



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

CERTIFICATE OF MAILING

FILE NUMBER: CU-02-1

DOCUMENT MAILED: NOD & F&D

LOOKUP AREA (circle one): 750'

Subject property tax lot number: 18-13-04-110

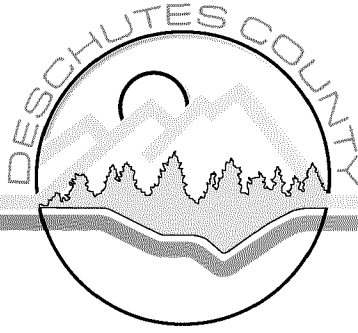
I certify that on 28th day of February, 2002, the attached notice/report, dated February 28, 2002, was mailed by first class mail, postage prepaid, to the person(s) and address(es) set forth on the attached list.

DATED this 28th day of February, 2002.

COMMUNITY DEVELOPMENT DEPARTMENT

By: Bend Mailing Services

<u>Applicant:</u> Louie Hoffman 685 S.E. Third Street Bend, Oregon 97702	14 Look-ups
<u>Owner:</u> Delmer and Patricia Davis 2537 Shoreland Drive. S Seattle, Washington 98144	Environmental Health: Roger Everett
Heidi Kennedy 64180 Old Bend Redmond Highway Bend, Oregon 97701	Property Address Coord.
	Bend Fire Dept.: Michael Skeels 1212 SW Simpson, Suite B Bend, Oregon 97702



Community Development Department

Planning Division Building Safety Division Environmental Health Division

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

NOTICE OF DECISION

As an owner within the notification area or interested party, this is to inform you that the Deschutes County Planning Division has approved the land use application described below:

FILE NUMBER: CU-02-1

LOCATION: The subject property is located at 23145 Bear Creek Road, Bend, and identified on the Deschutes County Assessor's maps as #18-13-04-110.

APPLICANT: Louie Hoffman - Steve Scott & Co., Realtors
685 SE Third Street
Bend, Oregon 97702

OWNER: Delmer Davis
Patricia Davis
2537 Shoreland Drive S.
Seattle, Washington 98144

AGENT: Heidi Kennedy
64180 Old Bend-Redmond Hwy
Bend, OR 97701

SUBJECT: The Deschutes County Planning Division has approved a Conditional Use Permit to establish a nonfarm dwelling in conjunction with a wildlife habitat conservation and management plan to be located on a 50-acre parcel in the Exclusive Farm Use Zone – Tumalo/Redmond/Bend Subzone (EFU-TRB).

STAFF CONTACT: Catharine Tilton, Associate Planner, (541) 383-6719

APPLICABLE CRITERIA: The application was reviewed for compliance against the following criteria contained in Title 18, the Deschutes County Zoning Ordinance:

- Chapter 18.16, Exclusive Farm Use Zones
- Chapter 18.92, Conventional Housing Combining Zone, Section 18.92.020
- Oregon Administrative Rules Chapter 660

This application was processed in accordance with the procedural requirements of Title 22 of the Deschutes County Code (DCC).

DECISION: Staff finds that the application satisfies all applicable criteria, and approval is being granted subject to the following conditions:

1. Approval of the conditional use permit for a nonfarm and wildlife habitat conservation plan dwelling is based on the site plan as submitted. Any substantial change to the site plan will require a new application.
2. The applicant shall submit, prior to issuance of the building permit for the dwelling, either certification to the County Assessor from the Oregon Department of Fish and Wildlife for approval and implementation of the wildlife conservation and management plan qualifying under ORS 215.808, or pay the tax penalties and submit certification from the Assessor that the tax penalty has been paid.
3. The applicant shall comply with the Bend Fire Department requirements.
4. In compliance with the Conventional Housing Combining zone, the dwelling shall be a conventional or modular house permanently attached to the subject property. Manufactured homes shall not be permitted.

This land use permit shall be void four years from the date this decision becomes final unless the permit is initiated or extended pursuant to Chapter 22.36 of the DCC.

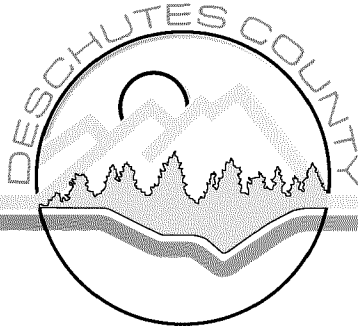
This decision becomes final twelve (12) days after the date mailed, unless appealed by a party of interest. To appeal, it is necessary to submit a Notice of Appeal, the appeal fee of \$250.00 and a statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue.

A copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

Dated this 27 day of February, 2002.

Mailed this 28th day of February, 2002



Community Development Department

Planning Division Building Safety Division Environmental Health Division

117 NW Lafayette Avenue Bend Oregon 97701-1925
(541)388-6575 FAX (541)385-1764
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FINDINGS AND DECISION

FILE NUMBER: CU-02-1

APPLICANT: Louie Hoffman - Steve Scott & Co., Realtors
685 SE Third Street
Bend, Oregon 97702

OWNER: Delmer Davis
Patricia Davis
2537 Shoreland Drive S.
Seattle, Washington 98144

AGENT: Heidi Kennedy
64180 Old Bend-Redmond Hwy
Bend, OR 97701

REQUEST: The applicant is requesting approval of a Conditional Use Permit for a nonfarm dwelling in conjunction with a wildlife habitat conservation and management plan to be located on a 50-acre parcel in the Exclusive Farm Use Zone – Alfalfa Subzone (EFU-AL).

STAFF CONTACT: Catharine Tilton, Associate Planner

I. APPLICABLE CRITERIA:

Title 18 of the Deschutes County Code, County Zoning.

- A. Chapter 18.16, Exclusive Farm Use (EFU) Zones, Sections 18.16.030-070.
- B. Chapter 18.92, Conventional Housing Combining Zone, Section 18.92.020

Oregon Administrative Rules.
OAR 660-033-0010 through 0130

II. BASIC FINDINGS:

- A. **LOCATION:** The subject property is located at 23145 Bear Creek Road, Bend, and identified on the Deschutes County Assessor's maps as #18-13-04-110.
- B. **LOT OF RECORD:** The subject property is a legal lot of record as it is Parcel 2 of Minor Partition, MP-91-27.

- C. **ZONING:** The property is zoned Exclusive Farm Use--Tumalo/Redmond/Bend (EFU-TRB) and is also within the Conventional Housing Combining Zone (CHC) Subzone. A portion of the property near the southern property line is within the Landscape Management (LM) Combining Zone; however, the proposed nonfarm dwelling will be situated outside the LM zone.
- D. **PROPOSAL:** The applicant is proposing to establish a non-farm dwelling on the property in conjunction with a wildlife conservation and management plan. The location of the dwelling is proposed to be sited near the center portion of the property on a dry rocky elevated knoll with yard setbacks that exceed 100-feet from the property lines. Access is via Bear Creek Road, a rural collector road.
- E. **SITE DESCRIPTION:** The approximate 19.63-acre parcel fronts Bear Creek Road along the northern property boundary. Topography of the rectangular-shaped lot is uneven terrain with the building site situated atop a rocky knoll and the southern pasture area situated at a lower elevation and relatively level. Vegetation on the property is a mixture of juniper, brush, grasses, and pasture area. The property is currently vacant and has seven acres of water rights located in the southern portion of the property.
- F. **SURROUNDING LAND USES:** Surrounding land uses are predominantly privately owned in a mixture of farm, nonfarm and rural residential uses. Public lands are located along the periphery of the study area, including a portion of an 11,138-acre property owned by the Federal government. Approximately a quarter of the study area in the northwest and southern portions are in rural residential use including lands zoned MUA10 and RR10. Lands abutting the subject property are privately owned approximate 20-acre parcels with a mixture of farm and nonfarm uses and rural residential development. Specifically, immediately north of the subject property is Bear Creek Road. North of Bear Creek Road are two approximate 20-acre lots in the Ross Ranch subdivision that are zoned EFUTRB and are partially irrigated with one lot, tax lot 17-13-33D-700, developed with a dwelling built in 1920, and the other tax lot, 17-13-33D-800, vacant. East of the subject property is an approximate 20-acre property partially irrigated and developed with two homes built in the 1970s (according to the County Assessor's data). South of the subject property is an approximate 20-acre lot that is partially irrigated and vacant. East of the subject property is an approximate 20-acre property developed with a nonfarm home approved under CU-95-106.
- G. **SOILS:** According to Natural Resources Conservation Service (NRCS), maps of the area show that the subject property is comprised of the following two soil units:

#36A-Deskamp loamy sand, 0 to 3% slopes

This soil type is comprised of 85% deskamp soil and similar inclusions and 15% contrasting inclusions. Deskamp soils are somewhat excessively drained with rapid permeability and available water capacity of about three inches. Major uses for this soil type are livestock grazing and irrigated cropland. Approximately 37% of the subject lot is made up of this soil type and located in the southern portion of the property. This soil type is considered a high-value soil when irrigated.

58C, Gosney-Rock Outcrop-Deskamp complex, 0 to 15% slopes.

This soil type is comprised of 50% Gosney soil and similar inclusions, 25% rock outcrop, 20% Deskamp soil and similar inclusions, and 5% contrasting inclusions. Gosney soils are somewhat excessively drained with rapid permeability. The available water capacity is about 1 inch. Deskamp soils are somewhat excessively drained with rapid permeability. Available water capacity is about 3 inches. Major use for this soil type is livestock grazing. The majority of the property, approximately 63% of the lot, is made up of this soil type. This soil type is not considered a high-value soil when irrigated.

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

Deschutes County Assessor: Currently under deferral.

Deschutes County Environmental Health Division: A septic site evaluation (F14488) completed and approved in a specific location on this property.

Property Address Coordinator: The address of record for this parcel is: 23145 Bear Creek Road, Bend.

Bend Fire Department: The property described above is within Bend Fire Department Fire Protection District Boundaries or contract area. To be assured this property is within the fire department response area, please contact the Deschutes County Assessor's office. To assist our emergency responders in locating this property, and to help them to work safely during an emergency incident, the following should be provided.

- * Visible address numbers from the street fronting the property.

- * Approved fire apparatus access shall be placed within 150 feet of all exterior walls of the first floor of all buildings. Access shall have an unobstructed width of not less than 20 feet designed with a uniform all-weather driving surface to support the imposed GVW of 50,000 lbs. and a vertical clearance not less than 13 feet 6 inches. Turning radius shall not be less than 45 feet and gradient shall not exceed 12 percent. Dead-end access roads in excess of 150 feet in length shall be provided with approved provision for the turning around of fire apparatus.

- * Buildings and structures that are interfaced with the forest or dense growth of natural vegetation should have a minimum 30-foot zone around the structures that is free of dense vegetation

The following agencies either had no comment or did not respond to the notice: Deschutes County Road Department, Deschutes County Building Division, Avion Water Company, Central Oregon Irrigation District, Bend Cable, Watermaster—District 11, Central Electric Co-op, Oregon Department of Fish and Wildlife, and Qwest.

- I. **PUBLIC COMMENTS:** The Planning Division sent written notice of this action to property owners within 750 feet of the site. The Planning Division received no public comments.
- J. **REVIEW PERIOD:** The Planning Division deemed this application complete and accepted it for review on February 9, 2002.

The applicant has also complied with the posted notice requirements of Section 22.23.030 (B) of Title 22. The applicant has submitted a Land Use Action Sign Affidavit that indicates that the applicant posted notice of the land use action on January 17, 2002.

III. CONCLUSIONARY FINDINGS:

TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

A. CHAPTER 18.16, EXCLUSIVE FARM USE ZONES.

- 1. Section 18.16.030, Conditional uses permitted - High value and non-high value farmland.

G. A dwelling in conjunction with a wildlife habitat conservation and management plan.

FINDING: The applicant is proposing to establish a nonfarm dwelling in conjunction with a wildlife habitat conservation and management plan. The proposed use may be allowed as a conditional use if the applicant satisfies the applicable criteria in Title 18 of the County Code.

- 2. Section 18.16.050, Standards for Dwellings in the EFU Zones

G. Nonfarm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

a. The Planning Director or Hearings Body shall make findings that:

i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

FINDING: The study area for purposes of the nonfarm dwelling analysis is comprised of all EFU-zoned lands within a one-mile radius of the subject property. GIS-generated maps show the majority of lands located within the one-mile radius are zoned EFU with the remainder, about one-third, zoned rural residential, either MUA10 or RR10. Rural residential lands are located in the southern and northwestern portions of the study area.

The record indicates that some or all of 100 EFU-zoned tax lots are located within a one-mile radius of the subject property. Of these 100 tax lots, 47 are receiving farm tax deferral and 45 parcels have irrigation. Of the 45 parcels with irrigation, only 3 have enough irrigation (23 irrigated acres) to meet the minimum farm parcel size in the EFUTRB Subzone. Typical farm practices in the area include irrigated pasture, livestock grazing (horses and cattle), and grass/hay crops. No forest uses exist on nearby lands.

The record includes information from the Oregon State University Extension Service describing the types of impacts the farming practices in the surrounding area could generate on nearby lands. Maintaining irrigated pasture can generate dust from re-seeding, drifting of herbicides from spraying, vehicle noise from trucks, manure odor from fertilizing, and possible water runoff from irrigation. Grazing livestock can generate dust, manure odor, possible interference with vehicular traffic, and property damage if livestock escape. Growing grass hay can generate dust, drifting of herbicides, vehicle noise from balers, manure odor, and potential runoff.

The location of the proposed homesite is situated near the center of the approximate 20-acre property on a rocky nonirrigated knoll. The applicant submitted a site plan that proposes to establish the dwelling over 100 feet from all boundary lines, including 890 feet from both the front and rear yards, nearly 117 feet from the east side yard, and 150 feet from the west side yard. The subject property is additionally buffered from farm practices by Bear Creek Road (a paved collector road) and from the property to the west, which received nonfarm dwelling approval in 1995. East and south of the subject property are approximate 20-acre properties partially irrigated with the eastern property developed with two homes and the southern property currently vacant. The proposed building site will be buffered from any small-scale farming activities to the east and south by the yard setbacks, which exceed 100 feet. This is adequate distance to buffer the homes from the low intensity farm uses in the surrounding area. Therefore the proposed nonfarm dwelling will not force a significant change in or significantly increase the cost of accepted farming practices occurring on nearby lands engaged in farm use.

ii. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

FINDING: On June 1, 1998, the Land Conservation and Development Commission adopted amendments to the administrative rules implementing Goal 3, Agricultural Lands (OAR Chapter 660-033) to incorporate case law and to clarify the analysis under the “stability” approval criterion. The new rules continue to apply the three-step “stability” analysis first articulated in Sweeten v. Clackamas County, 17 Or LUBA 1234 (1989). The new rules are as follows:

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall

consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

- (i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;
- (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved under subsections (3)(a), (3)(d) and section 4 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;
- (iii) Determine whether approval of the proposed nonfarm/lot of record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;...

FINDING: The findings are provided below.

Cumulative Impacts Analysis Study Area. The County has applied an area of analysis including all EFU-zoned land located within a one-mile radius of the subject property's boundaries and including 2,000 acres (hereafter called "study area"). Staff finds this area of analysis is suitable to provide a

comprehensive analysis of the character of the area surrounding the subject property because of its size and the number of parcels located within it.

As discussed above, there are 100 EFU-zoned tax lots in the study area, including the subject property. Eight of the 100 tax lots are in public ownership. The 92 privately owned parcels range in size from approximately 2 acres to 117 acres and 71 of the 92 privately owned parcels are 20 acres or less.

The study area can be characterized as follows: 100 EFU-zoned tax lots partially or entirely occur in the study area; 92 of the 100 EFU-zoned lots are in private ownership and range in size from approximately 2 acres to 117 acres. The average parcel size of privately owned EFU land is about 20 acres with the majority of the privately owned lots under 21 acres. The EFU-zoned tax lots abutting the subject property are about 20 acres. Table 1 below summarizes the study area's characteristics:

Table 1 Characteristics of the Study Area	
Total private & public EFU-zoned tax lots	100
Number of private EFU-zoned tax lots	92
Number of public EFU-zoned tax lots	8
Total private & public EFU-zoned acres	13,288
Number of private acres	1,810
Number of public acres	11,477
Number of private irrigated acres	537
Range of parcel size for private lands	1.75 –117
Average parcel size	19.68
EFU-zoned private tax lots with dwellings	67
Vacant EFU-zoned private lots	25
Private tax lots receiving farm tax deferral	47
¹ Private tax lots below minimum lot size	3

¹Minimum lot size for EFUTRB Subzone is 23 irrigated acres.

Types of Farm Uses. The privately owned, EFU zoned land in the study area is a mix of farm, nonfarm or vacant, and rural residential uses. Forty-five of the 92 privately owned tax lots have irrigation water and presumably engaged in farm use. All of these parcels are receiving farm tax deferral. Based upon the amount of irrigation and the size of the parcels in the study area, staff estimates a total of 537 acres (acreage that is currently being irrigated) are engaged in farm use and approximately 1,273 acres are not engaged in farm use. As discussed above, the predominant farm practices include irrigated pasture, hayfields and livestock grazing.

The record indicates that the study area consists of seven soil mapping units with the majority of the study area comprised of 58C a non-high value soil-mapping unit. The portion of the study area comprised of high value soil mapping units (36A, 36B, and 65A) when irrigated is predominantly concentrated in the mid-western area with scattered patches located sporadically throughout.

Existing Dwellings. The record indicates 67 of the 92 privately owned tax lots in the study area have dwellings. Table 2 below shows these dwellings were built in the following years:

Table 2: Number of Dwellings in Study Area	
Date	Total Number of Dwellings—Year built
1915-1978	35
1979-1992	14
1993-2000	18
Total	67

As shown in Table 2 above, 18 of the 67 dwellings were built from 1993 through 2000. The 35 dwellings built before 1979 predate the County's EFU zone and, therefore, were not subject to the EFU zoning requirements. The record is not complete with the type of housing approved after 1979; however, out of the 14 conditional use permits for dwellings occurring after 1993, 10 are nonfarm dwellings, three are farm dwellings, and one is a Lot of Record dwelling. Dwellings have yet to be built on three of these conditional use permits.

Dwelling Development Trends Since 1993. As discussed above, 18 dwellings have been built in the study area in 1993 or later. Most of these homes were approved as nonfarm dwellings; only four homes were approved as farm dwellings.

Potential Nonfarm Parcels. Potential nonfarm parcels are subject to the recently enacted House Bill 3326 that affects land divisions in the EFU zone and the County's 20-acre minimum lot size for nonfarm land divisions. The record indicates that out of the 92 privately owned EFU-zoned lots within the study area, 25 are vacant (i.e. without a dwelling). From these vacant lots only three lots have 40 or more acres with no water rights that may qualify for a nonfarm land division. Each of these three lots has enough acreage (117, 102, and 93 acres) to create three nonfarm parcels. Therefore, a potential exists to create a total of nine nonfarm parcels from these three vacant lots.

In addition, the record also indicates that none of the privately owned tax lots in the study area have enough irrigated acreage to meet the minimum farm division requirement of 23 irrigated acres in the EFUTRB Subzone. Therefore, the total potential nonfarm parcels within the study area is nine.

Potential Nonfarm Dwellings. If all of the existing and potential parcels identified in the subsection above were approved for nonfarm dwellings, an additional 31 nonfarm dwellings could be built within the study area. However, staff finds that not all of these existing and potential tax lots reasonably can be considered developable with nonfarm dwellings. Whether these tax lots could qualify for a nonfarm dwelling depends on whether there is an area on the tax lot that satisfies the "generally unsuitable" standard

discussed in detail in the findings below, and whether the tax lot reasonably could be combined with another parcel to be farmed productively.

Potential Lot of Record Dwellings. Under Section 18.16.050(E) and OAR 660-033-130(3), a lot-of-record dwelling may be sited on an EFU-zoned parcel on nonhigh value farmland if the parcel was created and acquired by the current owner prior to January 1, 1985, has continuously been owned by the present owner since then, and if the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract. Under Section 18.16.050(F) and OAR 660-033-130(3)(c), a lot-of-record dwelling may be sited on high value farmland if it meets the criteria for a lot-of-record dwelling on nonhigh value farmland and the Planning Division finds the parcel cannot practically be managed for farm use “due to extraordinary circumstances inherent in the land or its physical setting,” such as “very steep slopes, deep ravines or other similar natural or physical barriers.”

The Planning Division has determined that for purposes of the stability analysis it will assess the development potential of vacant tax lots in the same way for potential lot-of-record dwellings as for nonfarm dwellings – i.e., whether or not the tax lots have irrigation and high value soils.

Stability and character of the Land Use Pattern of the Area. The character of the land use pattern of the study area is a mixture of farm and nonfarm rural residential uses. Rural residential lands comprise about one-quarter of the study area and farm uses are predominantly small hobby farms, pasture and grass/hay production. Portions of the study area are also vacant unproductive lands that are unirrigated and in its natural state. Less than a quarter of the study area is in public ownership.

Most of the privately owned EFU-zoned tax lots, about 73%, are developed with homes and an additional three Conditional Use permits for dwellings (2 nonfarms and one Lot of Record dwelling) are valid, but have yet to be constructed. Thus, nearly 76% of the 92 privately owned EFU-zoned tax lots within the study area are either developed with a home or have obtained approval for a home. Thirty-five of these homes were built prior to 1978, 14 homes were built from 1979 to 1992, and 18 homes were built since 1993. Since 1993, 10 nonfarm dwellings have been approved, three farm dwellings, and one Lot of Record dwelling.

In summary, the character of the land use pattern of the study area is a mixture of farm and nonfarm rural residential lands that are predominantly developed with homes and if farming, small hobby farms, pasture and some grass and hay production. This stable pattern has steadily developed over time and the addition of the proposed nonfarm dwelling will not destabilized the land use pattern in the study area.

Effect on Stability from Proposed Nonfarm Partition and Nonfarm Dwelling.

Although the data is not complete, the record indicates that 11 nonfarm dwellings have been approved in the study area. Approval of the proposed nonfarm dwelling will make a total of 12 nonfarm dwellings that have obtained approval. Staff finds the cumulative effect of adding this nonfarm dwelling will

not “materially alter the stability of the land use pattern in the area” by making it more difficult for the existing farms to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or by diminishing the number of tracts or acreage in farm use.

Of the 1,810 acres of privately owned EFU land within the study area, approximately 537 acres (30%) are irrigated. The land use pattern is a mix of rural residential use, vacant, or small-scale farm use.

Staff finds that adding this home plus the potential nonfarm dwelling will not, then, tip the balance from resource to nonresource use. About three-quarters of the privately owned tax lots in the study area—67 of 92—have homes. Approval of the applicants’ request would add one more dwelling to the area, increasing the percentage of parcels with dwellings from 73% to 74%.

In addition, approval of the proposed nonfarm dwelling will not set a precedent for the wholesale approval of nonfarm dwellings to the detriment of surrounding farming since most of the area is already developed with residences with the majority approved as nonfarm dwellings. As previously determined, 25 lots are vacant and three of these, if partitioned, could add an additional 6 lots that may qualify for a nonfarm dwelling. Staff finds these existing lots have the potential for nonfarm development regardless of whether or not the applicant’s proposed nonfarm dwelling is approved.

Further, approval of the proposed nonfarm dwelling will not result in the loss of acreage in farm use as the proposed building site is located on a dry elevated rocky knoll. The Burden of Proof indicates that the subject property has been used in the last five years for cattle grazing and the limited production of “row crops” to accommodate the cattle grazing. Aerial photographs show the farm area near the southern portion of the property, which is consistent with the 7 acres of water rights attributed to the parcel and the 36A soil-mapping unit. The remaining portion of the parcel—about 63%--consists of poor quality soils unsuitable for the production of farm crops or livestock without irrigation.

Finally, staff finds it significant that no property owners in the surrounding area commented on the applicants’ proposal, strongly suggesting they are not interested in acquiring the subject property to expand their current small-scale farm operations and are not concerned about the impact of the proposed nonfarm dwelling on their operations. Further, the property west of the subject parcel is not available for the expansion of farm use since it received nonfarm approval in 1995.

For the foregoing reasons, staff finds approval of the proposed nonfarm dwellings will not destabilize the agricultural character of the surrounding area.

iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock, or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

2. For the purposes of this subsection only, unsuitability shall be determined with reference to the following:

a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

FINDING: The proposal meets this criterion because it shows that the nonfarm dwelling will be sited on a portion of the subject property that is generally unsuitable for the production of farm crops and livestock or merchantable tree species. The nearly 20-acre property only has seven acres of water rights located in the southern portion of the property on soils that are considered high value when irrigated (36A). The majority of the property consists of non-high value soils on uneven rocky terrain with natural undisturbed vegetation, including juniper, grass, and brush. The building site will be situated near the center of the property on the unproductive and unirrigated portion of the property atop an elevated rocky knoll containing poor non-high value soils, 58C, Gosney-Rock Outcrop-Deskamp complex with undisturbed juniper, grasses and brush.

For the foregoing reasons, staff finds the proposed nonfarm dwelling homesite is generally unsuitable for the production of farm crops or livestock and, therefore, the applicant's proposal satisfies this approval criterion.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds,

drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

FINDING: This criterion is not applicable because the subject property is not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm.

v. Road access, fire and police services and utility systems (i.e. electrical and telephone) are adequate for the use.

FINDING: The applicants submitted the following information to demonstrate that public services and utilities are adequate:

1. *Electricity.* The applicant submitted a December 19, 2001, letter from Central Electric Co-op indicating that the subject property is within the service area.
2. *Road access.* Access to the proposed nonfarm dwelling is via Bear Creek Road, which is a public rural collector road.
3. *Telephone.* The applicant submitted a January 3, 2002, letter from Qwest that indicates that the subject property is in Qwest service territory.
4. *Domestic water.* The applicant submitted a December 20, 2001, letter from Avion Water Company that indicates the Company is "willing and able to serve potable water" to the subject property.
5. *Fire protection.* The applicant submitted a December 19, 2001, letter from the Bend Fire Department that indicates the subject property "appears to be within the Bend Fire Department fire protection boundaries or contract area."
6. *Police protection.* Deschutes County Sheriff.

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

3. Loss of tax deferral. Except as provided in DCC 18.16.050(l)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued, the applicant must produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

FINDING: According to Deschutes County Assessor's records, the subject property is currently receiving farm tax deferred status. The applicant did not sign Form D, Acknowledgement of Tax Consequences; however, the applicant is seeking approval for the nonfarm dwelling as a wildlife conservation plan

dwelling, which will be reviewed by the Oregon Department of Fish and Wildlife in conjunction with the County Assessor's Office. If approved, the applicant may qualify for special assessment through the wildlife conservation plan provisions.

3. Section 18.16.050(I), Wildlife conservation plan dwelling.

1. *A dwelling listed in DCC 18.16.030(G) is allowed when the planning director or hearings body finds that the proposed dwelling:*

- a. *Is situated on a lot or parcel existing on November 4, 1993, that qualifies for a farm dwelling, as listed in DCC 18.16.030(A), or a nonfarm dwelling, as listed in DCC 18.16.030(C);***

FINDING: The subject property was created through partition MP-91-27 as Parcel 2. Records from the County Surveyor's office show that MP-91-27 was recorded as Partition Number 1993-60 and filed on October 15, 1993. Thus, staff concludes that the subject parcel existed on November 4, 1993. The nonfarm dwelling criteria are addressed in foregoing findings.

- b. *Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;***
- c. *Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;***

FINDING: These two criteria are virtually identical to those found in 18.16.050(G)(1)(a)(i), which were addressed in foregoing findings and incorporated herein.

- d. *Will not be established on a lot or parcel that is predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the United States Natural Resources Conservation Service or any combination of such soils; and***

FINDING: The proposed dwelling will be located on a parcel that does not have Class I or II soils, and they are not rated prime or unique soils by the NRCS.

- e. *Is the only dwelling situated on the affected lot or parcel.***

FINDING: The proposed dwelling will be the only dwelling on the subject property.

2. *For a wildlife conservation plan dwelling approval based upon nonfarm dwelling criteria, this subsection shall also apply. Unless prior to approval of a conditional use permit for a wildlife conservation plan dwelling the applicant submits to the assessor certification demonstrating approval by the Oregon Department of Fish and Wildlife of a wildlife conservation and management plan and its implementation, the conditional use permit shall contain a condition requiring that the applicant, prior to issuance of a building permit for such dwelling, either 1) submit certification to the*

assessor from ODFW demonstrating approval and implementation of a wildlife conservation and management plan qualifying under ORS 215.808 or 2) pay the tax penalties required by DCC 18.16.050(G)(3).

FINDING: The applicant did not submit documentation showing that the applicant submitted to the assessor certification demonstrating approval by the Oregon Department of Fish and Wildlife of a wildlife conservation and management plan and its implementation. Therefore, as a Condition of Approval, the applicant will be required to complete this process with the Assessor's Office prior to the issuance of a building permit or pay the tax penalties.

4. Section 18.16.060(E), Building height.

FINDING: This subsection establishes a maximum building height of 30 feet. The applicant has not stated what type of dwelling is to be placed on the site. The building plans for the dwelling will be checked at the time of submittal for meeting the 30-foot standard.

5. Section 18.16.070, Yards.

FINDING: Applicable yard setbacks include a 60-foot front setback from Bear Creek Road, a 100-foot east-side and rear setback, and a 25-foot west-side setback. The site plan submitted with the application shows all yard setbacks exceeding 100 feet for the proposed nonfarm dwelling. This criterion is met.

B. CHAPTER 18.92, CONVENTIONAL HOUSING COMBINING (CH) ZONE

Section 18.92.020, Permitted Uses.

All outright and conditional uses allowed in the underlying zone except that in no case shall a housing type be allowed that is other than conventional or modular housing permanently attached to real property.

FINDING: The applicant has not identified the type of home to be built on the subject property. To meet this criteria, staff has added a Condition of Approval that requires the home to be a conventional or modular house permanently attached to the subject property.

IV. CONCLUSION:

The proposed application for a Conditional Use permit for a dwelling in conjunction with a wildlife habitat conservation and management plan can comply with the applicable standards and criteria of the County zoning ordinance if Conditions of Approval are applied.

V. DECISION:

APPROVAL, subject to the following conditions of approval.

VI. CONDITIONS OF APPROVAL:

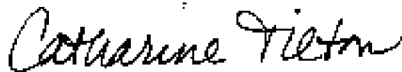
1. Approval of the conditional use permit for a nonfarm and wildlife habitat conservation plan dwelling is based on the site plan as submitted. Any substantial change to the site plan will require a new application.
2. The applicant shall submit, prior to issuance of the building permit for the dwelling, either certification to the County Assessor from the Oregon Department of Fish and Wildlife for approval and implementation of the wildlife conservation and management plan qualifying under ORS 215.808, or pay the tax penalties and submit certification from the Assessor that the tax penalty has been paid.
3. The applicant shall comply with the Bend Fire Department requirements.
4. In compliance with the Conventional Housing Combining zone, the dwelling shall be a conventional or modular house permanently attached to the subject property. Manufactured homes shall not be permitted.

VII. DURATION OF APPROVAL:

All conditions of this approval shall be completed and an application for a building permit for the nonfarm dwelling submitted within four (4) years from the date this decision becomes final, or an extension of time pursuant to Section 22.36.010 of the County Code obtained, or this approval shall be void.

This decision becomes final twelve (12) days after the date of mailing, unless appealed by a party of interest.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Catharine Tilton, Associate Planner



Reviewed by: Kevin M. Harrison, Principal Planner

Dated this 28th day of February 2002.

Mailed this 28th day of February 2002

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY.

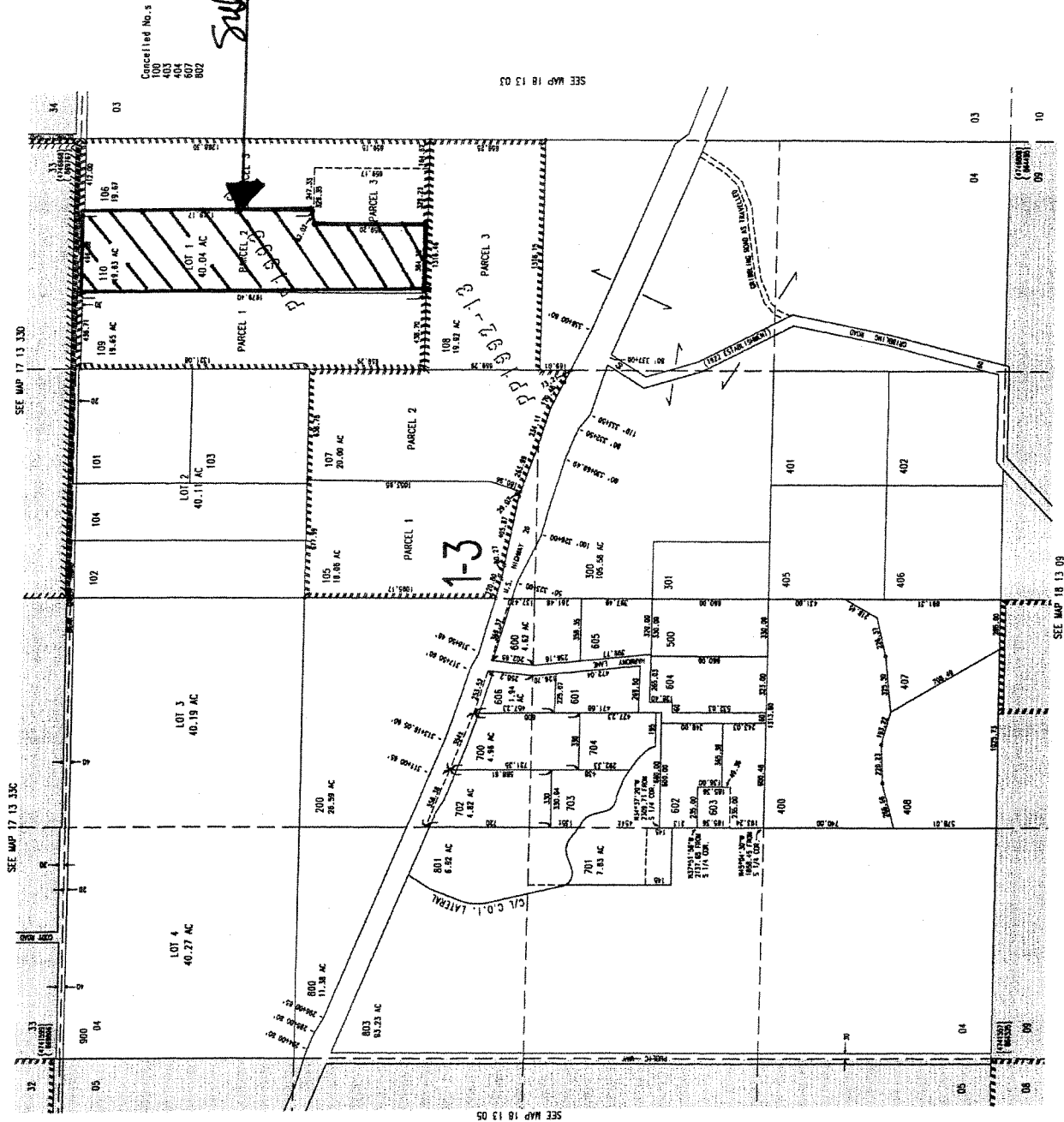
COORDINATES SHOWN IN PARENTHESES ARE
FOR MAP PREPARATION PURPOSE ONLY.

REVISED: 12/13/2000

SECTION 04 T.18S., R.13E., W.M.
DESCHUTES COUNTY

1" = 400'

18 13 04



18 13 04

Deschutes County Development Department

file # CU 02-1

2/28/2002

TAX LOT	PRIMARY NAME	Secondary NAME	COMPANY	ADDR1	CITY/State/ZIP
1813030001701	FRICK, CHARLES J	FRICK, LINDA B		625 HILLENDALE RD BOX	MENDENHALL, PA 19357
1813040000300	KIM D WARD LLC			60801 BROSTERHOUS RD	BEND OR 97702
1813040000103	LEE, KEITH	LEE, DIANA L		23085 BEAR CREEK RD	BEND OR 97701-9304
1813040000110	MICHELUCCI, STEVEN J	MICHELUCCI, PATRICIA A		35132 KING COURT	FREMONT CA 94536
1813040000106	MICHELUCCI, STEVEN J	MICHELUCCI, PATRICIA A		755 OLD COUNTY RD	SAN CARLOS CA 94070
171333D000600	PURCELL, CLYDE W			465 NE REVERE	BEND OR 97701
171333D000700	PURCELL, CLYDE W			465 NE REVERE	BEND OR 97701
171333D000800	PURCELL, CLYDE W			465 NE REVERE	BEND OR 97701
1713340000700	SAVIN, MICHAEL A	WAIT, JULIETTE		7826 MASON DELLS DR	DALLAS TX 75230
1813040000109	STIEBEN, STANLEY R	STIEBEN, PATRICIA L		23125 BEAR CREEK RD	BEND OR 97701
1813030001700	TARABOCHIA, BURTON D	TARABOCHIA, LISA M		23255 BEAR CREEK RD	BEND OR 97701
1813040000101	TURNER, TED R			23075 BEAR CREEK RD	BEND OR 97701
1813040000107	WARD, KIM D LLC			60801 BROSTERHOUS RD	BEND OR 97702
1813040000108	WARD, KIM D LLC			60801 BROSTERHOUS RD	BEND OR 97702

Total records 14