, incorporated by reference herein, the Hearings Officer has found school-generated traffic will not exceed the intersection's capacity, and therefore transportation access to the site will be adequate for the proposed school.

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

FINDINGS: The natural and physical features and natural resource values of the subject property consist of gently sloping topography including a dry ravine, some rock outcrops, and a moderately dense vegetative cover consisting of mature juniper trees and native brush and grasses. The applicant's submitted site plan shows approximately two-thirds of the property would be undisturbed, the school buildings would be clustered together near the center of the property, and the dry ravine would be undisturbed with the exception of a surface water retention basin to be installed at its lowest elevation. The record does not indicate any natural hazards on or affecting the subject property except the potential for wildfire. As discussed in the findings above, the applicant has proposed, and will be required as a condition of approval, to provide a firefighting water supply and delivery system that is satisfactory to the fire department. For these reasons, the Hearings Officer finds the subject property is suitable for the proposed school use considering the factors listed in this paragraph.

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

FINDINGS: The area surrounding the subject property is characterized by diverse zoning districts and developments. Existing uses include undeveloped land, operating and reclaimed surface mining areas, small-scale farms, rural residences, industrial, wholesale and office uses at the Knife River site, Tumalo State Park, the Deschutes River and its associated flood plain, and a heavily traveled state highway. The Hearings Officer finds projected uses on surrounding properties would include uses similar to those already in existence as well as other uses permitted outright or conditionally in the EFU-TRB, MUA-10, SM, SMIA, OS & C, and TU R5 Zones.

The proposed private school would be developed on approximately 6 acres (30%) of the nearly 20-acre subject property and would consist of three buildings and other improvements including driveways, parking and maneuvering areas, playground, and an on-site well, septic system and surface water drainage system. Maximum enrollment would be 225 students from pre-K through high school. Buildings, parking areas and driveways would be located near the center of the property at elevations lower than Tumalo Reservoir Road and land uses to the west and north. This design takes advantage of the visual screening provided by existing vegetation including mature trees and native brush and grasses.

As also discussed above, the school would operate on weekdays from approximately 7:30 a.m. to 3:15 p.m., and would have very few late afternoon, evening and weekend activities or events. The applicant's submitted TIA predicts the school would generate 558 ADTs, which when added to the current ADTs would keep traffic well below the 9,600 ADT design capacity of both Tumalo Reservoir and O.B. Riley Roads. The TIA predicts that none of this traffic would pass through the Tumalo Rim Subdivision to the west, but rather would primarily use O.B. Riley Road to travel to and from the west side of Bend area where the majority of students live.

Opponents raised a number of compatibility issues, addressed in the findings below.

1. Impact on Rural Lifestyle. Opponents argue locating a school on the subject property would be inconsistent with the nearby rural residential uses. The Hearings Officer disagrees. Private schools are permitted conditionally in the MUA-10 Zone, signifying the county's determination that such uses can be compatible with other uses permitted outright and conditionally in that zone. Moreover, schools are and long have been an integral part of rural land uses.

2. Impact on Tumalo State Park. Greg Ciannella, Natural Resources Specialist for OPRD, submitted a letter dated February 8, 2011 commenting on the applicant's proposal and stating in relevant part:

"I was impressed with the attention the school, the designers and engineers have exercised to mitigate potential impact the development of the project may have on users of the park and river. The design utilizes the site well and preserves the natural screening of the buildings by maintaining large treed buffers from OB Riley and Tumalo Reservoir Roads. From my observations, it is likely the school buildings will be practically invisible from the Deschutes River and Tumalo State Park. In addition the site plan has endeavored to preserve important trees, rock features and includes native and appropriate plant materials in the landscape design and natural non-reflective materials on the buildings. It is clear that a great deal of sensitivity and attention has been paid to the environmental setting and blending with the adjacent State Park.

We note that the school does not operate in late afternoons, on weekends, or during the summer months, which constitutes the peak usage periods of the park and river. Even so, Cascades Academy has demonstrated its intent to be respectful and responsible neighbors and we would welcome them to the community. I'm told they have been community contributors to Tumalo State Park

for some years now.

Oregon Parks and Recreation also notes the substantial fire protection facilities incorporated in the design which gives comfort that the site is probably better protected from the greatest risk to this scenic area – fire. We have had great concern about the frequent illegal bonfires used by the transient population and youths that are currently attracted to the site.

In summary, Oregon Parks and Recreation has not identified material concerns about this development and its impact on Tumalo State Park or the Scenic Waterway in this area. Rather, we believe the design is thoughtful and appropriate and we would be supportive of Cascades Academy as neighbors to the park."

In light of these comments, the Hearings Officer finds no merit to opponents' park-related objections to the applicant's proposal.

3. Impact on Wildlife. The Hearings Officer is aware rural and suburban areas throughout the county provide wildlife habitat. Nevertheless, the subject property has not been identified as wildlife habitat of sufficient importance to merit protection through designation of a Wildlife Area Combining Zone. Moreover, opponents have not identified specific threats to wildlife and their habitat posed by the proposed school. And as discussed above, the school will occupy only 30 percent of the subject property, leaving the majority of it in its natural state, and the school will not operate during the summer or most evenings and weekends, reducing human-caused disturbance to wildlife. Therefore, I find no merit to this argument.

4. Impact on Water Table/Water Rights. The record includes a copy of a water rights application the applicant filed with the Oregon Water Resources Department (OWRD), describing the proposed use as a "private school to be constructed on the property with some irrigated plant and grassy play areas." Opponent Nunzie Gould argues the water right application is inconsistent with the applicant's request for conditional use and site plan approval because these land use applications do not include the "playing field use." The Hearings Officer disagrees. The submitted site plan clearly shows an area labeled "playground" located south of the gymnasium building and corresponding to a portion of the area identified for irrigation on the water rights application map located in the southwest quadrant of the subject property. At the public hearing, the applicant's attorney Tia Lewis stated there would be no "playing fields" such as those designed for organized sporting events. The remainder of the proposed irrigated area on the water rights application map consists of the septic drainfields that are proposed to be grassy areas. I find any impact of the applicant's proposed well on the area water table will be evaluated by OWRD before any water right is granted.

5. Property Devaluation. Opponents argue the presence of the proposed school will devalue their nearby rural residential properties. The Hearings Officer finds this is an argument that is frequently made but – as in this case – rarely supported by any evidence such as real estate appraiser opinions or market analyses. Without such proof, I find this argument is without merit.

6. *Alternative Locations.* Several opponents argue the applicant should site the proposed school on another (unidentified) location. The Hearings Officer finds the possibility of alternative locations is irrelevant to my review of this application. The question before me is whether the *subject property* is suitable for the proposed school.

7. *Visual Impacts.* Opponents argue the proposed school will have negative visual impacts on Tumalo State Park, the Deschutes River, Highway 20, and nearby properties. The Hearings Officer disagrees. As discussed in detail in the findings above, I have found the submitted site plan and building elevation drawings demonstrate the school will be well screened from these features and properties by vegetation, topography and distance. While portions of the school buildings likely will be visible from Highway 20, O.B. Riley Road and Tumalo Reservoir Road, I find these views will be fleeting and intermittent in light of the substantial screening vegetation.

8. *Septic System.* Opponents expressed concern about potential contamination of the Deschutes River from the school's on-site septic system. As discussed in the findings above, the septic system must be approved by DEQ through WPCF plan review and permitting that will require the applicant to demonstrate effluent can be treated on site and will not run off site. In addition, the record indicates the septic system would be located at least 180 feet from the river. Therefore, the Hearings Officer finds no merit to this argument.

9. *Surface Water Run-off.* Opponents expressed concern about surface water from the proposed school site running onto O.B. Riley Road and on into the Deschutes River. As discussed in the findings above, the applicant has proposed to direct surface water runoff down the existing dry ravine and into a catch basin at the bottom of the ravine in the northeast corner of the property. The Hearings Officer has found that as a condition of approval the applicant will be required to submit to the County Engineer drainage calculations and analyses prepared by a registered professional engineer demonstrating the proposed drainage basin will contain all surface water drainage on the subject property. I find that with imposition of this condition the applicant's proposal will not adversely affect surrounding roads or property through surface water off-site.

10. *Future Expansion.* Opponents expressed concern about the potential expansion of the proposed school beyond its stated maximum capacity of 225 students. As set forth in the conditions of approval below, the Hearings Officer has approved the applicant's proposal subject to the maximum capacity identified by the applicant. Any further expansion of enrollment or site improvements will require additional land use review and approval(s).

11. *Construction-related Noise and Dust.* The Hearings Officer understands neighborhood concerns about impacts on their residential uses from construction noise and dust emanating from the subject property. I find that these impacts will be temporary in nature. Nevertheless, I find that as a condition of approval the applicant will be required to minimize construction-related dust on the subject property through measures such as spraying of water on unpaved access roads and vehicle maneuvering areas.

12. *Evening/Weekend/Summer Activities.* Opponents who live near the subject property expressed concern about the impacts from evening, weekend and summer activities on the subject property. The applicant's burden of proof and public hearing testimony stated the school

will not operate during the summer, and that late afternoon, evening and weekend activities will be very infrequent. The applicant also stated no organized sports activities would occur on the playground. For these reasons, the Hearings Officer finds there will be minimal if any impact on surrounding property from evening and weekend activities on the subject property.

13. Trespassing/Vandalism/Littering on Neighboring Properties. Opponents expressed concern about the proposed school generating these negative impacts on their nearby properties. The Hearings Officer understands opponents' concerns as the record indicates there have been problems in the past with transients' use of the site for camping and warming fires. However, I find development of the subject property with the proposed school is likely to reduce illegal use of the property and trespass on neighboring properties, due to the regular presence of people.

14. Removal of Trees. Opponents object to removal of trees from the subject property. However, the applicant has proposed, and the Hearings Officer has found the applicant will be required as a condition of approval, to retain, preserve and protect all trees not required to be removed for construction. Moreover, I find the applicant's proposal is likely to require the removal of far fewer trees than necessary for other uses permitted in the MUA-10 Zone, such as farm use.

15. Traffic Impacts. Traffic impacts from the proposed school are discussed in detail in the findings above. Based on those findings, incorporated by reference herein, the Hearings Officer has found traffic generated by the proposed school will not exceed the capacity of affected transportation facilities, including the O.B. Riley/Cook Avenue/Highway 20 intersection.

16. Traffic/Bicycle Safety. Opponents expressed concern about the safety of bicyclists riding on O.B. Riley Road, which the record indicates does not have striped bicycle lanes, when school-generated traffic is added to existing traffic on these facilities. As discussed above, even with the addition of the projected 558 ADTs from the school, traffic will still be well below the design capacity of these roads. Opponents also have expressed concern about traffic safety at the O.B. Riley/Cook Avenue/Highway 20 intersection with the addition of school-generated traffic. The applicant's and opponent Nunzie Gould's traffic engineers disagree about how many school-generated trips will actually use this intersection. However, as discussed in detail in the findings above, incorporated by reference herein, the Hearings Officer has found the applicant's trip distribution assumptions and calculations are consistent with the county's code provisions for TIAs and are reasonable considering the school's students and historic traffic patterns. Therefore, I find no merit to this argument.

For the foregoing reasons, the Hearings Officer finds the proposed private school will be compatible with existing and projected uses on surrounding properties based on the factors listed in DCC 18.128.015(A), therefore satisfying this criterion.

b. Section 18.128.190, Schools

- A. Nursery schools shall provide and maintain at least 100 square feet of outdoor play area per child. A sight-obscuring fence at least four feet but not more than six feet high shall separate the play area from adjoining lots.**

B. Secondary schools shall provide a site area of 10 acres plus one additional acre for each 100 pupils of predicted ultimate enrollment.

FINDINGS: The proposed school would provide instruction for pre-kindergarten up to 12th grade, therefore including both a “nursery” and “secondary” school.⁸ The applicant’s burden of proof includes the following relevant discussion:

“CACO [Cascades Academy] currently has the equivalent of 10-15 ‘full time’ pre-k type students. The submitted plans and documents demonstrate a maximum pre-k population capacity of approx. 40 students is possible at build-out.

The outdoor playground area proposed and shown on A1.1 etc. measures approx. 11,500 sf, which according to 18.128.190(A) would accommodate up to 115 pre-k students. The adjacent and adjoining terrace-pre-school courtyard area (sheet A2.1) measures approx. 2000 sf. The adjacent and adjoining outdoor paved half court area measures approx. 1600 sf. Combined those areas provide a total of at least 15,100 sf of available ‘outdoor’ play area.

The specific play areas described above are all significantly separated and shielded (sight-obscured) from adjoining lots by; the proposed buildings and structures themselves, the significant distances/setbacks to adjoining properties, at least 350 feet to the west, 600 feet to the north, 500 feet to the south, and 250 feet to the east, and the substantial existing/preserved vegetation, trees, and topography in those separation areas. Thus the Applicant believes a sight-obscuring fence is not warranted, necessary, nor desirable. The Applicant does not propose a sight-obscuring fence for those reasons.

Obviously the Applicant might view 18.128.190 as intended to address formal ‘nursery schools’, or schools that serve pre-k students only, which more typically are located in a more urban environment, where sight-obscuring elements may be practical related to the smaller parcel sizes more typical of more urban settings. In this case the relatively large subject property with its unique topography and significant vegetation and setback areas provides sight-protection aspects not normally associated with typical nursery schools.”

The staff report states, and the Hearings Officer concurs, that in light of the significant vegetative screening that would surround the play area, a sight-obscuring fence is not necessary.

The applicant’s burden of proof states the ultimate school enrollment would be 225 students including up to 45 secondary (high school) students. With 45 secondary students, the minimum required site area would be 10 acres, less than the 20-acre subject property, therefore satisfying this criterion.

⁸ Section 18.04.030 does not define “nursery school.” The ordinary definition of “nursery school” is “a school for children who are not old enough to attend kindergarten” *Webster’s New Collegiate Dictionary*.

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For the foregoing reasons, and with imposition of the conditions of approval discussed above, the Hearings Officer finds the applicant's proposal satisfies all applicable conditional use approval criteria.

IV. DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer hereby **APPROVES** the applicant's proposed conditional use permit, site plan, lot of record, landscape management, and surface mining impact area applications to establish a private school on the subject property, **SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

1. This approval is based on the applicant's submitted application, site plan and building elevation drawings, burden of proof statements, supplemental materials, and written and oral testimony. Any substantial change to the approved school facility will require a new land use application and approval.

PRIOR TO APPLYING FOR ANY BUILDING PERMIT:

2. The applicant/owner shall submit to the Planning Division a revised site plan and elevation drawings demonstrating the height of the main school building does not exceed 30 feet measured from the average natural ground elevation at the east walls of the classroom wings of the building.
3. The applicant/owner shall provide to the Deschutes County Engineer drainage calculations and analyses prepared by a licensed professional engineer demonstrating that any increase in drainage runoff from the site as a result of the approved school will be retained on the site, and that there will be no measurable adverse impacts to neighboring properties, streets, or surface and subsurface water quality.
4. The applicant/owner shall execute and record with the Deschutes County Clerk a Waiver of Remonstrance for Surface Mining Site No. 370, on a form approved by the county, and shall provide a copy of the recorded waiver to the Planning Division.
5. The applicant/owner shall apply to and obtain from the county a permit for a monument sign at the school entrance on Tumalo Reservoir Road.
6. The applicant/owner shall apply for and obtain any and all required approvals from the Oregon Parks and Recreation Department for the proposed school.
7. The applicant/owner shall apply for and obtain a Water Pollution Control Facility permit from the Oregon Department of Environmental Quality.
8. The applicant/owner shall apply for and obtain plan review approval for the school's drinking water system from the Oregon Department of Human Services through the Oregon Drinking Water Program.

9. The applicant/owner shall secure an access permit from the Deschutes County Road Department for access onto Tumalo Reservoir Road.

WITH AND DURING CONSTRUCTION:

10. The applicant/owner shall install all outdoor lighting in compliance with the county's Outdoor Light Control ordinance under Chapter 15.10 of the Deschutes County Code.
11. The applicant/owner shall meet all the requirements of the Bend Fire Department set forth in its January 18, 2011 comments and in Keith D'Agostino's February 11, 2011 memorandum.
12. The applicant/owner shall install a curb or bumper rail for all parking spaces along Tumalo Reservoir Road to prevent vehicles from extending over the road right-of-way.
13. The applicant/owner shall minimize construction-related dust on the subject property through measures such as spraying of water on unpaved access roads and vehicle maneuvering areas.
14. The applicant/owner shall install a landscaped strip separating a parking area from Tumalo Reservoir Road containing:
 - a. trees spaced as appropriate to the species, not to exceed 35 feet apart on the average; and
 - b. low shrubs not taller than three feet zero inches, spaced no more than eight feet apart on the average.

PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY:

15. The applicant/owner shall install an on-site sign directing bicyclists from Tumalo Reservoir Road to the bicycle parking spaces.
16. The applicant/owner shall install a sign in front of the main school building directing bicyclists to walk their bikes where the pedestrian/bike path crosses the vehicle driveway.
17. The applicant/owner shall improve the abutting segment of Tumalo Reservoir Road to the county's standards and specifications for collector roads as set forth in Table "A" of Title 17. Required improvements include widening the existing pavement to a width of fourteen (14) feet along with 2-foot gravel shoulders from centerline along the entire frontage of the subject property, and installation of drainage swales along the property's frontage.
18. The applicant/owner shall submit to the County Engineer and the Oregon Department of Transportation (ODOT) for their review and approval detailed plans for mitigation at the O.B. Riley/Cook Avenue/Highway 20 intersection. If ODOT approves the mitigation, the

applicant/owner shall pay the county \$1,872 (one thousand eight hundred seventy-two dollars) for the cost of re-striping at the intersection. If ODOT does not approve the proposed re-striping mitigation, no mitigation to the intersection will be required.

AT ALL TIMES:

19. The applicant/owner shall retain all trees not required to be removed for construction.
20. The applicant/owner shall protect all retained trees during construction, and install temporary fencing around the drip line of each retained tree that could be affected by excavation and/or the movement of construction vehicles and equipment so that the roots of the retained trees and the soils within the drip line are not damaged.
21. The applicant/owner shall continuously maintain and keep alive all retained and introduced vegetation, including watering when and where appropriate.
22. The applicant/owner shall maintain off-street parking spaces for parking operable vehicles and not for vehicle storage.
23. The applicant/owner shall maintain the clear vision area at the intersection of Tumalo Reservoir Road and the entrance driveway free from obstructions.
24. The applicant/owner shall maintain the drainage basin to the capacity specified in the approved drainage plan.

DURATION OF APPROVAL:

25. The applicant/owner shall apply for a building permit for the school facility within two (2) years from the date this approval becomes final, or obtain an extension of time pursuant to Section 22.36.010 of the Deschutes County Code, or this approval shall be void.

Dated this 23rd day of April, 2011.

Mailed this 23rd day of April, 2011.


Karen H. Green, Hearings Officer

THIS DECISION BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE OF MAILING, UNLESS TIMELY APPEALED BY A PARTY OF INTEREST.

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ATTACHMENT 4
Existing Permit G-16947
Form I & Q from Original Application

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Oregon Water Resources Department

FORM I FOR IRRIGATION USE

1. Please indicate whether you are requesting a primary or supplemental water right, as well as the number of acres that will be irrigated for each type. The acreages must match those shown on the map submitted with your application.

Primary: 3 Acres

Supplemental: _____ Acres (supplemental irrigation can be used only when the primary right is not available, and must match the season of the primary right)

List the permit or certificate number of the primary water right that underlies each supplemental right.

Circle one	Season Allowed
Permit/Certificate # _____	_____
Permit/Certificate # _____	_____
Permit/Certificate # _____	_____
Permit/Certificate # _____	_____

2. Indicate the maximum number of acre-feet of water you expect to use in an irrigation season:

9 acre-feet (typically 2.5 or 3.0 acre-feet per acre)
(1 acre-foot equals 12 inches of water spread over 1 acre, or 43,560 cubic feet, or 325,851 gallons)

3. **For Limited License applications proposing to use water for irrigation.** If for use of stored water, a limited license may be issued for up to one year with a valid contract for stored water per ORS 537.143(9). A limited license may also be issued for irrigation from live flow or groundwater, if the sole purpose is to establish a crop for which no further irrigation will be required after the crop is established per ORS 537.143(6)(a). Please describe the proposed project and indicate if stored water, live flow, or groundwater is to be used. When irrigation is needed to establish a crop, you must justify why more than one year is required.

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Last revision August 4, 2009



Oregon Water Resources Department

FORM Q
FOR COMMERCIAL AND INDUSTRIAL WATER USES

1. Describe the goods and services you plan to provide:

Teaching children in a school.

2. How will the water be used?

Typical school type water uses; drinking fountains, bathrooms, etc.

3. What is the maximum amount of water that will be used on any given day:

7 cfs gpm

4. Are there periods of the day, week, month, or year that the water will not be used?
(e.g. no use December-March)

No Yes If so, when? weekend days and the months of July and August

5. Is there a particular time or period of day, week, month, or year when the use of water is absolutely essential for the project to continue? (e.g. vegetable processing, Oct. 15-Nov. 15)

No Yes If so, when? Sept - June

6. Are there periods of the day week, month, or year where the amount of water used will be less than at peak times?

No Yes If so, when? weekends little water will be used