



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

1:00 PM, MONDAY, OCTOBER 16, 2023

Allen Room - Deschutes Services Building - 1300 NW Wall Street - Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqdD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

Time estimates: The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

CALL TO ORDER

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

Note: In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.

AGENDA ITEMS

1. [1:00 PM Work Session: Road Dedication – Fryrear Butte Road](#)
2. [1:15 PM Work Session – Request for an Improvement Agreement Termination for Caldera Springs Destination Resort](#)

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

ADJOURN



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 16, 2023

SUBJECT: Work Session: Road Dedication – Fryrear Butte Road

RECOMMENDED MOTION:

N/A; work session in preparation for potential Board action on October 18, 2023.

BACKGROUND AND POLICY IMPLICATIONS:

Desert Springs Ranch Limited Partnership has submitted a road dedication application for the extension of Fryrear Butte Road in order to provide road frontage for landlocked parcels (File No. 247-23-000438-RD).

BUDGET IMPACTS:

None

ATTENDANCE:

Haleigh King, Associate Planner



MEMORANDUM

TO: Board of County Commissioners

FROM: Haleigh King, Associate Planner

DATE: October 9, 2023

RE: Work Session: Road Dedication – 247-23-000438-RD / Fryrear Butte Road

The Board of County Commissioners (Board) will conduct a Work Session on October 16, 2023, regarding a road dedication proposal for the extension of Fryrear Butte Road across two tax lots (“Subject Property”) as shown in Exhibit 1. This item is scheduled as an Action Item at the Board’s October 18, 2023 meeting.

To formalize a road dedication, as prescribed in Deschutes County Code (DCC), the Board is required to review an applicant’s proposal and make a determination to accept or reject the declaration of dedication within 120 days after the application is deemed complete. Staff calculates the 120th day upon which the Board shall make a determination as October 27, 2023. Document number 2023-907 has been prepared for the proposed dedication.

I. BACKGROUND

The Deschutes County Planning Division approved a road dedication application (see attached decision), submitted by the property owners, Desert Springs Ranch LP, for the extension of Fryrear Butte Road in order to provide road frontage for landlocked parcels. The land use decision became final on September 6, 2023. The property owner does not plan to construct the road at this time. Staff reviewed this application and found that it met applicable criteria¹ in DCC subject to the following conditions:

- A. This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.

¹ DCC, Title 17, Subdivision, Chapter 17.52, Road Dedications; Title 18, Zoning, Chapters 18.16, Exclusive Farm Use Zone; 18.116, Supplementary Provisions; 18.128, Conditional Use; and Title 22, Development Procedures.

- B.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.

- C.** All persons with an ownership interest in the properties subject to the road dedication shall sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.

- D.** Per Deschutes County Code (DCC) Chapter 17.52.090:
 - The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
 - Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
 - Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
 - Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

- E.** Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road.

As conditioned, the public road proposed with this dedication will be designated a local access road and will not be maintained by the County unless and until that right-of-way is established as an official County Road. The County Road Department coordinated with the applicant and provided conditions in the staff decision. No concerns were identified by the Road Dept. or the County Transportation Planner. Notice of the application and the decision was mailed to owners within 750 feet of the subject property. No public comments were received.

Per County policy, the Board reviews all road dedications to accept or reject the proposal. Therefore, this matter must be addressed in a public meeting.

II. NEXT STEPS

Based on the feedback received from the Board at the Work Session, Staff will prepare for the upcoming October 18, 2023 meeting where this item will be presented as an Action Item. Staff

recommends the Board move acceptance of and signature on Document No. 2023-097, a dedication declaration for the extension of Fryrear Butte Road.

ATTACHMENT(S):

1. Document No. 2023-097: Deed of Declaration and supporting documents
2. Preliminary Title Report
3. Findings and Decision for application no. 247-23-000438-RD

REVIEWED
LEGAL COUNSEL

After recording return to:
Deschutes County Road Dept.
61150 S.E. 27th Street
Bend, Oregon 97701

For Recording Stamp Only

DEED OF DEDICATION

DESERT SPRINGS RANCH, an Oregon limited partnership ("Grantor"), does hereby dedicate to the public for roadway and utility purposes that parcel of land described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference incorporated herein.

The true consideration for this conveyance is other consideration.

DATED this 3d day of October, 2023.



Desert Springs Ranch, an Oregon limited partnership
By: Eric Vetterlein
Its: General Partner

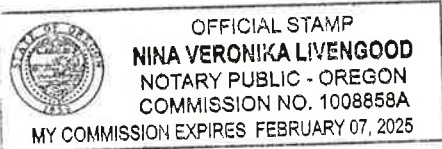
STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Eric Vetterlein and acknowledged the foregoing instrument on behalf of Desert Springs Ranch, an Oregon limited partnership.

Dated this 3rd day of October, 2023.



NOTARY PUBLIC FOR OREGON
My Commission Expires: Feb. 07. 2025



ACCEPTANCE

Deschutes County, acting by and through its Board of County Commissioners, does hereby accept the foregoing Deed of Dedication as a public road pursuant to ORS 93.808.

DATED this _____ day of October, 2023.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

PATTI ADAIR, VICE CHAIR

ATTEST:

PHIL CHANG, COMMISSIONER

Recording Secretary

STATE OF OREGON)
) SS.
County of Deschutes)

Before me, a Notary Public, personally appeared Anthony DeBone, Patti Adair, and Phil Chang, the above-named Board of County Commissioners of Deschutes County, Oregon, acknowledged the foregoing instrument, on behalf of Deschutes County, Oregon.

Dated this _____ day of _____, 2023.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

Fryrear Butte Road Dedication

A strip of land 60.00 feet in width, located in the West Half of the East Half of the Southwest Quarter (W1/2 E1/2 SW1/4) of Section 17 and the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20, Township 15 South, Range 11 East, Willamette Meridian, Deschutes County, Oregon, said strip of land lying 30.00 feet on each side of the following described centerline:

Commencing at the West One-Sixteenth (1/16) corner common to said Section 17 and said Section 20; thence along the West line of said Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20 South 00°09'24" East 30.00 feet to the TRUE POINT OF BEGINNING; thence leaving said West line and along a line 30.00 feet Southerly and parallel with the North line of said Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20 North 89°53'35" East 173.76 feet; thence leaving said parallel line North 03°57'20" East 1098.48 feet; thence North 71°07'29" West 195.50 feet to the Easterly centerline terminus of Fryrear Butte Road as dedicated in that certain Order recorded in Deschutes County Commissioners' Journal Volume 15, Page 331, the most Easterly tangent of which is collinear with the final tangent described in this dedication.


The sidelines of said strip of land shall be prolonged or shortened so as to terminate at said West line of said Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section 20.

Containing 2.02 acres, more or less.

See attached Exhibit B, entitled "Fryrear Butte Road Dedication", which is made a part hereof.

10/2/2023

REGISTERED
PROFESSIONAL
LAND SURVEYOR

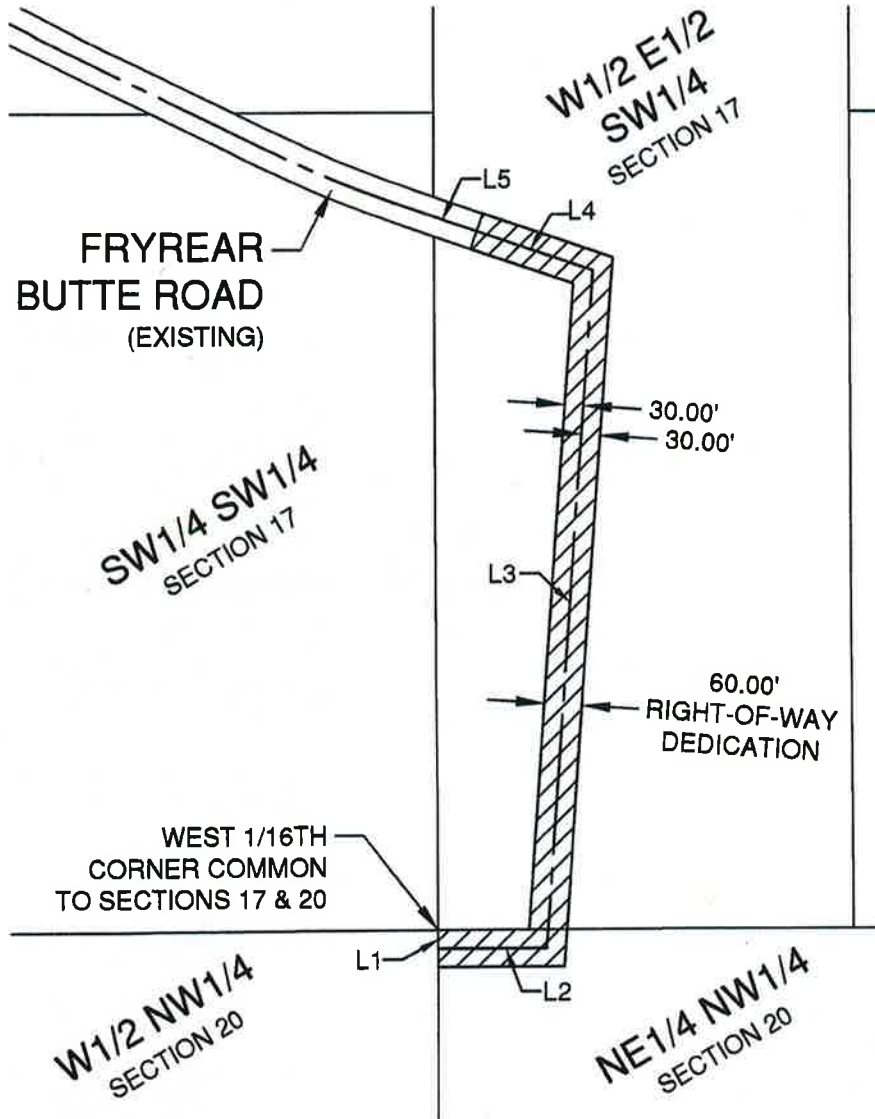


OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

RENEWS: 12/31/2024

EXHIBIT B FRYREAR BUTTE ROAD DEDICATION

LOCATED IN THE W1/2 E1/2 SW1/4 OF SECTION 17 AND THE
NE1/4 NW1/4 OF SECTION 20, TOWNSHIP 15 SOUTH, RANGE 11 EAST,
WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S0°09'24"E	30.00'
L2	N89°53'35"E	173.76'
L3	N3°57'20"E	1098.48'
L4	N71°07'29"W	195.50'
L5	S71°07'29"E	115.70'

NOTE: BEARINGS FOR THIS MAP ARE BASED ON THE DESCHUTES COUNTY SURVEYOR'S OFFICE CENTRAL OREGON COORDINATE SYSTEM (DESCHUTES13 TRANSFORMATION) AND THE NAD83(2011) EPOCH 2010.00 DATUM REALIZATION.

PREPARED BY:



Munson & Associates
civil engineers | land surveyors
845 NORTHEAST 11TH STREET
BEND, OREGON 97701



SCALE: 1" = 300'
DATE: 10/2/2023
W.O.#: 21-019

10/2/2023

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

RENEWS: 12/31/2024



AmeriTitle, LLC
15 Oregon Ave., Bend, OR 97703
PHONE (541)389-7711 FAX (541)389-0506

October 2, 2023
File Number: 610230AM
Report No.: 1
Title Officer: Tonya Vejar Email: tonya.vejar@amerititle.com

PRELIMINARY TITLE REPORT

Property Address: APN 133950; 1511000003303, Bend, OR 97703
APN 133952; 1511170001000, Bend, OR 97703

<u>Policy or Policies to be issued:</u>	<u>Liability</u>	<u>Premium</u>
OWNER'S STANDARD COVERAGE		
Endorsement: OTIRO 110 – No charge	TBD	\$200.00
Proposed Insured: TBD		

We are prepared to issue ALTA (07/01/21) title insurance policy(ies) of , in the usual form insuring the title to the land described as follows:

Legal description attached hereto and made a part hereof marked Exhibit "A"

and dated as of 26th day of September, 2023 at 7:30 a.m., title is vested in:

Desert Springs Ranch Limited Partnership, an Oregon limited partnership

The estate or interest in the land described or referred to in this Preliminary Title Report and covered herein is:

FEE SIMPLE

Except for the items properly cleared through closing, Schedule B of the proposed policy or policies will not insure against loss or damage which may arise by reason of the following:

GENERAL EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Facts, rights, interests or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the Public Records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject Land onto adjoining Land or of existing improvements located on adjoining Land onto the subject Land) encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the subject Land.
5. Any lien, or right to a lien, for services, labor, material, equipment rental, or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

EXCEPTIONS 1 THROUGH 5 ABOVE APPLY TO STANDARD COVERAGE POLICIES AND MAY BE MODIFIED OR ELIMINATED ON AN EXTENDED COVERAGE POLICY.

SPECIAL EXCEPTIONS:

Tax Information:

Taxes assessed under Code No. 6012 [Account](#) No. 133950 [Map](#) No. 1511000003303
NOTE: The 2022-2023 Taxes: \$3.33, are Paid

Taxes assessed under Code No. 6012 [Account](#) No. 133952 [Map](#) No. 1511170001000
NOTE: The 2022-2023 Taxes: \$922.45, are Paid

6. The 2023-2024 Taxes: A lien not yet due or payable.
7. Taxes deferred, as disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said Land is disqualified for such use the property will be subject to additional taxes or penalties and interest.
8. Regulations, including levies, assessments, water and irrigation rights and easements for ditches and canals of Three Sisters Irrigation District.
(No inquiry has been made)
9. Right, title and interest of the public in and to those portions of the Land lying within roads, streets or highways.

10. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:

Granted To: Central Electric Cooperative, Inc.

Recorded: January 29, 1962

Instrument No.: [130/54](#)

As to Parcel II

The Effect, if any of Quit Claim Deed, including the terms and provisions thereof,

Recorded: April 16, 1982

Instrument No.: [355/932](#)

11. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:

Recorded: December 6, 1966

Instrument No.: [151/306](#)

As to Parcel II

12. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:

Recorded: February 15, 1967

Instrument No.: [152/178](#)

As to Parcel I

13. Covenants, conditions and restrictions, but omitting any covenant or restriction based on race, color, religion, sex, sexual orientation, disability, handicap, familial status, marital status, ancestry, national origin or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: December 6, 1972

Instrument No.: [190/772](#)

Modification(s) of said covenants, conditions and restrictions

Recorded: September 22, 1989

Instrument No: [192/2013](#)

Modification(s) of said covenants, conditions and restrictions

Recorded: June 2, 2006

Instrument No: [2006-38491](#)

14. Power Line Easement, including the terms and provisions thereof,

Recorded: December 12, 2001

Instrument No.: [2001-61301](#)

Amended by Order No. 2006-093, including the terms and provisions thereof,

Recorded: June 8, 2006

Instrument No.: [2006-39710](#)

Amended by Order No. 2006-173, including the terms and provisions thereof,

Recorded: December 14, 2006

Instrument No.: [2006-81748](#)

15. Squaw Creek Irrigation District Order for the Creation of a Sub District, including the terms and provisions thereof,

Recorded: February 8, 2002

Instrument No.: [2002-07771](#)

As to Parcel I

16. Pipeline Easement, including the terms and provisions thereof,
Recorded: June 17, 2004
Instrument No.: [2004-35594](#)
17. Pipeline Easement, including the terms and provisions thereof,
Recorded: November 20, 2009
Instrument No.: [2009-49351](#)
As to Parcel I
18. An easement including the terms and provisions thereof, affecting the portion of said Land and for the purposes stated therein as set forth in instrument:
Granted To: Central Electric Cooperative Inc.
Recorded: June 10, 2015
Instrument No.: [2015-22594](#)
19. Pipeline Easement-2018 Modifications, including the terms and provisions thereof,
Recorded: February 27, 2018
Instrument No.: [2018-07798](#)
20. Declaration and Grant of Easement, including the terms and provisions thereof,
Recorded: August 11, 2022
Instrument No.: [2022-30886](#)

INFORMATIONAL NOTES:

NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

NOTE: Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the parties to the transaction must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.

NOTE: Due to current conflicts or potential conflicts between state and federal law, which conflicts may extend to local law, regarding marijuana, if the transaction to be insured involves property which is currently used or is to be used in connection with a marijuana enterprise, including but not limited to the cultivation, storage, distribution, transport, manufacture, or sale of marijuana and/or products containing marijuana, the Company declines to close or insure the transaction, and this Preliminary Title Report shall automatically be considered null and void and of no force and effect.

THIS PRELIMINARY TITLE REPORT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

This report is preliminary to the issuance of a policy of title insurance and shall become null and void unless a policy is issued and the full premium paid.

End of Report

"Superior Service with Commitment and Respect for Customers and Employees"

EXHIBIT "A"
LEGAL DESCRIPTION

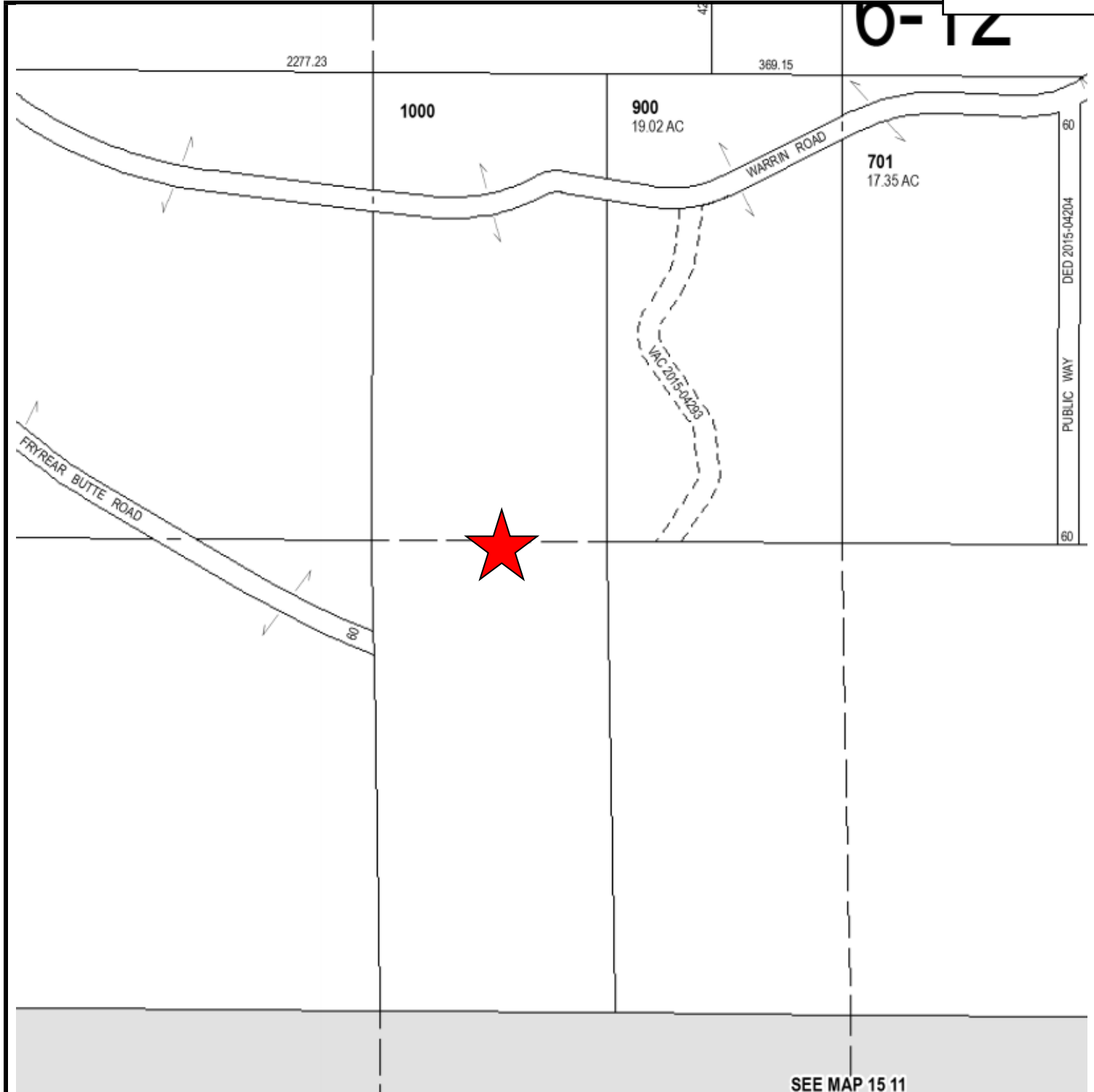
Parcel I:

The East one half of the Northwest quarter of Section 20, Township 15 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.
EXCEPTING therefrom those portions dedicated to the public in Instrument recorded June 9, 1983, in Book 16, Page 493, Deschutes County, Oregon

Parcel II:

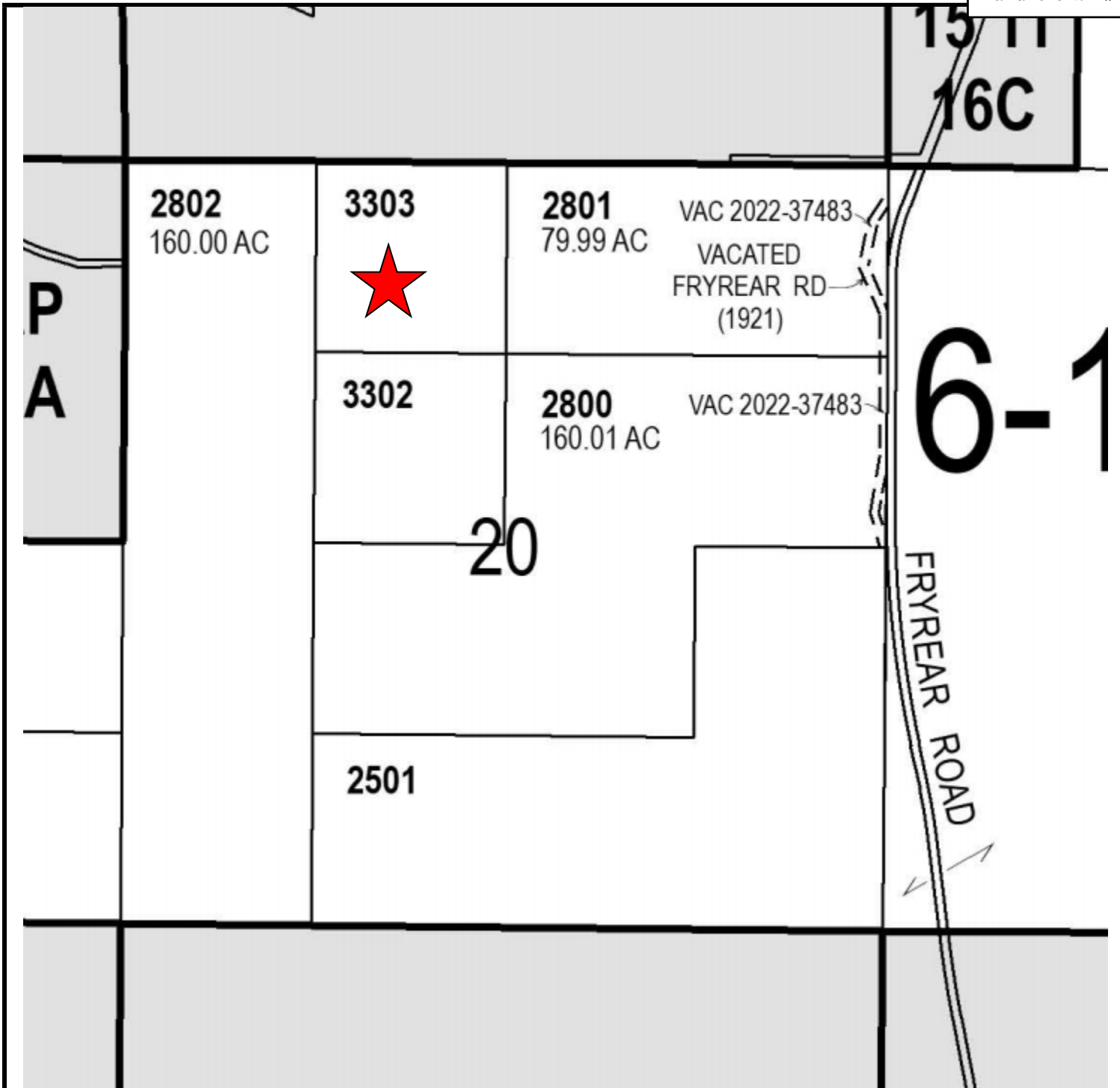
The West half of the East half of the Southwest quarter of Section 17, Township 15 South, Range 11, East of the Willamette Meridian, Deschutes County, Oregon.

0-12



APN 133950; 1511000003303
Bend, OR 97703

THIS MAP IS FURNISHED AS AN ACCOMMODATION STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREOF



APN 133950; 1511000003303
Bend, OR 97703

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COMMUNITY DEVELOPMENT

FINDINGS AND DECISION

FILE NUMBER: 247-23-000438-RD

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511000003303
Account: 133950
Situs Address: **NO SITUS ADDRESS**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001200
Account: 133968
Situs Address: **NO SITUS ADDRESS**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001000
Account: 133952
Situs Address: **NO SITUS ADDRESS**

APPLICANT’S ATTORNEY: Myles Conway Law PC

REQUEST: The applicant requests approval to dedicate an additional segment of Fryrear Butte Road, extending through Tax Lots 1000 and 1200 (County Assessor’s Map 15-11-17) and Tax Lot 3303 (County Assessor’s Map 15-11-00) in the Exclusive Farm Use Zone (EFU).

STAFF CONTACT: Haleigh King, Associate Planner
Phone: 541-383-6710
Email: Haleigh.king@deschutes.org

RECORD: Record items can be viewed and downloaded from:
www.buildingpermits.oregon.gov

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)
Title 17, Subdivision and Partition Ordinance
Chapter 17.52, Road Dedications

Title 18, Deschutes County Zoning Ordinance:
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS

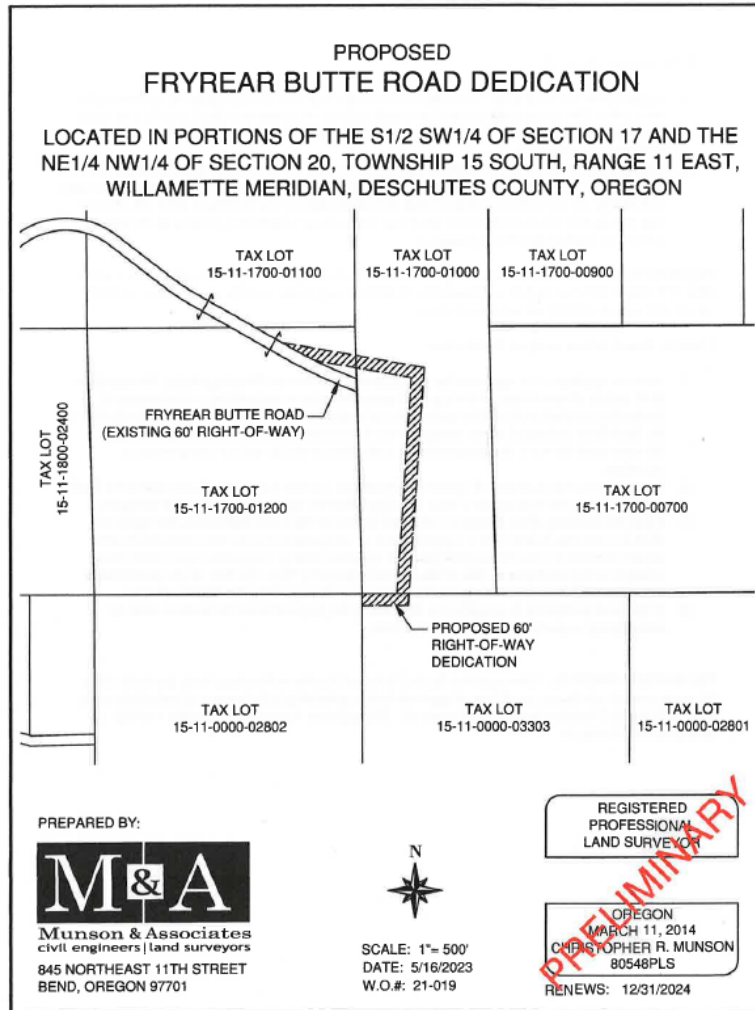
LOT OF RECORD: The three tax lots ("Subject Property") included in this application, Tax Lots 1000, 1200, and 3303, have each been verified as legal lots of record pursuant to County Land Use File Nos. 247-22-000600-LR, 599-LR, and 505-LR, respectively.

SITE DESCRIPTION: The applicant provided the following site description in their narrative:

Tax Lot 1200, County Assessor's Map 15-11-17 ("Tax Lot 1200") is an approximately 40-acre quarter-quarter section. The property is undeveloped and is bisected by the previously dedicated "Fryrear Butte Road". This property does not contain any water rights and is vegetated with juniper trees, sagebrush and native grasses. Tax Lot 1000, County Assessor's Map 15-11-17 ("Tax Lot 1000") lies to the east, does not contain any water rights and is vegetated with juniper trees, sagebrush and native grasses. Tax Lot 3303, County Assessor's Map 15-11-00 ("Tax Lot 3303") lies to the south and the affected portions of said lot are not irrigated and are vegetated with juniper trees, sagebrush and native grasses.

Staff agrees with this depiction of the subject property. The subject property also contains a 20-foot-wide, north-south Central Electric powerline easement located in the approximate center. As noted by the applicant, the subject property is undeveloped. The proposed Road Dedication is depicted in *Figure 1*, below.

Figure 1 – Proposed Road Dedication

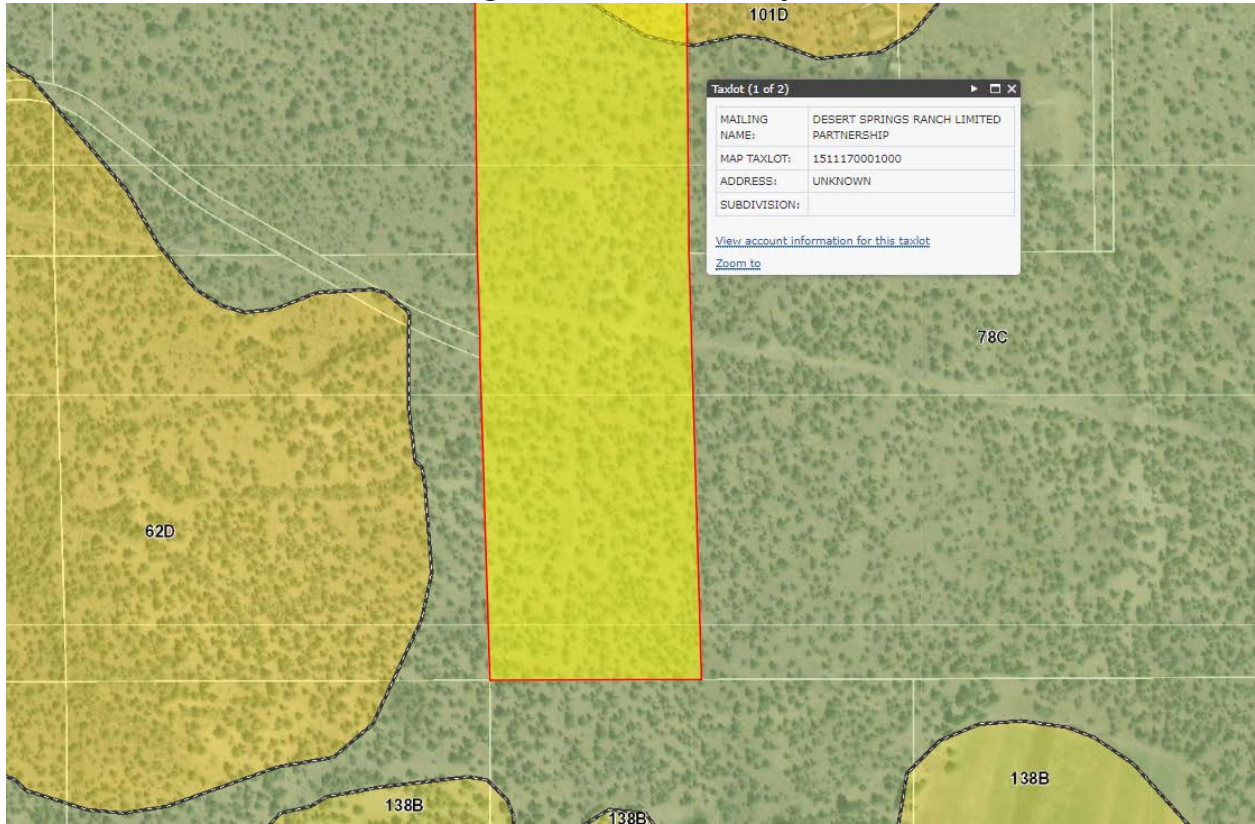


REVIEW PERIOD: The subject application was submitted on May 30, 2023 and deemed complete by the Planning Division on June 29, 2023. This is the date the application was deemed complete and accepted for review. Per Deschutes County Code (DCC) Chapter 17.52.090(B), staff calculates the 120th day on which the County must take final action on this application as October 27, 2023.

SURROUNDING LAND USES: Immediately surrounding properties to the north, west, east, and south are all EFU-zoned lots in similar sizes and shapes to the subject property. Properties to the northeast are developed with rural residential uses and are over 1,500 feet from the northern extent of the road dedication. Surrounding EFU-zoned property is generally vacant and contains juniper scrub woodland. There are some areas of irrigated fields to the west of Tax Lot 3303. The Forked Horn Estates residential subdivision, zoned Multiple Use Agriculture – 10 (MUA10) lies farther west with lots developed with single-family dwellings.

SOILS: According to the Natural Resources Conservation Service (NRCS) maps of the area, there is one soil unit mapped within the boundaries of the proposed right-of-way. See Figure 1 below:

Figure 2 – NRCS Soil Map



78C Lickskillet-Deschutes complex, 0 to 15 percent slopes: The agricultural capability rating for this soil is 6e/7e for nonirrigated and no rating for irrigated land. This soil is not considered high value farmland when irrigated.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on June 13, 2023, to several public agencies and received the following comments:

Deschutes County Road Department, Cody Smith

I have reviewed the application materials for the above-referenced file number, proposing the dedication of a public right of way to provide for the extension of Fryrear Butte Road across Tax Lots 1000 and 1200 on County Assessor’s Map 15-11-17 and Tax Lot 3303 on County Assessor’s Map 15-11-00. The proposed right of way dedication will provide for public road frontage and connectivity to Tax Lot 2802 on County Assessor’s Map 15-11-00 to meet requirements under other pending land use applications (File Nos. 247-22-000372-MP and 247-22-000373-CU) for Tax Lot 4001 on County Assessor’s Map 15-11-00; all tax lots referenced herein are under the Applicant’s ownership. The application materials indicate that no road improvements are planned within the proposed dedication area. Road Department staff conclude that road surface improvement requirements are not warranted until such time as any tract of land abutting or accessed by the proposed right of way dedication is divided under applicable Deschutes County Code (DCC).

Deschutes County Road Department requests that approval of the proposed road dedication be subject to the following conditions:

- The dedication area shall consists of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- All parties with an ownership interest in the property subject to the road dedication shall execute a dedication deed pursuant to DCC 17.52.090(A). The dedication shall be granted to the public. The dedication deed shall be in a form acceptable to the Deschutes County Road Department pursuant to DCC 17.52.040 and shall include a legal description and exhibit map prepared by a licensed professional land surveyor.
- Applicant shall submit the executed dedication deed and a current preliminary title report for the proposed dedication to the Deschutes County Community Development Department pursuant to DCC 17.52.090(A) and (C). Upon final review and approval of the dedication deed by the Road Department, the Community Development Department shall present the dedication deed to the Board of County Commissioners for acceptance pursuant to DCC 17.52.090(B).
- Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
- Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

Deschutes County Senior Transportation Planner, Peter Russell, Tarik Rawlings

I have reviewed the transmittal materials for file 247-23-000438-RD to dedicate a 60-foot-wide right of way to extend Fryrear Butte Road through 15-11-17, Tax Lots 1000 and 1200 and 15-11-00, Tax Lot 15-11-00, Tax Lot 3303. Tax lots 1000 and 1200 are zoned Exclusive Farm Use (EFU) while 3300 is Multiple Use Agriculture (MUA-10). I have no adverse comments on the road dedications. I will defer to the Road Dept. to see if the two right angle curves are acceptable and comply with Deschutes County Code (DCC) 17.48.070 for horizontal curves. One is the right angle in the middle of Tax Lot 1000 where the Fryrear Butte Road dedication changes from west-east to a north-south orientation. The second is in the northeast corner of Tax Lot 3303 where the north-south orientation makes another 90-degree turn to an east-west alignment.

The following agencies did not respond to the notice: Deschutes County Assessor, Cloverdale Fire Department, Three Sisters Irrigation District.

PUBLIC COMMENTS: The Planning Division mailed notice of the application to all property owners within 750 feet of the subject property on June 13, 2023. The applicant also complied with the posted notice requirements of Section 22.24.030(B) of Title 22. The applicant submitted a Land Use Action Sign Affidavit indicating the applicant posted notice of the land use action on June 10, 2023. No public comments were received.

III. **FINDINGS & CONCLUSIONS**

Title 17, Deschutes County Subdivision Ordinance

Chapter 17.52. Road Dedications

Section 17.52.010. Purpose.

The purpose of DCC 17.52.010 is to establish procedures for the dedication of more than minor amounts of road right of way to the public where the dedication will not be reviewed as part of another land use application. Minor amounts of road right of way means rights of way no greater than those required for modernization, traffic safety improvement, maintenance or repair of an existing road or street. DCC 17.52.010 applies to road dedications which occur outside of urban growth boundaries in Deschutes County. DCC 17.52.010 requires that road dedications be reviewed for consistency with the Transportation Policies for new roads or major road modifications of the Comprehensive Plan.

FINDING: Staff has reviewed the proposal for consistency with the Transportation Policies for new roads or major road modifications of the Comprehensive Plan in subsequent findings.

Section 17.52.030. Application.

Any person proposing the dedication of more than minor amounts of road right of way, where the proposed dedication will not be reviewed as part of another land use application, shall submit a written application for a land use permit to the Planning Director. The land use permit application shall include a completed request form, a written burden of proof statement which indicates the proposal complies with the applicable criteria, a map showing the location of the land to be dedicated, a preliminary title report covering the land to be dedicated, and the appropriate filing fee.

FINDING: Staff finds the proposed dedication of the roadway constitutes more than a minor amount of road right-of-way. The applicant has submitted a map showing the location of the land to be dedicated, a preliminary title report covering the land to be dedicated, and the appropriate filing fee in support of this application.

Section 17.52.050. Approval Criteria.

- A. Applications for road dedications in zones where Class I or II road projects, as defined by DCC 18.04.030, are permitted outright shall address the criteria in DCC 18.116.230. Such applications shall also address any applicable criteria in the zone in which the road dedication is proposed.**
- B. Applications for road dedications in zones where Class I or II road projects defined by DCC 18.04.030, or public road or highway projects defined by ORS 215.283(2)(p) through (r) and 215.283(3), are permitted as conditional uses shall address the**

criteria in DCC 18.116.230 and 18.128.015. Such applications shall also address any applicable criteria in the zone in which the road dedication is proposed.

FINDING: The applicant’s burden of proof provides the following proposed findings:

The proposed right-of-way dedication is permitted as a conditional use under ORS 215.283(3), DCC 18.16.030 and OAR 660-12-0065. Compliance with the requirements of DCC 18.116.230 and 18.128.015 are referenced above.

Staff agrees and finds the subject application is a conditional use and must address the criteria in DCC 18.116.230 and 18.128.015.

Section 17.52.090. Board Action on Road Dedication.

- A. Once an application is approved by the Planning Director or Hearings Body, the applicant shall satisfy all conditions of the land use approval prior to submitting a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, the Planning Director shall forward the declaration of dedication to the Board for acceptance or rejection.**
- B. Except as otherwise provided under the Deschutes County Code, the Board shall take final action on the road dedication within 120 days after the application is deemed complete.**
- C. Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.**
- D. If the road dedication is accepted by the Board, the declaration of dedication shall be immediately recorded with the County Clerk.**

FINDING: The applicant will be required to submit a declaration of dedication and legal descriptions for the proposed road dedication, which must be signed by the property owner(s), and include a title report. If the road dedication is accepted by the Board, the declaration of dedication must be recorded with the County Clerk’s Office. The declaration of dedication for the proposed road shall be completed and recorded with the County Clerk’s Office within 120 days of the application being deemed complete. Staff calculates this day to be October 27, 2023. To ensure compliance, staff has added these actions as Conditions of Approval.

Section 17.52.100. Maintenance of Dedicated Roads.

Any public road created in conjunction with the dedication of public road right of way under DCC 17.52 shall be designated as a Local Access Road, as defined by ORS 368.001(3), which shall not be maintained by the County unless and until that road right of way is established

as a County road, as defined by ORS 368.001(1), by order or resolution of the County governing body as authorized by ORS 368.016(2)(c).

FINDING: Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road. Staff will include this requirement as a condition of approval.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.16, Exclusive Farm Use Zones (EFU)

Section 18.16.030 Conditional Uses Permitted; High Value and Non-High Value Farmland
The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or non-high value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of DCC Title 18.

- ...
- U. Roads, highways and other transportation facilities, and improvements not otherwise allowed under DCC 18.16, if an exception to Goal 3, Agricultural Lands, and to any other applicable goal is first granted under state law. Transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.***

FINDING: The applicant’s burden of proof provides the following proposed findings:

DCC 18.36.080 requires the extension of public rights-of-way in connection with any subdivision or partition in the EFU Zone. As noted above, the applicant seeks to extend a right-of-way connection from Fryrear Butte Road to Tax Lot 2802 in connection with pending County land use files 247-22-000372-MP and 247-22-000373-CU. OAR 660-12-0065 identifies transportation facilities, services and improvements that are permitted on rural lands consistent with Goals 3, 4, 11 and 14 without a goal exception, including low volume public “Access Roads” that provide access to property. The proposed dedication is authorized under OAR 660-12-0065.

Staff agrees with the applicant’s statement. The proposed road dedication is reviewed as a Conditional Use. Applicable standards are addressed below.

Section 18.16.040. Limitations on Conditional Uses

- A. Conditional uses permitted by DCC 18.16.030, 18.16.031, and 18.16.033 may be established subject to ORS 215.296, applicable provisions in DCC 18.128, and upon a finding by the Planning Director or Hearings Body that the proposed use:***

1. ***Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and***
2. ***Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and***
3. ***That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.***

FINDING: The applicant’s burden of proof provides the following proposed findings:

The subject property does not contain any water rights and is not actively utilized for agricultural production. The subject property is comprised entirely of Class 7 soils that are not suitable for agricultural production. In addition, the property is encumbered by power and utility easements granted to the Central Electric Cooperative (recorded in the Deschutes County public records as documents 2001-61301 and 2015-22594). The applicant seeks to extend a public right-of-way south along the eastern boundary of the property in an area comprised of Class 7 soils (classified by NRCS as 78C) that is encumbered by the existing power line easements. A depiction of the proposed right-of-way dedication segment is depicted on Exhibit A attached hereto. The proposed right-of-way area is vegetated by juniper and sagebrush. The dedication of public right-of-way in this location will not have any effect on agricultural use or production on the Desert Springs Ranch and/or any surrounding parcels. The neighboring properties are also comprised of Class 7 soils, do not have any irrigation water rights and are not utilized for ongoing agricultural production. The proposed right-of-way is located in the least suitable area for the production of farm crops and livestock and will not impact agricultural production on any surrounding parcel as required by this section.

Staff agrees with the applicant’s response. Further, staff notes the proposed road dedication application does not include the construction of a physical road within the proposed dedication area; therefore, no construction or traffic impacts are expected in association with the dedication.

Chapter 18.116, Supplementary Provisions

Section 18.116.230, Standards for Class I and II Road Projects

Class I and II road or street projects shall be reviewed against the applicable Comprehensive Plan Transportation Plan element, shall be consistent with applicable road standards and shall meet the following criteria:

- A. ***Compatibility with existing land use and social patterns, including noise generation, safety hazards (e.g. children in a residential area), and zoning.***
- B. ***Environmental impacts, including hazards imposed to and by wildlife (e.g. migration or water use patterns).***
- C. ***Retention of scenic quality, including tree preservation.***
- D. ***Means to improve the safety and function of the facility, including surrounding zoning, access control and terrain modifications.***

- E. In the case of roadways where modification results in a change of traffic types or density, impacts on route safety, route land use patterns, and route nonmotorized/pedestrian traffic.**
- F. Consideration of the potential developmental impact created by the facility.**
- G. Cost effectiveness.**

FINDING: The applicant’s burden of proof provides the following proposed findings:

As noted above, no road or street construction is proposed in connection with the subject application. Rather, the applicant seeks to dedicate an additional right-of-way segment to extend the existing Fryrear Butte public right-of-way (designated as a “Local Access Road”) south to the boundary of Tax Lot 2802. The proposed dedication area is intended to facilitate the construction of a new local access roadway at such time as Tax Lot 2802 is further partitioned. The proposed dedication area is located entirely within areas of Class 7 soil (as mapped by NRCS) and will have no impact on agricultural practices on surrounding lands. Construction of a local access roadway within this area will facilitate access for the land uses permitted within the EFU zone. Any future roadway construction will comply with applicable County roadway standards. The minimal additional traffic created by this proposal (if any) will not result in any change in traffic types or density, route safety and/or route land use patterns.

Staff agrees with the applicant’s response. Further, staff notes the proposed road dedication application does not include the construction of a physical road within the proposed dedication area; therefore, no construction or traffic impacts are expected in association with the dedication. The dedicated area includes a 60-foot right-of-way which is consistent with County standards. The road dedication will extend approximately 500 feet from Fryrear Butte Road to the east before turning south for approximately 1,100 feet and then making one additional extension to the west to front on Tax Lot 2802. Staff notes there is no Landscape Management (LM) or Wildlife Area (WA) or any other overlays affecting the subject property. These overlays help to protect Goal 5 resources. However, as noted, the subject property does not contain any inventoried Goal 5 resources.

In regards to potential development impact created by the facility, the road dedication will give frontage to Tax Lot 2802 and Tax Lot 3303, where none currently exists. This may allow for these tax lots to be partitioned in the future. It is unclear at this point whether these tax lots would be eligible for a partition. However, future partitions are subject to Title 17 and Title 18 standards and submittal and review of a formal land use application. The County has not received any applications for land divisions involving Tax Lot 2802 and Tax Lot 3303. This road dedication itself does not approve or establish any development.

The applicant has submitted a Minor Partition to divide a 157.3-acre property (Map and Tax Lot 15-11, Tax Lot 4001) within the Exclusive Farm Use (EFU) Zone into two parcels (County File No. 247-22-000372-MP, 373-CU). Parcel 1 is proposed to be 153.1 acres, and Parcel 2 is proposed to be 4.2 acres. The applicant also requests approval of a conditional use permit for a non-farm (single-family) dwelling on Parcel 2. However, the newly created parcel and the remainder parcel will be accessed via Cloverdale Road and will not require improvement of the proposed road dedication.

Lastly, staff note no public funds will be expended for construction or maintenance of this road. Staff has included a condition of approval which requires any road created in this proposed dedication under DCC 17.52 shall be designated as a local access road, which shall not be maintained by the County unless and until that right-of-way is established as a County-maintained road.

Chapter 18.128, Conditional Use

Section 18.128.010, Operation.

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

FINDING: The proposed conditional use is reviewed in accordance with the standards and procedures of this title; DCC Title 22, the Uniform Development Procedures Ordinance; and the Comprehensive Plan. No prior use now classified as a conditional use is being modified by this proposal.

Section 18.128.015, General Standards Governing Conditional Uses.

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

- A. The site under consideration shall be determined to be suitable for the proposed use based on the following factors:**
 - 1. Site, design and operating characteristics of the use;**

FINDING: The applicant’s burden of proof provides the following proposed findings:

The applicant seeks to dedicate an extension of public right-of-way from the existing terminus of Fryrear Butte Road, through the subject property, to Tax Lot 2802. The proposed dedication area will be 60-feet in width and generally within the alignment depicted on Exhibit A attached hereto. The proposed dedication is intended to comply with the requirements of DCC 17.36.080 (Future Extension of Streets) as applicable to the larger Desert Springs Ranch property. The proposed dedication area is located entirely within mapped Class 7 soils and in a location that will have no impact on agricultural activities being conducted within Desert Springs Ranch or any surrounding property. Tax Lot 2802 has existing access from Forked Horn Drive (to the west) and no roadway construction is planned or anticipated within the proposed dedication area until such future time as said parcel may be further divided. The length and width of the proposed dedication area is sufficient to

facilitate a local access roadway supporting any future partition of Tax Lot 2802. The proposed dedication is compatible with the existing and projected uses of surrounding properties based on the factors listed in DCC 18.128.015(A), as referenced above.

As noted, the proposed road dedication does not include construction of a roadway at this time. The road dedication includes the extension of the existing Fryrear Butte Road to the south in order to provide future road access to landlocked parcels. The dedicated area includes a 60-foot right-of-way which is consistent with County standards. The road dedication will extend approximately 500 feet from Fryrear Butte Road to the east before turning south for approximately 1,100 feet and then making one additional extension to the west to front on Tax Lot 2802.

As discussed, the subject property is located on undeveloped land zoned EFU. The subject properties contain a vegetative cover of juniper and sagebrush. No portion of the subject property is currently irrigated and the dedication area does not cross any irrigated pasture or fields. The applicant proposed the dedication within an existing powerline easement to limit disturbance to the property should a road be constructed in the future. The applicant included a statement¹ from Central Electric Cooperative, the easement authority, which states the following:

Thank you for reaching out. CEC is in favor of the dedication. Please keep our facilities on one side of the ROW.

Based on the information above, staff believes the proposed site location is suitable for the road dedication considering its size, design, and operating characteristics of the use.

2. Adequacy of transportation access to the site; and

FINDING: The proposed road dedication will extend the existing Fryrear Butte road right-of-way which connects to Jordan Road, a public road maintained by the County and functionally classified as a local road. The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application and identified no required improvements to other area roadways. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of transportation access to the site.

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

FINDING: The site is generally flat and presents no topographical constraints on the proposed road dedication. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Of these, wildfire is of special concern regarding the suitability of the use. The subject property is located within a wildfire hazard area, however, the road dedication application does not include the construction of any structures or habitable space. Further, the road dedication does not propose road construction at this time. Although, if a future road is built within the dedicated right-of-way it

¹ Reference email from Parneli Perkins, CEC, dated May 19, 2023.

may allow greater access for emergency vehicles in the event of an emergency. The subject property is currently served by Cloverdale Fire District.

Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. The subject property is not located within a special flood hazard area. Further, there is no road construction proposed at this time, so there would be no impacts to any potential mapped wetlands.

Comments from agencies did not identify any site unsuitability due to general topography, natural hazards, or natural resource values. There were no public comments received which identified unsuitability based on the above listed factors.

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

FINDING: Staff finds this this criterion requires that the proposed use must be compatible with existing and projected uses on surrounding properties. Staff finds “surrounding properties” are those that might be significantly adversely impacted by their proximity to the proposed use. Existing uses on surrounding properties include rural residential uses to the west and vacant, undeveloped EFU parcels with some in apparent farm use. Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the area. These projected uses on property surrounding the subject property include residential use, and agriculture and farm use. Staff finds existing uses are a reasonable representation of uses allowed in the underlying zones of surrounding properties. For this reason, staff finds projected uses are likely to be similar to existing uses.

Staff finds that the proposed road dedication will be compatible with the existing and projected uses due to the scale of the operation and operating characteristics as analyzed in DCC 18.128.015(A) above.

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

Staff finds the proposed road dedication would be unsuitable if the siting, design and operating characteristics of the use significantly adversely impacted existing and projected uses on surrounding properties. Typically, potential adverse impacts could include visual, noise, dust, and odor impacts.

Staff finds the road dedication, which does not include construction of a roadway at this time, will not have a visual, noise, dust or odor impact. If a road is improved within the proposed dedication area, staff finds the road will not have a visual impact, as the dedication area will not include structures.No odors would be generated by a future roadway. Any noise impacts are expected to be temporary in nature and associated with construction, including any grading or clearing that is necessary. No significant noise, visual, dust, or odor impacts are identified in the record for the application.

(A)(2). Adequacy of transportation access to the site; and

Staff finds the road dedication would be unsuitable if access to the area of dedication would significantly adversely impact existing and projected uses on surrounding properties. The proposed road dedication will extend the existing Fryrear Butte road right-of-way which connects to Jordan Road, a public road maintained by the County and functionally classified as a local road. The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application and identified no required improvements to other area roadways. Staff finds, as conditioned, the site is suitable for the proposed use based on adequacy of existing transportation access to the site.

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

Staff finds the proposed use would be unsuitable if it significantly adversely impacted off-site topography, natural hazards, or natural resource values. As discussed above, the proposed road dedication application does not include the actual construction of a roadway. However, staff finds a future roadway in this location would not significantly impact off-site topography, natural hazards or natural resource values. The subject property is located within a wildfire hazard area, although due to its location within the boundary of the Cloverdale Fire District, staff finds this natural hazard is greatly reduced. No significant natural hazards have been identified in the record. There is no evidence in the record that the proposed use will significantly adversely impact natural resource values of the area. The area of dedication is partially within a disturbed easement area associated with an existing powerline easement and contains juniper and sagebrush vegetation. The placement of the roadway in this area will minimize disturbance to potentially viable EFU-zoned land. However, as noted, the subject properties currently do not have irrigation rights and are not in farm use.

C. These standards and any other standards of DCC 18.128 may be met by the imposition of conditions calculated to insure that the standard will be met.

FINDING: To the extent this decision is conditioned under DCC 18.128 criterion, Staff notes such conditions are authorized by this criterion.

Section 18.128.020, Conditions.

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

- A. Require a limitation on manner in which the use is conducted, including restriction of hours of operation and restraints to minimize environmental effects such as noise, vibrations, air pollution, glare or odor.**
- B. Require a special yard or other open space or a change in lot area or lot dimension.**
- C. Require a limitation on the height, size or location of a structure.**
- D. Specify the size, number, location and nature of vehicle access points.**

- E. Increase the required street dedication, roadway width or require additional improvements within the street right of way.**
- F. Designate the size, location, screening, drainage, surfacing or other improvement of a parking or loading area.**
- G. Limit or specify the number, size, location, height and lighting of signs.**
- H. Limit the location and intensity of outdoor lighting and require shielding.**
- I. Specify requirements for diking, screening, landscaping or other methods to protect adjacent or nearby property and specify standards for installation and maintenance.**
- J. Specify the size, height and location of any materials to be used for fencing.**
- K. Require protection and preservation of existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.**
- L. Require that a site plan be prepared in conformance with DCC 18.124.**

FINDING: To the extent that any conditions of approval contained in this decision require improvement to the site beyond the minimum standards of DCC Title 18, staff finds such conditions are authorized by this section.

IV. CONCLUSION

Based on the foregoing findings, staff concludes that the proposed use can comply with the applicable standards and criteria of the Deschutes County zoning ordinance if conditions of approval are met.

Other permits may be required. The applicants are responsible for obtaining any necessary permits from the Deschutes County Building Division and Deschutes County Environmental Soils Division as well as any required state and federal permits.

V. DECISION

APPROVAL, subject to the following conditions of approval.

VI. CONDITIONS OF APPROVAL

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- C.** All persons with an ownership interest in the properties subject to the road dedication shall

sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.

D. Per Deschutes County Code (DCC) Chapter 17.52.090:

- The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
- Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
- Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
- Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.

E. Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the County unless and until that right-of-way is established as an official County road.

VII. DURATION OF APPROVAL, NOTICE, AND APPEALS

The declaration of dedication for the proposed road shall be completed and recorded with the County Clerk’s Office within 120 days of the application being deemed complete. Staff calculates this day to be October 27, 2023.

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.

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

DESCHUTES COUNTY PLANNING DIVISION

Haleigh King

Written by: Haleigh King, Associate Planner

Will Groves

Reviewed by: Will Groves, Planning Manager

Attachment: Proposed Road Dedication Map

owner	agent	inCareof	address	cityStZip	type	cdd id	email
Myles Conway			2503 NW Coe Court	Bend, OR 97703	FD	23-438-RD	myles@mconwaylaw.com
Desert Springs Ranch Limited Partnership			5051 SW Barnes Road	Portland, OR 97221	FD	23-438-RD	antonvett@comcast.net
Anton Vetterlein			430 SW Hamilton Street	Portland, OR 97239	FD	23-438-RD	
Chris Munson			845 NE 11th Street	Bend, OR 97701	FD	23-438-RD	



COMMUNITY DEVELOPMENT

NOTICE OF DECISION

The Deschutes County Planning Division has approved the land use application described below:

FILE NUMBER: 247-23-000438-RD

**SUBJECT PROPERTY/
OWNER/APPLICANT:**

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511000003303
Account: 133950
Situs Address: ****NO SITUS ADDRESS****

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001200
Account: 133968
Situs Address: ****NO SITUS ADDRESS****

Mailing Name: DESERT SPRINGS RANCH LIMITED PARTNERSHIP
Map and Taxlot: 1511170001000
Account: 133952
Situs Address: ****NO SITUS ADDRESS****

APPLICANT'S ATTORNEY: Myles Conway Law PC

REQUEST: The applicant requests approval to dedicate an additional segment of Fryrear Butte Road, extending through Tax Lots 1000 and 1200 (County Assessor's Map 15-11-17) and Tax Lot 3303 (County Assessor's Map 15-11-00) in the Exclusive Farm Use Zone (EFU).

STAFF CONTACT: Haleigh King, Associate Planner
Phone: 541-383-6710
Email: Haleigh.king@deschutes.org

RECORD: Record items can be viewed and downloaded from:
www.buildingpermits.oregon.gov

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

Title 17, Subdivision and Partition Ordinance

Chapter 17.52, Road Dedications
Title 18, Deschutes County Zoning Ordinance:
Chapter 18.16, Exclusive Farm Use Zones (EFU)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

DECISION: Staff finds the application meets applicable criteria and approval is being granted subject to the following conditions:

CONDITIONS OF APPROVAL

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The dedication area shall consist of a 60 ft.-wide strip of land pursuant to DCC 17.48.100 with an alignment generally as depicted in the application materials.
- A.** All persons with an ownership interest in the properties subject to the road dedication shall sign the declaration of dedication. The applicant shall submit a current title report or subdivision guarantee verifying ownership of the properties prior to acceptance as a public road.
- D.** Per Deschutes County Code (DCC) Chapter 17.52.090:
 - The applicant shall submit a declaration of dedication for final action. The declaration of dedication shall include a legal description of the land to be dedicated. Upon receipt of the declaration of dedication, staff will schedule a meeting with the Board of County Commissioners to review the declaration of dedication for acceptance or rejection.
 - Upon the meeting of the Board to take final action on the road dedication, the applicant shall provide the Board with a supplemental or amended report to the preliminary title report submitted with the application. The supplemental or amended report shall show changes in the condition of title of the relevant property from the date of the preliminary title report up to and including the time immediately preceding the Board meeting.
 - Upon acceptance of the dedication deed by the Board of County Commissioners, Applicant shall immediately cause for the recording of the dedication deed in the Official Records at the Deschutes County Clerk’s Office pursuant to DCC 17.52.090(D).
 - Upon recording of the dedication deed, Applicant shall immediately cause for survey and monumentation of the new road right of way by a licensed professional land surveyor in accordance with ORS 209.250 and ORS 368.106.
- E.** Any public road created in this proposed road dedication under DCC 17.52 shall be designated as a local access road. Any new local access road will not be maintained by the

County unless and until that right-of-way is established as an official County road.

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. Pursuant to Ordinance 2021-014 and Deschutes County Code Section 22.32.015(B), appeals must be received by 4:00 pm.

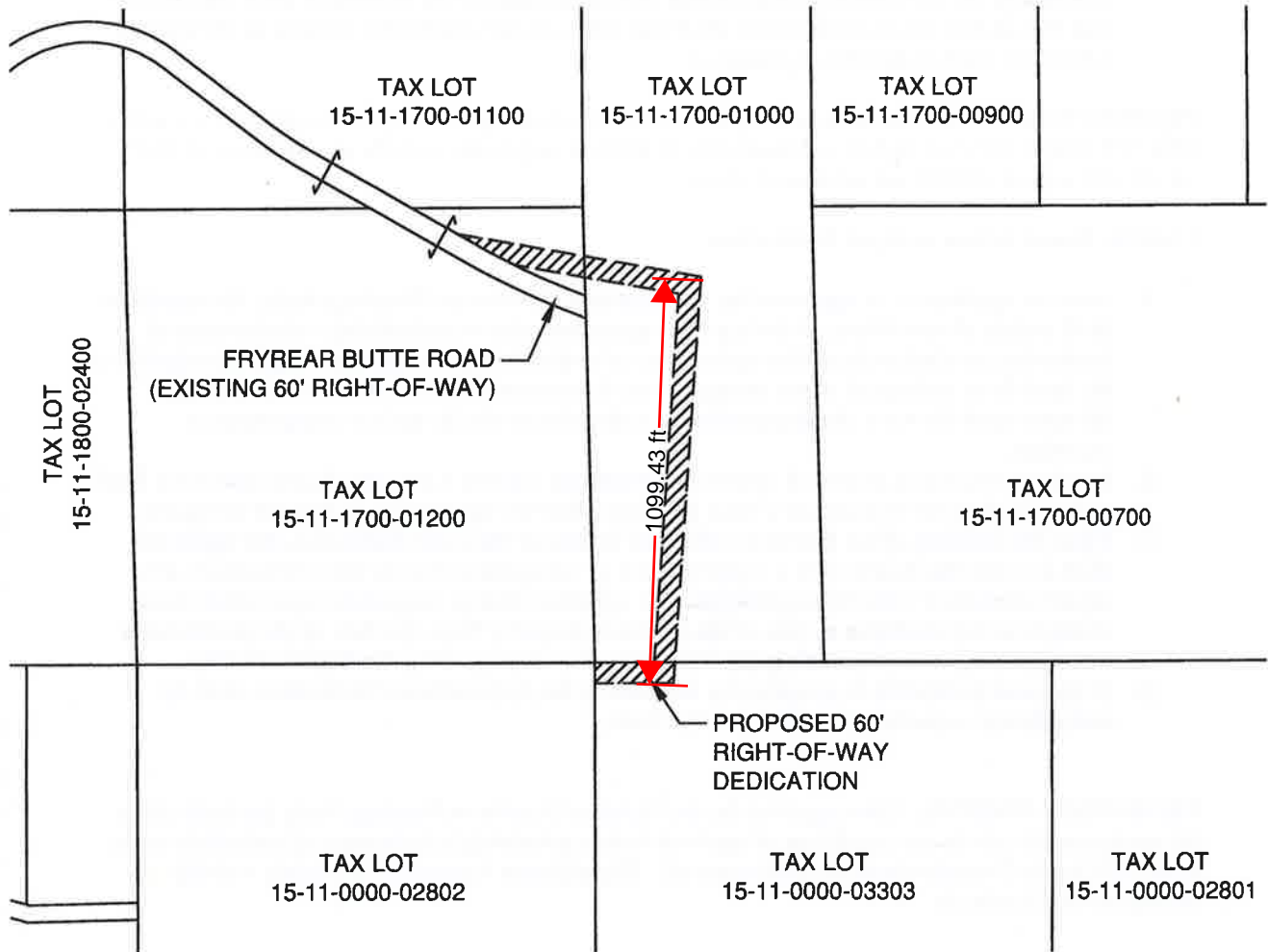
Copies of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost. Copies can be purchased for 25 cents per page.

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

This Notice was mailed pursuant to Deschutes County Code Chapter 22.24.

PROPOSED FRYREAR BUTTE ROAD DEDICATION

LOCATED IN PORTIONS OF THE S1/2 SW1/4 OF SECTION 17 AND THE
NE1/4 NW1/4 OF SECTION 20, TOWNSHIP 15 SOUTH, RANGE 11 EAST,
WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON



PREPARED BY:



Munson & Associates
civil engineers | land surveyors

845 NORTHEAST 11TH STREET
BEND, OREGON 97701



SCALE: 1" = 500'
DATE: 5/16/2023
W.O.#: 21-019

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
MARCH 11, 2014
CHRISTOPHER R. MUNSON
80548PLS

PRELIMINARY

RENEWS: 12/31/2024

owner	agent	inCareof	address	cityStZip	type	cdd id
DESCHUTES CO. ASSESSOR			ELECTRONIC		NOD	23-438-RD
DESCHUTES CO. ROAD DEPT.	CODY SMITH		ELECTRONIC		NOD	23-438-RD
DESCHUTES CO. SR. TRANS. PLANNER	TARIK RAWLINGS		ELECTRONIC		NOD	23-438-RD
JOAN R HULL TRUST	HULL,WENDY C TRUSTEE	C/O MIKELYN HULL	25715 SW AIRPORT AVE	CORVALLIS, OR 97333	NOD	23-438-RD
LAWRENCE, DENISE J			28102 S SALO RD	MULINO, OR 97042	NOD	23-438-RD
DESERT SPRINGS RANCH LIMITED PARTNERSHIP		C/O VETTERLEIN, ERIC GENERAL PARTNER (A)	5051 SW BARNES RD	PORTLAND, OR 97221	NOD	23-438-RD
JOAN R HULL TRUST	HULL,WENDY C TRUSTEE	C/O MIKELYN HULL	25715 SW AIRPORT AVE	CORVALLIS, OR 97333	NOD	23-438-RD
DESCHUTES COUNTY		C/O PROPERTY MANAGEMENT	PO BOX 6005	BEND, OR 97708-6005	NOD	23-438-RD
JSTC LIMITED PARTNERSHIP			11339 S ELYSIUM AVE	PORTLAND, OR 97219	NOD	23-438-RD
SUMMER, COLBY & APRIL			17835 WARRIN RD	SISTERS, OR 97759	NOD	23-438-RD
NEWMAN, TREVOR L & TY N			3848 NW 91ST ST	REDMOND, OR 97756	NOD	23-438-RD
BALDOCK, JEROME M & DONNA M			17530 SE FORKED HORN DR	SISTERS, OR 97759	NOD	23-438-RD
JANSSENS, ERIN			43000 SE TROUT CREEK RD	CORBETT, OR 97019	NOD	23-438-RD
EDWARDS, CHERYL ANNE			17771 WARRIN RD	SISTERS, OR 97759	NOD	23-438-RD
VOGT, HOWARD F ET AL			UNKNOWN		NOD	23-438-RD



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 16, 2023

SUBJECT: Work Session – Request for an Improvement Agreement Termination for Caldera Springs Destination Resort

RECOMMENDED MOTION:

Work Session in preparation of signature of Document No. 2023-906. This item is scheduled as a Consent Agenda item for October 18, 2023.

BACKGROUND AND POLICY IMPLICATIONS:

Staff will provide background to the Board regarding an Improvement Agreement termination request related to the Caldera Springs Destination Resort.

BUDGET IMPACTS:

None.

ATTENDANCE:

Haleigh King – Associate Planner



MEMORANDUM

TO: Board of County Commissioners

FROM: Haleigh King, Associate Planner

DATE: October 9, 2023

RE: Work Session - Request for an Improvement Agreement termination specific to four (4) Overnight Lodging Units within Caldera Springs Phase A subdivision (Deschutes County File No. 247-23-000672-IA).

The Board of County Commissioners (Board) will conduct a Work Session on October 16, 2023 regarding the termination of an Improvement Agreement for Caldera Springs Destination Resort. This item is scheduled as a Consent Item at the Board's October 18, 2023 meeting.

I. BACKGROUND

The property is identified as 18124 and 18105 Forestbrook Loop, Bend, and is further identified on County Assessor's Map 20-11-08DD as tax lot 1300 and tax lot 900, respectively. These are Lots 2 and 16 within the Caldera Springs Overnight Lodging Unit ("OLU") Phase A subdivision.

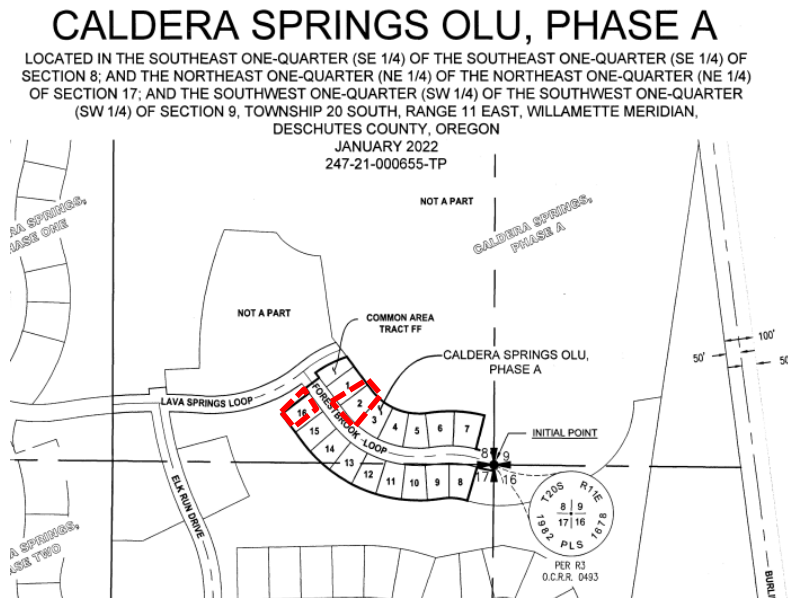


Figure 1: Lot 2 and 16 within Phase A (Source: Parametrix)

The developer requests the termination of an Improvement Agreement associated with the Caldera Springs Destination Resort (Document No. 2022-955, recorded in the real property records of Deschutes County on January 11, 2023 as Document No. 2023-00702). This Improvement Agreement was reviewed and signed by the Board on December 21, 2022. This Improvement Agreement was required by the developer for the construction costs of four (4) OLU located on two (2) lots within Phase A. The resort is required to maintain a 2.3:1 single-family residential units to OLU ratio. The platting of Phase C resulted in a shortfall of four (4) OLUs, so as a condition of approval, the developer either needed to complete the required OLUs or bond for the construction of the units. The developer elected to bond for the OLU construction.

The four (4) OLU units have now been completed, certificates of occupancy have been issued by the County Building Division (Attch 3), and the bond was released on August 21, 2023. The bond amount was 120 percent to the cost estimate and totaled \$1,069,159.25. County Legal Counsel has reviewed the termination agreement.

The Improvement Agreement continues to encumber the property as there was no termination clause embedded within the contract. The owner has applied for an Improvement Agreement as the permit process by which the termination can be presented to the Board of County Commissioners and lawfully removed from the title of the property.

II. RECOMMENDATION AND NEXT STEPS

Staff anticipates this will return as a consent agenda item at the Board's October 18, 2023 meeting. Staff recommends the Board move to approve the termination and signatures on Document No. 2023-906.

ATTACHMENT(S):

- A. Document No. 2023-906: Termination of Improvement Agreement (Doc. No. 2022-955) for Caldera Springs Expansion – Phase A (OLU Construction)
- B. Document No. 2022-955: Improvement Agreement for Caldera Springs Expansion – Phase A (OLU Construction)
- C. Lot 2 and Lot 16 – Certificate of Occupancy

REVIEWED
LEGAL COUNSEL

For Recording Stamp Only

After Recording Return to:
Deschutes County
Community Development Department
117 NW Lafayette Avenue
Bend, OR 97703

**TERMINATION OF IMPROVEMENT AGREEMENT
Overnight Lodging
Document No. 2022-955**

This Termination of Improvement Agreement (“Termination”), is by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon (“County”) and Caldera Springs Real Estate, LLC (“Developer”).

RECITALS:

- A. Developer executed that certain Improvement Agreement identified as Deschutes County Document No. 2022-955, recorded in the real property records of Deschutes County on January 11, 2023 as Document No. 2023-00702 (the “Improvement Agreement”). All capitalized terms used in this Termination without definition shall have the meaning set forth in the Improvement Agreement.
- B. Under the Improvement Agreement Developer was required to complete the Required Improvements, as more particularly described in the Improvement Agreement. Pursuant to the issuance of certificates of occupancy for the Required Improvements, the County has determined that the Required Improvements have been constructed as required under the Improvement Agreement.
- C. County and Developer desire to enter into this Termination to verify and confirm completion of the Required Improvements and to remove the Improvement Agreement as an encumbrance to title against the Real Property.

NOW THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual obligations hereinafter stated, as follows:

- 1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.

2. **Real Property Description.** The real property subject to this Termination (the “Real Property”) is identified as a portion of Map and Tax Lots 201108DD01300 and 201108DD00900 and which are more particularly described on the attached Exhibit A.

3. **Termination; Release of Security.** The County and Developer hereby terminate the Improvement Agreement and acknowledge and agree that the Improvement Agreement shall be of no further force or effect. To the extent already not released to Developer, the County shall deliver the Security (as calculated by and included in Document No. 2022-955, and recorded in the real property records of Deschutes County as Document No. 2023-00702) to Developer upon execution of this Termination.

4. **Counterparts.**
 - 4.1 This Termination may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
 - 4.2 Each copy of this Termination so executed shall constitute an original.
 - 4.3 If this Termination is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Termination.

5. **Captions.**
 - 5.1 The captions contained in this Termination were inserted for the convenience of reference only.
 - 5.2 Captions do not, in any manner, define, limit, or describe the provisions of this Termination or the intentions of the parties.

6. **Effective Date.** Notwithstanding mutual execution of this Termination, this Termination shall not become effective until recorded.

Signatures on Following Pages

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice-Chair

ATTEST:

PHIL CHANG, Commissioner

Recording Secretary

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared ANTHONY DEBONE, PHIL CHANG, PATTI ADAIR, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this __ day of _____, 20__

Notary Public, State of Oregon

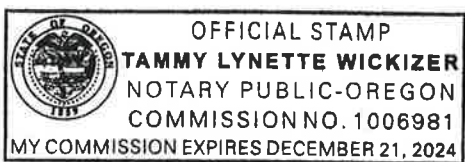
DATED this 6 day of October, 2023

DEVELOPER:

Caldera Springs Real Estate, LLC
By: Sunriver Resort Limited Partnership
Its: Member

By: Lowe Sunriver, Inc.
Its: General Partner

By: _____
Tom O'Shea, Managing Director



STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared Tom O'Shea, and acknowledged the foregoing instrument as the Managing Director of Lowe Sunriver, Inc. as General Partner of Sunriver Resort Limited Partnership, as Member of Caldera Springs Real Estate, LLC on behalf of Caldera Springs Real Estate, LLC.

DATED this 6 day of October, 2023

Notary Public, State of Oregon

EXHIBIT A
Legal Description

Lot 2 and Lot 16, Caldera Springs OLU Phase A, Deschutes County, Oregon, recorded at Document No. 2022-04792.

Deschutes County Official Records

Steve Dennison, County Clerk

2023-00702

01468563202300007020800809

 D-IPPS Cnt=1 Pgs=80 Stn=25
 \$400.00 \$11.00 \$61.00 \$10.00 \$6.00

01/11/2023 11:33 AM
 \$488.00

 REVIEWED

 LEGAL COUNSEL

 For Recording Stamp Only

After Recording Return to:
 Deschutes County
 Community Development Department
 117 NW Lafayette Avenue
 Bend, OR 97703

IMPROVEMENT AGREEMENT
Overnight Lodging

This Improvement Agreement ("Agreement"), relating to the construction and installation of certain required improvements (the "Required Improvements," as defined below in Section 4) within the plat of Caldera Springs OLU, Phase A located in the Caldera Springs Destination Resort is by and between DESCHUTES COUNTY, OREGON, a political subdivision of the State of Oregon ("County") and Caldera Springs Real Estate, LLC ("Developer").

RECITALS:

- A.** Developer filed an application for final subdivision plat approval for the tentative subdivision plan approved under File No. 247-22-000182-TP (the "Land Use Approval") prior to the completion of the Required Improvements.
- B.** Deschutes County Code (DCC) Section 18.113.110 provides that a developer may, in lieu of completing the Required Improvements prior to filing a final subdivision plat, enter into an agreement with the County and provide a good and sufficient form of security to provide for the completion of such improvements.
- C.** The Required Improvements under this Agreement do not constitute a Public Improvement as the term is defined in ORS 279A.010(1)(cc).
- D.** County and Developer desire to enter into this Agreement in order to establish the obligation and to secure completion of the Required Improvements following recording of the final plat for the Land Use Approval.

NOW THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual obligations hereinafter stated, as follows:

1. **Recitals.** The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions and are not mere recitals.
2. **Real Property Description.** The real property subject to this Agreement (the “Real Property”) is identified as a portion of Map and Tax Lots 201108DD01300 and 201108DD00900 and which are more particularly described on the attached Exhibit A. This Agreement shall be recorded against and shall encumber the Real Property and every developable unit of land lawfully created from the Real Property (each, a “Lot”) subject to Section 20 below.
3. **Exhibits.** The exhibits listed below and attached to the Agreement are hereby incorporated herein by reference:
 - 4.1 Exhibit A -- Legal description of Real Property.
 - 4.2 Exhibit B -- List of Required Improvements.
 - 4.3 Exhibit C – Copy of Land Use Approval.
 - 4.4 Exhibit D - Bond Instrument.
4. **Identification of Required Improvements.** Developer shall install and complete, or cause to be installed and completed, the improvements listed in Exhibit B on each Lot and required by the Tentative Plan set forth in Exhibit C to the extent that same remain to be completed (the “Required Improvements”).
5. **Construction of Required Improvements.**
 - 5.1 Developer shall install and complete the Required Improvements in accordance with the plans and construction specifications related thereto and to any additional County and/or State of Oregon specifications or applicable regulations. Developer shall cause the Required Improvements to be completed in compliance with the applicable codes, regulations, and laws then in effect.
 - 5.2 Developer shall promptly repair any damage to existing and new roads, water lines, stormwater facilities, and similar facilities within and without the Real Property, which are caused by the installation of the Required Improvements.
 - 5.3 Under DCC 18.113.060(A)(1)(b)(3) overnight lodging units guaranteed through surety bonding or equivalent financial assurances must be constructed within four (4) years of the date of execution of the surety bond or other equivalent financial assurance (the “Completion Date”). Developer shall schedule final inspections and shall have the Required Improvements in a condition determined by County to be sufficient not later than the Completion Date. For purposes of calculating the warranty of improvements under Section 6.1 below, the “Completion Date” shall be the date upon which the County has performed all final inspections of and issued a certificate of occupancy for the Required Improvements.

6. License to Enter and Remain on Property.

- 6.1 During the term of this Agreement, Developer hereby grants County and County’s employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Required Improvements.
- 6.2 After the Default Grace Period specified in Section 7.2, and after providing notice to Developer, County or its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and may cause the Required Improvements to be completed.

7. Right to Draw on Security.

- 7.1 Upon failure of the Developer to complete the Required Improvements as required under Section 5.3 above by the Completion Date, County shall notify Developer in writing of such failure (the “Default Notice”).
- 7.2 Upon receipt of the Default Notice, Developer shall have thirty (30) days to complete the Required Improvements to the condition required under Section 5 (the “Default Grace Period”).
- 7.3 Should Developer fail to complete the Required Improvements within the Default Grace Period, County may, at its sole discretion, cause incomplete or unsatisfactory Required Improvements to be completed.
- 7.4 If County causes the Required Improvements to be completed, County may draw upon the Security for any and all costs and expenses incurred by County including, but not limited to, attorneys and engineering fees, and costs and expenses reasonably anticipated or projected by the County to be incurred by the County, in construction and/or completion of the Required Improvements.
- 7.5 If County affirmatively elects (with written documentation of same signed by the Chair of the Board of County Commissioners) not to cause the Required Improvements to be completed, County shall within 180 days cause the Security to be released to Developer.
- 7.6 For the purposes of this Agreement and access to any security offered and accepted to secure Developer’s performance, Developer’s failure to complete the Required Improvements shall include failure to install or have installed any portion of the Required Improvements to the standards required under Section 5 above.

8. No County Guarantee. County does not warrant or guarantee that any of the Required Improvements referred to in this Agreement will be constructed, maintained or operated.

9. License to Use Permits, Specifications and Plans.

- 9.1 If County determines that any portion of the Required Improvements have not been completed as required by Section 5 above, Developer shall, upon request of the County, license and assign to County all of Developer's, applicable permits, plans, specifications, shop drawings, instruments, permits and approvals, and other documents necessary or useful in the completion or repair of or related in any manner to the applicable Required Improvements.
- 9.2 Developer shall ensure that any contracts for supply of labor and materials used in connection with constructing Required Improvements are assignable to the County.
- 9.3 Upon such request, Developer shall deliver or shall cause to be delivered, physical possession of such permits, plans, specifications, shop drawings, instruments, permits, approvals, and other documents to the County.
- 9.4 County may sub-assign or license the rights referred to in this Section 9 for any purpose without further approval from Developer.

10. No Third-Party Beneficiaries.

- 10.1 County and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 10.2 Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

11. Restoration of Monuments. Developer shall restore any monument erected or used for the purpose of designating a survey marker or boundary of any town, tract, plat or parcel of land that is broken, damaged, removed or destroyed, during the course of work provided for or anticipated by this Agreement, whether intentional or otherwise, by the Developer or Developer's agents, employees, independent contractors, or persons or entities other than County.

12. Costs of Inspection. Developer shall pay to County the actual costs incurred by County in the inspection of the completed Required Improvements plus any fees, such as legal review fees, plan review fees and structural, electrical, plumbing and other specialty codes inspection fees normally associated with the review and inspection of any improvements on the Real Property.

13. Security for Required Improvements.

- 13.1 Attached as Exhibit D is a copy of a performance bond in the amount of One Million Sixty-Nine Thousand One Hundred Fifty-Nine and 25/100 Dollars (\$1,069,159.25) (the "Security"). The Security represents the costs of the Required Improvements

to be constructed on each of the two Lots subject to this Agreement, together with the required twenty percent (20%) added Security.

13.2 As used herein, the issuer of the Security is referred to as “Surety.”

13.4 Cost Notice Update

13.4.1 County, in reasonable intervals, may require the Developer to provide an updated construction cost estimate for the then remaining Required Improvements (the “Cost Update Notice”).

13.4.2 Upon receipt of the Cost Update Notice, the Developer shall have thirty (30) days to provide the updated construction cost estimate (the “Developer’s Response”).

13.4.3 Upon receipt of the Developer’s Response, or if no Response is received within the thirty (30) day period, if the County reasonably determines that the Developer’s obligations under this Agreement together with the Security do not provide adequate financial assurance for completion of the Required Improvements, the County shall have the option to require Developer to increase the amount of the Security and to memorialize such increase in an amendment to this Agreement (the “Security Amendment”).

13.4.4 If the County requires Developer to increase the amount of the Security, Developer shall also file the application fees and materials to amend this Agreement to memorialize the Security Amendment within thirty (30) days of receipt of the County’s notice to increase the Security.

13.4.5 If Developer fails or refuses to increase the amount of Security as directed by the County, such failure or refusal shall be considered failure of the Developer to complete the Required Improvements as required under Section 5 and the County may draw upon the Security pursuant to Section 8.

14. Developer’s Obligation for Costs.

14.1 Developer expressly acknowledges, understands, and agrees that this Agreement shall not relieve Developer from the obligation to complete and fully pay for the Required Improvements, to warranty those Required Improvements, and other costs and fees set forth in this Agreement.

14.2 Should Developer default in its obligation to complete the Required Improvements as required by Section 5 or warranty those Required Improvements as required by Section 6, Developer agrees to compensate County for all costs, fees, charges and incurred expenses related to Developer’s default.

15. Release of Security or Obligation.

- 15.1 County shall release the Security less any Warranty Security within thirty (30) calendar days of Developer requesting in writing that the Security be released following the final inspection and approval of the Required Improvements. County shall release the Warranty Security within thirty (30) calendar days of the Developer requesting in writing that the Warranty Security be released following the Warranty Period.
- 15.2 County may, at the County’s discretion and consistent with applicable law, release Developer from any of Developer’s obligations under the terms and conditions of this Agreement.
- 15.3 County’s release of any of Developer’s obligations shall not be construed as a waiver of County’s right to require full compliance with the remainder of this Agreement and Developer’s obligation to satisfy any costs, fees, charges and expenses incurred in completion or repair of the Required Improvements.

16. Shortfall in Security.

- 16.1 If the amount available to be drawn from the Security or Warranty Security is less than the costs and expenses anticipated to be incurred, or actually incurred, by County, including, but not limited to, attorneys and engineering fees, County may apply the proceeds of the Security or Warranty Security to the anticipated or actual costs and expenses of completion or repair of the Required Improvements.
- 16.2 Developer shall be responsible and liable for any shortfall between the actual costs and expenses of completion or repair of the Required Improvements, including, but not limited to, attorneys and engineering fees, and the amount of the Security or Warranty Security available to fund such costs and expenses.

17. Incidental Costs. Without limiting the generality of Section 17, if the proceeds of the Security or Warranty Security are not remitted to County within the timeframe set forth in the Security or Warranty Security after County provides written notice to Surety in the form prescribed by the Surety, or the Required Improvements are not installed within a reasonable time period determined and specifically identified by County after County provides notice to Developer and/or Surety, then County’s costs of completing and/or repairing the Required Improvements, the costs of obtaining the proceeds of the Security, Warranty Security, or other security, all incidental costs to the extent not covered by the Security, Warranty Security, or other security, and liquidated damages calculated at the rate of \$500 per day shall be added to the amount due to County from Developer, and shall be paid to County by Developer, in addition to and with all other amounts due hereunder.

18. Successors in Interest.

- 18.1 The original of this Agreement shall be recorded with the Deschutes County Clerk and shall be a condition and covenant that shall run with the Real Property including any lots created from the Real Property (each a "Lot").
- 18.2 It is the intent of the parties that the provisions of this Agreement shall be binding upon the parties to this Agreement, and subject to the terms contained in Section 20, their respective successors, heirs, executors, administrators, and assigns, and any other party deriving any right, title or interest in or to the Real Property or any Lot, including any person who holds such interest as security for the payment of any obligation, including a mortgagee or other secured party in actual possession of said Real Property by foreclosure or otherwise or any person taking title from such security holder.

19. Lot Purchasers.

- 19.1 Notwithstanding the terms of Section 19, the terms of this Section 19 shall apply to each Lot lawfully created from the Real Property in accordance with the Land Use Approval.
- 19.2 Each Lot shall be conveyed free of any obligation to pay money or complete any obligation arising from or related to this Agreement.
- 19.3 The owner of a Lot, other than Developer, is under no obligation or burden to complete the terms and conditions of this Agreement.
- 19.4 The purpose for the recordation of this Agreement is to place owners and prospective purchasers on notice of the Agreement's terms, that the County has no obligation to construct the Required Improvements or any portion of the Required Improvements, and the Agreement does not in any way guarantee that any of the Required Improvements will be constructed.
- 19.5 The Agreement conveys no right or right of action by a Lot owner, other than Developer, against the County for any act or omission of the County including, but not limited to, County decisions or acts that required or authorized the Required Improvements, or any part of the Required Improvements, not being constructed.

20. Binding Authorization. By signing this Agreement, each signatory signing in a representative capacity, certifies that the signer is authorized to sign the Agreement on behalf of and bind the signer's principal.

21. Expiration.

- 21.1 This Agreement shall expire after the conclusion of the Warranty Period, or by the County's express written release of Developer from this Agreement.

- 21.2 Upon expiration, County shall provide Developer with a document in recordable form, formally evidencing such expiration within thirty (30) days of such a request from Developer.

- 22. **Survival.** County's rights under this Agreement, including County's right to draw upon the Security or Warranty Security in whole or in part, and Developer's obligation to pay the full costs and expenses of completing the Required Improvements and repairs or replacements required herein along with any licenses granted in this Agreement and any costs of enforcement of this Agreement, shall survive the expiration of this Agreement.

- 23. **No Agency.**
 - 23.1 It is agreed by and between the parties that Developer is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Developer completes performance under this Agreement nor does County have a right to exercise any control over Developer's activities.

 - 23.2 Developer is not an officer, employee or agent of County as those terms are used in ORS 30.265.

- 24. **No Joint Venture or Partnership.** County is not, by virtue of this Agreement, a partner or joint venturer with Developer in connection with the Site Plan, the Required Improvements, the Real Property, or any Lot and shall have no obligation with respect to Developer's debts, obligations or other liabilities of each and every nature.

- 25. **Liens.**
 - 25.1 Developer shall pay as due all claims for work done on and for services rendered or materials furnished to the Real Property and shall keep the Real Property free from liens.

 - 25.2 If Developer fails to pay any such claims or to discharge any lien, County may do so and collect the cost plus ten percent (10%) from the Developer or Surety; provided, however, County may not pay such claims or discharge any lien while Developer is timely disputing the validity of such claims or liens.

 - 25.3 Such action by County shall not constitute a waiver of any right or remedy that County may have on account of Developer's failure to complete the Required Improvements or failure to observe the terms of this Agreement.

- 26. **Indemnification.** The County shall not be responsible for any injury to any and all persons or damage to property caused directly or indirectly by reason of any and all activities (including inaction) of Developer under this Agreement and on the Real Property; Developer further agrees to defend, indemnify and save harmless County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses

and expenses in any manner resulting from, arising out of, or connected with any such injury or damage.

27. **Limitation of Liability.** County’s liability, if any, pursuant to this Agreement is subject to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

28. **Attorney Fees and Costs.** In the event an action or suit or proceeding, including appeal therefrom, is brought by any party arising directly and/or indirectly out of the provisions of this Agreement or the interpretation thereof, for Developer’s failure to complete the Required Improvements or to observe any of the terms of this Agreement or the interpretation thereof, County shall be entitled to recover, in addition to other sums or performances due under this Agreement, reasonable attorney’s fees and costs as the court may adjudge in said action, suit, proceeding or appeal.

29. **Waiver.**

29.1 Waiver of the strict performance of any provision of this Agreement shall not constitute the waiver of any other provision or of the Agreement.

29.2 No waiver may be enforced against the County unless such waiver is in writing and signed by the County.

30. **Compliance with provisions, requirements of Federal and State laws, statutes, rules, regulations, executive orders and policies. Debt Limitation.**

30.1 This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution.

30.2 Any provisions herein that conflict with applicable law, including but not limited to DCC 17.24.120 and 17.24.130, are deemed inoperative to that extent.

30.3 Additionally, Developer shall comply with any requirements, conditions or limitations arising under any Federal or State law, statute, rule, regulation, executive order and policy applicable to the Required Improvements.

30.4 If this Agreement is in any manner construed to constitute the lending of the County’s credit or constitute a debt of County in violation of Article XI, Section 10, of the Oregon Constitution, this Agreement shall be void.

31. **No Inducement.** No representations, statements, or warranties have induced the making and execution of this Agreement other than those herein expressed.

32. **Governing Law.**

32.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- 32.2** Any claim, action, suit or proceeding (each a “Claim”) between County and Developer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon in Eugene, Oregon.
- 32.3** By signing below, Developer hereby consents to the *in personam* jurisdiction of the courts identified in Section 33.2.
- 32.4** The parties agree that the UN Convention on International Sales of Goods shall not apply.
- 33. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable in one respect, the validity of the term or provision in any other respect and that of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced to the extent possible.
- 34. Counterparts.**
- 34.1** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 34.2** Each copy of this Agreement so executed shall constitute an original.
- 34.3.** If this Agreement is signed in counterpart, each counterpart shall be recorded as provided herein for the recording of this Agreement.
- 35. Notice.**
- 35.1** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Developer or County at the address or fax number set forth below or to such other addresses or fax numbers as either party may hereafter indicate in writing.
- 35.2** Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.
- 35.2.1** Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- 35.2.2** Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission.

35.2.3 To be effective against County, such facsimile transmission shall be confirmed by telephone notice to County’s Director of Administrative Services.

35.2.4 Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Agreement shall be mailed by first class mail or delivered as follows:

To Developer:

Caldera Springs Real Estate LLC
PO Box 3609
Sunriver, Oregon 97707
Attn: Thomas Samwel

To County:

Deschutes County Administration
County Administration
1300 NW Wall Street, Ste 200
Bend, Oregon 97703
Fax No. 541-388-4752

36. Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

37. Captions.

37.1 The captions contained in this Agreement were inserted for the convenience of reference only.

37.2 Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

38. Amendment.

38.1 The Agreement may only be amended by written instrument signed by both parties and recorded, except that an amendment shall not be recorded against any Lot other than Lots then owned by Developer.

38.2 For purposes of Section 39.1, the signatures of the County shall be the signatures of the Board of Commissioners, Board Chair, or County Administrator.

38.3 Developer shall make application and pay the applicable fee to bring a proposed amendment before the County.

39. Merger Clause. This Agreement and the attached exhibits constitute the entire agreement between the parties and supersedes any and all prior or contemporaneous negotiations and/or agreements among the parties, whether written or oral.

40. **Effective Date.** Notwithstanding mutual execution of this Agreement, this Agreement shall not become effective until recorded.

Signatures on Following Pages

Dated this 21st of Dec., 2022

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Patti Adair

PATTI ADAIR, Chair

Anthony DeBone

ANTHONY DEBONE, Vice-Chair

Phil Chang

PHIL CHANG, Commissioner

ATTEST:

Brenda Fitzgerald

Recording Secretary

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared ANTHONY DEBONE, PHIL CHANG, PATTI ADAIR, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 21st day of December, 2022

Angie Marie Powers
Notary Public, State of Oregon



DATED this 20th day of Dec, 2022

DEVELOPER:

Caldera Springs Real Estate, LLC

By: Sunriver Resort Limited Partnership

Its: Member

By: Lowe Sunriver, Inc.

Its: General Partner

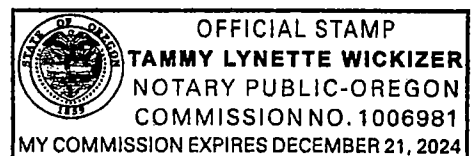
By: *[Signature]*
Tom O'Shea, Managing Director

STATE OF OREGON, County of Deschutes) ss.

Before me, a Notary Public, personally appeared Tom O'Shea, and acknowledged the foregoing instrument as the Managing Director of Lowe Sunriver, Inc. as General Partner of Sunriver Resort Limited Partnership, as Member of Caldera Springs Real Estate, LLC on behalf of Caldera Springs Real Estate, LLC.

DATED this 20 day of December, 2022

[Signature]
Notary Public, State of Oregon





Des 10/16/2023 Item #2.
 117 NW Lafayette Avenue
 PO Box 6005
 Bend, OR 97703
 541-388-6575

Commercial

Certificate of Occupancy

Web Address: www.deschutes.org/cd

Email Address: cdd@deschutes.org

This structure has been inspected and, at the time of certificate issuance, was in compliance with all applicable codes and regulations for the occupancy, division of occupancy and use for which the occupancy is classified.

Structural Specialty Code Edition: 2019

Permit Number: 247-22-001292-STR **Final Inspection Date:** 5/30/23
Property Address: 18124 FORESTBROOK LP, BEND, OR 97707
Parcel Number: 201108DD01300
Owner: CALDERA SPRINGS REAL ESTATE LLC, PO BOX 3609, SUNRIVER, OR 97707

Description of Work: LOT 2 - TWO-FAMILY DWELLING: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATIONS/UNITS. (Model B1)
Category of Construction: Commercial **Type of Work:** New
Existing Sprinklers: No **Sprinklers Included in Project:** Yes

Occupant Load: TWO-FAMILY DWELLING: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODA
Portion of Building: TWO-FAMILY DWELLING: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATIONS/UNITS. (Model A1)
Special Conditions: None Specified

<u>Occupancy Classification</u>	<u>Type of Construction</u>	<u>Sq. Ft.</u>
R-1 hotels	VB	2,571
U Utility, misc.	VB	669

<u>Related Permits</u>	<u>Permits Status</u>
247-22-003265-PLM	Final
247-22-002789-MECH	Final
247-22-003470-FIRE	Final
247-22-001292-STR-REV-03	Revision Withdrawn
247-22-001292-STR-REV-01	Revision Complete
247-22-001292-STR-REV-02	Revision Complete
247-22-001292-STR-TCO-01	TCO Complete

Randy Scheid
 Building Official

Effective Date: May 31, 2023

Contact and license information for the general, electrical, plumbing and mechanical contractors is on file and can be obtained upon request.



Des 10/16/2023 Item #2.
 117 NW Lafayette Avenue
 PO Box 6005
 Bend, OR 97703
 541-388-6575

Commercial

Certificate of Occupancy

Web Address: www.deschutes.org/cd

Email Address: cdd@deschutes.org

This structure has been inspected and, at the time of certificate issuance, was in compliance with all applicable codes and regulations for the occupancy, division of occupancy and use for which the occupancy is classified.

Structural Specialty Code Edition: 2019

Permit Number: 247-22-001296-STR **Final Inspection Date:** 5/15/23
Property Address: 18105 FORESTBROOK LP, BEND, OR 97707
Parcel Number: 201108DD00900
Owner: CALDERA SPRINGS REAL ESTATE LLC, PO BOX 3609, SUNRIVER, OR 97707

Description of Work: LOT 16 - DUPLEX: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATION UNITS. (Model B1)

Category of Construction: Commercial **Type of Work:** New
Existing Sprinklers: No **Sprinklers Included in Project:** Yes

Occupant Load: R-1 = 2,571 sf (INCLUDES COVERED PORCHES) U = 669 sf (INCLUDES COVERED TRASH AREA)

Portion of Building: LOT 16 - DUPLEX: 2 RENTABLE DESTINATION RESORT OVERNIGHT LODGING ACCOMMODATION UNIT (MODEL B1)

Special Conditions: None Specified

<u>Occupancy Classification</u>	<u>Type of Construction</u>	<u>Sq. Ft.</u>
R-3 1 & 2 family	VB	2,571
U Utility, misc.	VB	669
247-22-002806-MECH	Finald	
247-22-003268-PLM	Finald	
247-22-003473-FIRE	Permit Issued	
247-22-001296-STR-REV-02	Revision Withdrawn	
247-22-001296-STR-REV-01	Revision Complete	

Randy Scheid
 Building Official

Effective Date: May 15, 2023

Contact and license information for the general, electrical, plumbing and mechanical contractors is on file and can be obtained upon request.