



COMMUNITY DEVELOPMENT

HEARINGS OFFICER HEARING - LAND USE: HOMAN OUTDOOR MOTOCROSS FACILITY

6:00 PM, TUESDAY, AUGUST 15, 2023

Barnes Sawyer Rooms - Deschutes Services Bldg - 1300 NW Wall St - Bend

(541) 388-6575 | www.deschutes.org

AGENDA

MEETING FORMAT

This meeting will be conducted electronically, by phone, in person, and using Zoom.

Members of the public may view the meeting in real time via the Public Meeting Portal at www.deschutes.org/meetings.

Members of the public may listen, view, and/or participate in this meeting using Zoom. Using Zoom is free of charge. To login to the electronic meeting online using your computer, copy this link: <https://us02web.zoom.us/j/82015139307>

Using this option may require you to download the Zoom app to your device.

Members of the public can access the meeting via telephone, dial: 1-669-444-9171. When prompted, enter the following Webinar ID: 820-1513-9307. Written comments can also be provided for the public comment section to Caroline.House@deschutes.org.

PUBLIC HEARING

FILE NUMBERS: 247-22-000812-CU / 247-22-000813-SP

SUBJECT PROPERTY: Map/Taxlot: 1512110000600 / Address: 7505 NW EAGLE DR, REDMOND, OR 97756

APPLICANT/OWNER: Justin Homan

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

STAFF PLANNER: Caroline House, Senior Planner (541-388-6667 / Caroline.House@deschutes.org)

1. The applicant requests conditional use and site plan approval for a recreation-oriented facility requiring large acreage. Specifically, the applicant proposes a outdoor motocross facility.



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, please call (541) 617-4747.



STAFF REPORT

FILE NUMBERS: 247-22-000812-CU / 247-22-000813-SP

**SUBJECT PROPERTY/
OWNER:**

Mailing Name: HOMAN, JUSTIN M
Map and Taxlot: 1512110000600
Account: 124991
Situs Address: 7505 NW EAGLE DR, REDMOND, OR 97756

APPLICANT: Justin Homan

REQUEST: The applicant requests conditional use and site plan approval for a recreation-oriented facility ("ROF") requiring large acreage. Specifically, the ROF will include four (4) outdoor motocross course/tracks.

HEARING DATE: Tuesday, May 2, 2023, 6 p.m.

LOCATION: Deschutes Services Building, Barnes & Sawyer Rooms, 1300 NW Wall Street, Bend, OR 97703 & Zoom

HEARINGS OFFICER: Alan Rappleyea

STAFF PLANNER: Caroline House, Senior Planner
Phone: 541-388-6667
Email: Caroline.House@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000812-cu-247-22-000813-sp-homan-outdoor-motocross-track>

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)

- Title 18, Deschutes County Zoning Ordinance:
 - Chapter 18.60, Rural Residential Zone (RR10)
 - Chapter 18.80, Airport Safety Combining Zone (AS)
 - Chapter 18.116, Supplementary Provisions

Chapter 18.120, Exceptions
Chapter 18.124, Site Plan Review
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

II. BASIC FINDINGS

LOT OF RECORD: Verification is not required under DCC 22.04.040(B)(2).¹

SITE DESCRIPTION: The subject property is +/- 6.57 acres in size, irregularly shaped, and the south property line abuts NW Eagle Drive. The southeast corner of the property is developed with a single-family dwelling, a barn, and what appears to be a small well house. Additionally, there is barbwire fencing along the west, south, and east property lines. The remaining areas of the property are a mixture of open space and four (4) personal motocross course/tracks. The undisturbed areas of the property are predominately comprised of native grasses and there are mature trees and shrubs established adjacent to the existing structures. There are utility poles and overhead power lines established along the property's frontage on NW Eagle Drive. Access to the existing residential use is via two (2) driveway access points² from NW Eagle Drive. Grade is generally flat across the site with the exception of several earthen berms that have been constructed as part of the existing motocross courses/tracks.

PROPOSAL: The Applicant states the proposed ROF will encompass 6-acres of the subject property and have the following operating characteristics:

1. The type of off-road vehicles will be two-wheeled, which would include electric, gas and hybrid motorized/manual powered motocross related vehicles.
2. General Operating characteristics of the use would be structured supervised training/camps and/or coordinated practice laps on closed course(s). Anticipate use would be an average of 2 days per week during the months of Oct through March. Primarily on Saturdays and Sundays between 10am-4pm for groups and select weekdays for private one-on-one trainings between the hours of 10AM-3PM. During the months of April-September group training would occur on Weekdays and Weekends between 6-9PM when there is an abundance of daylight and historically low wind conditions. In the Spring and Summer training needs to be in the evenings due to heat, wind conditions and the specific disciplines of training that is proposed to occur. IE Advanced level participants who are learning Supercross & Freestyle Motocross require low wind conditions.
3. Fees charged would be for training & proficiency instruction. Fees would be charged for training camps/schools. Applicant would propose to also be able to charge for use of course/track depending upon staff comment.

¹ Staff notes the Applicant submitted materials that are typically provided as a lot of record verification request. However, the applicant has not requested a lot of record verification (ref. 2023-04-05 J. Homan – Final Incomplete Letter Response).

² Reference Residential Driveway Access Permit Nos. 247-22-007773-DA / 247-22-007773-DA-01.

4. Fall, Winter and Spring would be the seasons where demand is the highest. Oct 1 to March 30 is the estimated date range impacted by weather.
5. With sunrise and sunset being very different depending upon the Seasons, use would cease at sunset in the Spring and Summer. In the Fall and Winter use would cease at 7:30pm.
6. Proposed types of events are training camps and practice.
7. An anticipated maximum number of users is estimated at 20 riders.
8. There are no proposed accessory uses, with exception of water truck/watering system and portable bathrooms.
9. There is no proposed visitor seating as there is not a demand for such seating.
10. Existing structures include (2) light poles. There are no proposed structures.
11. The property has four separate courses on it. The applicant is proposing to use all four course as shown on "EXHIBIT SITE PLAN". Courses are comprised of native soil existing on the property. The "Turn Course" has no height variances above or below grade. The AX1 Course has obstacles that vary between 1' and 6' in height. The SX/AX2 course has obstacles that vary between 2' & 6'. The FMX Course utilizes [an] obstacle that is 10' in height. The course footprints will remain with updates/changes to the obstacles being made monthly. See "EXHIBIT COURSE OBSTACLES" & "EXHIBIT COURSE OBSTACLES Detail" for proposed design and heights/dimension of each obstacle.
12. There is no sound system.
13. There is no overnight camping or use proposed.

SURROUNDING LAND USES: Immediately surrounding properties are all RR10-zoned lots ranging in size from 5 to 20 acres. The property to the east is engaged in agricultural use and does not contain a dwelling. The properties to the north, west, and south are developed with single-family dwellings and do not appear to be used for agricultural purposes. The nonadjacent surrounding properties are a mixture of RR10 and Exclusive Farm Use (EFU) zoned properties. The majority of these properties appear to be developed residentially. However, there do appear to be a few properties engaged in farm use. Cline Falls Airpark, a privately owned and private use airport, is +/- 700 feet to the west. The Eagle Crest Destination Resort is approximately one-quarter mile to the southwest and its wastewater treatment facility is 100 feet to the south. The Deschutes River is approximately one-quarter mile to the east and the Redmond Urban Growth Boundary is a little over 2 miles to the east.

LAND USE HISTORY:

- 78-1534: Building permit approval to construct a single-family dwelling on the subject property.
- LM-01-136: Land use approval for a single-family dwelling addition in the AS and Landscape Management (LM)³ Combining Zones.
- 247-21-000702-CU: Withdrawn conditional use request for a recreation-oriented facility requiring large acreage.

³ The LM zoning designation no longer applies to the subject property, because the nearby segment of the Deschutes River is no longer designated as a State Scenic Waterway. Therefore, the LM zone only extends 660 feet from the centerline of the Deschutes River under DCC 18.84.020.

PUBLIC AGENCY COMMENTS: The Planning Division mailed notice on October 20, 2022, to several public agencies and received the following comments:

Deschutes County Building Division, Randy Scheid

NOTICE: The Deschutes County Building Safety Divisions code mandates that Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. must be specifically addressed during the appropriate plan review process with regard to any proposed structures and occupancies.

Accordingly, all Building Code required items will be addressed, when a specific structure, occupancy, and type of construction is proposed and submitted for plan review.

Deschutes County Onsite Wastewater, Todd Cleveland

This proposal raises a few concerns with the Onsite Wastewater Division that need to be addressed.

1. Location approval criteria (DCC 13.08): The proposal appears to impact large portions of the property with vehicular traffic. This is a conflict with onsite wastewater systems. The existing system serving the residence has no identified replacement area nor is an area set aside on the basic site plan. This is concerning because when the existing system for the residence fails and needs replacement there does not appear to be an adequate area meeting all setbacks and free of traffic that could be used for a future replacement system. A portion of the property, preferably near the existing system should be established and protected as a complete system replacement area. This may require a complete approved site evaluation.

2. The proposal seems to be permanent with extensive use of the property for events, classes and training. With no limits to the use, portable toilets may not be an appropriate option. Restrooms with running water and full facilities, including lavatories, are more suitable for permanent use facilities to provide proper sanitary facilities. This would create the need for a proper onsite wastewater system. This proposal does not appear to be a limited-use recreational facility. High use parks tend to need permanent infrastructure.

Oregon Administrative Rules for Nonwater-Carried Systems (OAR 340-071-0330(2)) Nonwater-carried waste disposal facilities may be approved for temporary or limited-use areas, including but not limited to recreation parks, camp sites, farm labor camps, or construction sites. If this can be established as a limited use recreation park, portable toilets and handwash stations that are owned, operated and maintained by a licensed sewage disposal services may be an option for use.

Deschutes County Senior Transportation Planner, Peter Russell

I have reviewed the transmittal materials for 247-22-000812-CU/813-SP for a recreation-oriented facility (outdoor motocross track) on a 6.57-acre parcel in the Rural Residential (RR-10) and Airport Safety (AS) zones at 7505 NW Eagle Dr., aka County Assessors Map 15-12-11, Tax Lot 600.

The most recent edition of the Institute of Traffic Engineers (ITE) Trip Generation Handbook does not have a category for a motocross track. The applicant's burden of proof on Page 6 lists the range of expected trips, which vary seasonally. The highest rate is 10 vehicles a day, which equates to 20 weekday trips and the lowest is two vehicles a day which equates to four weekday trips. Deschutes County Code (DCC) at 18.116.310(C)(3)(a) states no traffic analysis is required for any use that will generate less than 50 new weekday trips. The proposed land use will not meet the minimum threshold for additional traffic analysis.

The property accesses NW Eagle Drive, which is a public road maintained by Deschutes County and functionally classified as a local road. The property has a driveway permitted by Deschutes County (247-22-007773-DA) and therefore the access permit requirements of DCC 17.48.210(A) are met.

Board Resolution 2013-020 sets a transportation system development charge (SDC) rate of \$5,080 per p.m. peak hour trip. For land uses that have neither an ITE category nor an analogous use, staff uses the Home Occupation land uses from DCC 18.116.280 as a proxy. Based on the applicant's burden of proof the motocross track from a transportation standpoint resembles a Type 3 Home Occupation as DCC 18.116.280(E)(7) creates no more than 20 business trips a day. A Type 3 Home Occupation by policy is assumed to generate one peak hour trip. Therefore the applicable SDC is \$5,080 (\$5,080 X 1). The SDC is due prior to issuance of certificate of occupancy; if a certificate of occupancy is not applicable, then the SDC is due within 60 days of the land use decision becoming final.

THE PROVIDED SDC AMOUNT IS ONLY VALID UNTIL JUNE 30, 2023. DESCHUTES COUNTY'S SDC RATE IS INDEXED AND RESETS EVERY JULY 1. WHEN PAYING AN SDC, THE ACTUAL AMOUNT DUE IS DETERMINED BY USING THE CURRENT SDC RATE AT THE DATE THE BUILDING PERMIT IS SUBMITTED.

The following agencies did not respond to the notice: Deschutes County Assessor, Deschutes County Environmental Health, Deschutes County Road Department, Deschutes County Sheriff, Oregon Department of Environmental Quality, Oregon Department of Aviation (Project & Planning Division), Oregon Department of Transportation, and Redmond Fire & Rescue.

PUBLIC COMMENTS: The Planning Division mailed notice of these applications to all property owners within 250 feet of the subject property on October 20, 2022. 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 October 20, 2022. No public comments were received.

REVIEW PERIOD: The subject applications were submitted on October 11, 2022. On November 10,

2022, the County mailed an incomplete letter to the applicant requesting additional information necessary to complete the review. The applicant provided responses to the incomplete letter on April 5, 2022, and notified the County that no additional information would be submitted. For this reason, the application was deemed complete on April 5, 2022, and a public hearing before a Hearings Officer was scheduled for May 2, 2023. The County mailed a Notice of a Public Hearing to all parties on April 7, 2023, and published a Public Notice in the Bend Bulletin on April 9, 2023. The 150th day in which the County must take final action on the subject application is September 11, 2023.

III. FINDINGS & CONCLUSIONS

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.60, Rural Residential Zone (RR-10)

Section 18.60.020. Conditional Uses Permitted.

The following uses may be allowed subject to DCC 18.128:

- G. Recreation-oriented facility requiring large acreage such as off-road vehicle track or race track, but not including a rodeo grounds.***

FINDING: As noted above, the Applicant has requested conditional use approval for a ROF requiring large acreage. The Applicant summarizes the proposed use as follows on pg. 5 of the Burden of Proof Statement (Amended 3.23.2023):

The proposed recreation-oriented facility requiring large acreage will be located on a property +/- 6.57 acres in size and this proposal will occupy more than 6 acres of the parcel. Each course will be utilized for different abilities and skills training.

Staff believes this RR10 use category has a two-prong test:

- 1. The proposed use must be a recreation-oriented facility; and
- 2. The proposed facility must require large acreage.

The Title 18 definitions section (DCC 18.04.030) does not define “recreation-oriented facility”. Nevertheless, this use category identifies similar uses to the Applicant’s proposal as a ROF (i.e. an off-road vehicle track or race track). For this reason, staff finds the Applicant’s proposal meets the first prong of the test.

The second prong of the test requires a determination that the proposed ROF “require[es] large acreage”. Staff believes consideration of similar County approvals and the minimum lot size in the RR10 Zone may offer guidance and on how to interpret this requirement. Staff searched County records for similar approved facilities and found the following reviews and approvals:

File Nos.	Type of ROF	Property Size	Final Reviewing Body
CU-99-87 SP-99-31	A golf facility including an 18-hole pitch, putt courses, a driving range, and pro shop.	27.9 acres	Administrative Review
SP-02-23 ⁴	Sports Complex Park including sports fields, two airstrips for remote-controlled model airplanes, a playground, a BMX bicycle track and a mountain bike trail.	40 acres	Hearings Officer
247-14-000238-PS 247-14-000274-A 247-14-000452-A 247-14-000453-A	A Land Use Compatibility Statement (LUCS) review for a ski lake	79 acres	BOCC ⁵
247-17-000636-CU 247-17-000640-SP 247-17-000641-LM	Conditional Use and Site Plan approval for: 1. A ski lake ⁶ ; and 2. Passive recreational uses including non-motorized boating and swimming in a second reservoir.	ROF 1 = 12.11 acres ROF 2 = 20 acres	BOCC ⁷

As part of the Hearings Officer’s review of the ski lake (file no. 247-14-000-238-PS, 247-14-000274-A), the Hearings Officer found on pg. 21 of the decision:

Title 18 does not define “recreation-oriented facility.” Webster’s New World Dictionary and Thesaurus, Second Edition, includes the following relevant definitions:

“Recreation: any form of play, amusement, etc. used to relax or refresh the body or mind.

Orient: to adjust . . . to a particular situation.”

Based on these definitions, the Hearings Officer finds a “recreation-oriented facility” is one that is designed and constructed to provide opportunities for recreational activity. I find at

⁴ Staff notes this property has a complicated land use history and there are additional land use approvals associated with the ROF. This land use decision was the most recent review for the ROF.

⁵ This BOCC decision was appealed to the Land Use Board of Appeals (LUBA) and it was found the County correctly categorized the use. Ultimately, LUBA dismissed/transferred the appeals (LUBA Nos. 2015-027, 2015-28, 2015-030).

⁶ This was the same ski lake that was reviewed as part of the LUCS described above.

⁷ The County’s decision was affirmed by LUBA and the Oregon Court of Appeals (LUBA Nos. 2018-111, 2018-112 and A171098).

least the southern reservoir’s design and use as a water-skiing lake is a recreation-oriented facility. I further find it is one “requiring large acreage such as an off-road vehicle track or race track” because a boat and skier(s) towed behind the boat require a large water surface area to safely and effectively maneuver, including making turns.

The Hearings Officer’s decision was appealed to the Board of County Commissioners (BOCC) and, as part of their review, the Board adopted the following findings (appeal nos. 247-14-000452-A, 247-14-000453-A):

The Board adopts and incorporates herein by reference the Hearings Officer's findings regarding use of the Property for recreation-oriented facilities requiring large acreage, as set forth on page 20- 21 of the Hearings Officer' s Decision. Additionally, the Board finds as follows:

...

DCC section 18. 60.030 permits conditionally in the RR-10 zone "recreation-oriented facility requiring large acreage such as off-road vehicle track or race track," Title 18 does not define recreation-oriented facility." The Hearings Officer relied on Webster's New World Dictionary and Thesaurus, Second Edition that includes the following relevant definitions:

“Recreation: any form ofplay, amusement, etc. used to relax or refresh the body or mind.

Orient: to adjust. . . to a particular situation."

The Board agrees with the Hearings Officer's finding that a “recreation-oriented facility" is one that is designed and constructed to provide opportunities for recreational activity. Therefore, the Board finds that the southern reservoir is a "recreation-oriented facility requiring large acreage," as that term is used in DCC 18.60.030.

The Applicant provided the following responses on pgs. 3 and 5 of the Burden of Proof Statement (Amended 3.23.2023):

The subject property acreage is adequate to accommodate the use as intended by the code section. The applicant has used the proposed as a private recreation facility since 1999. The subject property is 6.57 acres, per the County Assessor, and larger than 91.9% of all Deschutes County “DC” RR10 Zoned parcels. The average of all 18,231 DC RR10 parcels is 2.77 acres⁸. Example of Deschutes River Woods; Comparing the subject parcel with all RR10 lots in Deschutes River Woods platted lots, the subject property is also larger than 99.71% of these lots. Of the lots in all of Deschutes River Woods, all zoned RR10, 98% are under 2 acres in size, 2,066 of 2,077 lots are under 2 acres in size per the Deschutes County Assessor. See EXHIBIT RR10 Comparison. This code language says recreational uses that require “large acreage” and then expressly enumerates “off-road vehicle track or race track” as such a use that is consistent with the language and intent of the code. The recreation use as an off-road track is demonstrated on the site plan. The site plan demonstrates there is sufficient acreage to

⁸ Ines Curland, Deschutes County CDD Application Systems Analyst II, accessed the Assessor’s data and found 17,926 tax lots have full or partial RR10 zoning and the average size was 3.88 acres.

accommodate the use. The express language, "off-road track", is exactly what the proposed use is and thus is within the intent use as allowed by the code section.

...

The proposed recreation-oriented facility requiring large acreage will be located on a property +/- 6.57 acres in size and this proposal will occupy more than 6 acres of the parcel. Each course will be utilized for different abilities and skills training. IE The SX & AX2 and FMX Courses will require advanced skills and or professional credentials. Because of this very little, if any, use may occur. Whereas, the AX1 and Turn Courses are for new beginning level riders or low skilled riders. When having a group school there may be 5 riders on AX1, 5 on the Turn Course and 3 on the SX/AX2 courses at any given time.

It's unclear to staff whether the subject property must meet the RR10 minimum lot size requirements for the use to be consider a ROF requiring large acreage. Additionally, the threshold for what is "large acreage" is unclear. For these reasons, staff asks the Hearings Officer to make clear findings on whether the Applicant's proposal is a ROF *requiring large acreage*.

Section 18.60.040. Yard and Setback Requirements.

In an RR 10 Zone, the following yard and setbacks shall be maintained.

- A. The front setback shall be a minimum of 20 feet from a property line fronting on a local street right of way, 30 feet from a property line fronting on a collector right of way and 50 feet from an arterial right of way.***
- B. There shall be a minimum side yard of 10 feet for all uses, except on the street side of a corner lot the side yard shall be 20 feet.***
- C. The minimum rear yard shall be 20 feet.***
- D. The setback from the north lot line shall meet the solar setback requirements in DCC 18.116.180.***
- E. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.***

FINDING: The submitted application materials state "there are no proposed structures" and included the following responses on pgs. 6-7 of the Burden of Proof Statement (Amended 3.23.2023):

Ordinance 94-008 Section 11 I. "motorcycle tracks". Applicant recognizes 18.04.030 and confirms there are no buildings or structures within the setbacks, with exception of the identified telephone poles and preexisting barb wire fence. There are potential obstacles or berms within the setbacks. See "EXHIBIT COURSE OBSTACLES" & "EXHIBIT COURSE OBSTACLES Detail". Applicant's legal advisement is the obstacles or berms made of native soil from the subject parcel can be used or placed within the setbacks. Just as fences, gardens, trees and/or yard usage is allowed applicant proposes to utilize the property and agrees to not have structures or buildings within the setbacks. Applicant will agree to move proposed "ground"/native soil to grade if conditioned by staff. There shall be a minimum side yard of 10 feet for all uses, except on the street side of a corner lot the side yard shall be 20

feet.

The applicant will abide by yard and setbacks per [DCC 18.60.040]A. B. & C for any improved structures. This can me be made a condition of approval.

[DCC 18.60.40(C-D)] Not applicable as no structures are being built.

There are proposed berms between the course and property lines. The courses are made up of preexisting soil, primarily at grade with the field they are within. There are no construction materials within the courses, only preexisting soil.

As to DCC 18.04.030 "building" means a structure built for the support, shelter ore enclosure of persons, animals, chattels or property of any kinds and "structure" means something constructed or built having a fixed base on, or fixed connection to the ground or another structure. The obstacles are made of native soil. The obstacles create the course. The obstacles and courses are not connected to another structure or have a fixed base. The obstacles and courses are the "ground"/native soil. The obstacles and courses do not support persons, animals, structures or other property of any kind. Applicant will agree to move proposed "ground"/native soil to grade if conditioned by staff.

Staff believes the Applicant's proposal may include "structures" and/or "buildings". For this reason, staff asks the Hearings Officer to make clear findings on this issue and whether setbacks apply to any portions of the Applicant's proposed ROF.

DCC 18.04.030 establishes the following definitions:

"Building" means a structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

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

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

"Yard, front" means a yard between side lot lines measured horizontally at right angles to the front lot line from the front lot line to the nearest point of a building. Any yard meeting this definition and adjoining on a street other than an alley shall be considered a front yard.

"Yard, rear" means a yard between side lot lines measured horizontally at right angles from the rear lot line to the nearest point of a building.

"Yard, side" means a yard between the front and rear yard measured horizontally at right angles from the side lot lines to the nearest point of a building.

The proposed courses include earthen berms and, based on a staff site visit, manmade ramps and wooden platforms (see *Figures 1-3* below). The term “berm” is not defined under DCC 18.04.030 and it is unclear to staff if the ramps and platforms observed by staff are affixed to the ground. Additionally, it is unclear to staff if the Applicant will be removing existing berms located adjacent to the front and rear lot lines to match the areas identified in Exhibit Course Obstacles as “no obstacles or height variances”.

Figure 1 – Subject Property Looking North-Northeast from NW Eagle Drive



Source: Staff Site Visit 4/18/2023

Figure 2 – Proposed Course Berm located in the Front Yard Setback



Source: Staff Site Visit 4/18/2023

Figure 3 – Existing Berms located in the Rear Yard Setback (North Property Line)



Source: Staff Site Visit 4/18/2023

Staff believes prior County findings related to the review requirements for berms and/or similar improvements may assist the Hearings Officer in his review. For example, the following Hearings Officer finding from the LUCS review for the ski lake reference above⁹ may be instructive on whether the proposed berms are considered a “structure”:

The term “reservoir” is not defined in Title 18. Its ordinary definition is “a place where water is collected and stored for use.” Webster’s New World Dictionary and Thesaurus, Second Edition. “Impoundment” is defined in Section 18.04.030 as “any man-made structure which is or may be used to impound water.” That section also defines “structure” as “something constructed or built having a fixed base on, or fixed connection to, the ground or another structure” (emphasis added). TID argues the new reservoirs on the subject property are not “structures” because they are not “built” or “constructed.” The Hearings Officer disagrees.

The ordinary definitions of “build” and “construct,” respectively, are:

“Build: 1) to make by putting together materials, parts, etc., 2) to establish, base; 3) to

⁹ Reference file/appeal nos. 247-14-000238-PS, 247-14-000274-A. These findings were subsequently adopted as part of the BOCC’s decision (ref. appeal nos. 247-14-000452-A, 247-14-000453-A.

create or develop.

Construct: to build, devise, etc." Webster's New World Dictionary and Thesaurus, Second Edition.

The Hearings Officer finds the evidence in the record clearly shows the new reservoirs on the subject property were "built" or "constructed" within the reclaimed mining pits on the Klippel mining site. As discussed in the Findings of Fact above, at the time the subject property was rezoned from SM to RR-10, the Klippel site had been reclaimed by grading and re-contouring the mining pits and reseeding them with pasture grasses to prevent erosion. The numerous aerial and ground-level photographs of the subject property in the record, confirmed by my site visit observations, show the new reservoirs bear little if any resemblance to the reclaimed and reseeded mining pits that existed at the time of rezoning. The pits have been converted to reservoirs by excavating and grading the areas for holding water, building islands at each end of the southern reservoir, lining both reservoirs with an impermeable fabric, and affixing that fabric to the ground with an overlay of sand and gravel. For these reasons, I find the reservoirs clearly fall within the definition of "structure."

Regarding compliance with setbacks in the Flood Plain Zone, a Hearings Officer made the findings as part of her review for a pond expansion (ref. file no. 247-15-000221-CU¹⁰) and staff believes the findings may be instructive on whether the Applicant's proposed berms are considered a "structure" and/or a "building":

...The pond and berm are setback over 50 feet from any property line. I find that the berm is subject to setback requirements, as it an obstruction above the ground. (See DCC 18.04.030 definition of "yard" and the Hearings Officer's analysis of "structure" in 247-14-000-238-PS, p. 16). I conclude that there is a difference between a "building," which the pond and berm do not meet the county Code definition, and a "structure," which has a fixed connection to the ground. These criteria are met.

...

As set forth by the Hearings Officer in the decision in File No. 247-14-000-238-PS (KCDG), as affirmed by the Board, the term "structure" includes development such as the pond and berm. Structure is defined in DCC 18.04.030 as "something constructed or built having a fixed base on, or fixed connection to, the ground or another structure." The new pond has a fixed connection to the ground. Accordingly, I find it is a structure. The applicant argued that the KCDG decision is distinguishable because it proposed a different type of lake liner and also included a dock area and boat ramp. Here, the new pond similarly includes a boat ramp, although the applicant has stated it will only be used to access, install and maintain the heating and cooling pump. The Hearings Officer finds the applicant's arguments in this regard unpersuasive.

Staff also recommended that a more limited definition of "structure" be applied in this

¹⁰ Staff notes the applicant for this request withdrew their application after the Hearings Officer's decision was issued.

Decision. However, the only exception from the definition of "structure," set forth in DCC 18.96.030 with respect to FP regulations, has been limited to "not include a boundary fence as long as such fence is designed to impede as little as possible the movement of floodwaters and flood carried material." This Hearings Officer cannot amend the Code on her own volition, even if staff's observation that a more limited definition of structure as set forth in FEMA requirements would arguably be consistent with the purpose of county floodplain management regulations. The Board of County Commissioners may wish to consider an amendment to the Code (if and when proposed) to further limit the definition of "structure" in the FP zone.

Additionally, the Hearings Officer and the BOCC¹¹ required any berms to comply with the 150-foot setback under DCC 18.113.060(G)(2)(3) as part of the Conceptual Master Plan approval for an expansion of the Caldera Springs Destination Resort.

Based on this information, staff asks the Hearings Officer to make clear findings on whether the proposed berms are "buildings" and/or "structures" subject to RR10 yard setback requirements. Additionally, staff asks the Hearings Officer to determine if any other buildings or structures are proposed.

Section 18.60.050. Stream Setbacks

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

- A. All sewage disposal installations, such as septic tanks or septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.***
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.***

FINDING: The property is not adjacent to a stream or lake. Therefore, this criterion will be met.

Section 18.60.060. Dimensional Standards.

In an RR 10 Zone, the following dimensional standards shall apply:

- A. Lot Coverage. The main building and accessory buildings located on any building site or lot shall not cover in excess of 30 percent of the total lot area.***

¹¹ Reference files nos. 247-15-000464-CU, 247-18-000009-A.

FINDING: It is unclear to staff if any “buildings” are proposed as part of this proposal. Staff asks the Hearings Officer to address this requirement as part of his review.

B. *Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.*

FINDING: As noted above, there appear to be manmade ramps and/or wooden platforms incorporated into the proposed courses/tracks. If the Hearings Officer finds these improvements are “buildings” or “structures”, staff recommends a condition of approval be added to ensure compliance.

Section 18.60.070. Limitations On Conditional Uses.

The following limitations shall apply to uses allowed by DCC 18.60.030:

A. *The Planning Director or Hearings Body may require establishment and maintenance of fire breaks, the use of fire resistant materials in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce fire hazards or prevent the spread of fire to surrounding areas.*

FINDING: The Applicant provided the following response to this criterion on pg. 8 of the Burden of Proof Statement (Amended 3.23.2023):

Materials for track/course and accessory areas will be comprised of fire resistant materials. The native dirt will be used with no vegetation mitigated using heavy equipment. Heavy equipment will also be used to grade, eliminate any vegetation and maintain dirt and/or gravel placement. Materials used are the native soils for the courses and dirt parking areas. Gravel will be placed and maintained as required by Staff. All vehicular parking and maneuvering areas will be exclusively be on dirt or graveled surface areas. The courses will be comprised of existing soil/dirt. The courses are already built and in place. No vehicular, parking or maneuvering areas will be outside of dirt and/or graveled areas.

Staff asks the Hearings Officer to determine if any conditions or limitations need to be established, associated with the proposed ROF, to reduce fire hazards or prevent the spread of fire to surrounding areas.

B. *The Planning Director or Hearings Body may limit changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation in order to prevent or minimize erosion or pollution.*

FINDING: The Applicant provided the following response to this criterion on pg. 8 of the Burden of Proof Statement (Amended 3.23.2023):

Subject property and surrounding parcels have been flat farm and/or shooting range lands prior to 1980. The natural vegetation is primarily wild oats planted by prior farming operations with some native brush and tumbleweeds. Applicant will mitigate erosion and

dust pollution by implementing a water plan (water truck) & heavy equipment/skidsteer when needed or preparing the surface to not cause dust. Primary operation will occur in the Fall/Winter/Spring when soil has water content and dust is not emitted. Applicant agrees to A. & B. as the proposed courses have not caused erosion or pollution outside of the areas of current activity over 15 years of use. Applicant will be agreeable to conditions that will prevent or minimize erosion or pollution. See "EXHIBIT Neighbor Statements".

Staff believes the Applicant's proposal generally addresses the erosion and dust pollution impacts associated with the proposed use. However, staff recommends all existing trees on the site be retained. Staff asks the Hearings Officer to determine if any conditions to limit changes in the natural grade of land, or the alteration, removal or destruction of natural vegetation are needed to prevent or minimize erosion or pollution.

Section 18.60.080. Rimrock Setback.

Setbacks from rimrock shall be as provided in DCC 18.116.160.

FINDING: There is no rimrock in the project vicinity.

Chapter 18.80, Airport Safety Combining Zone (AS)

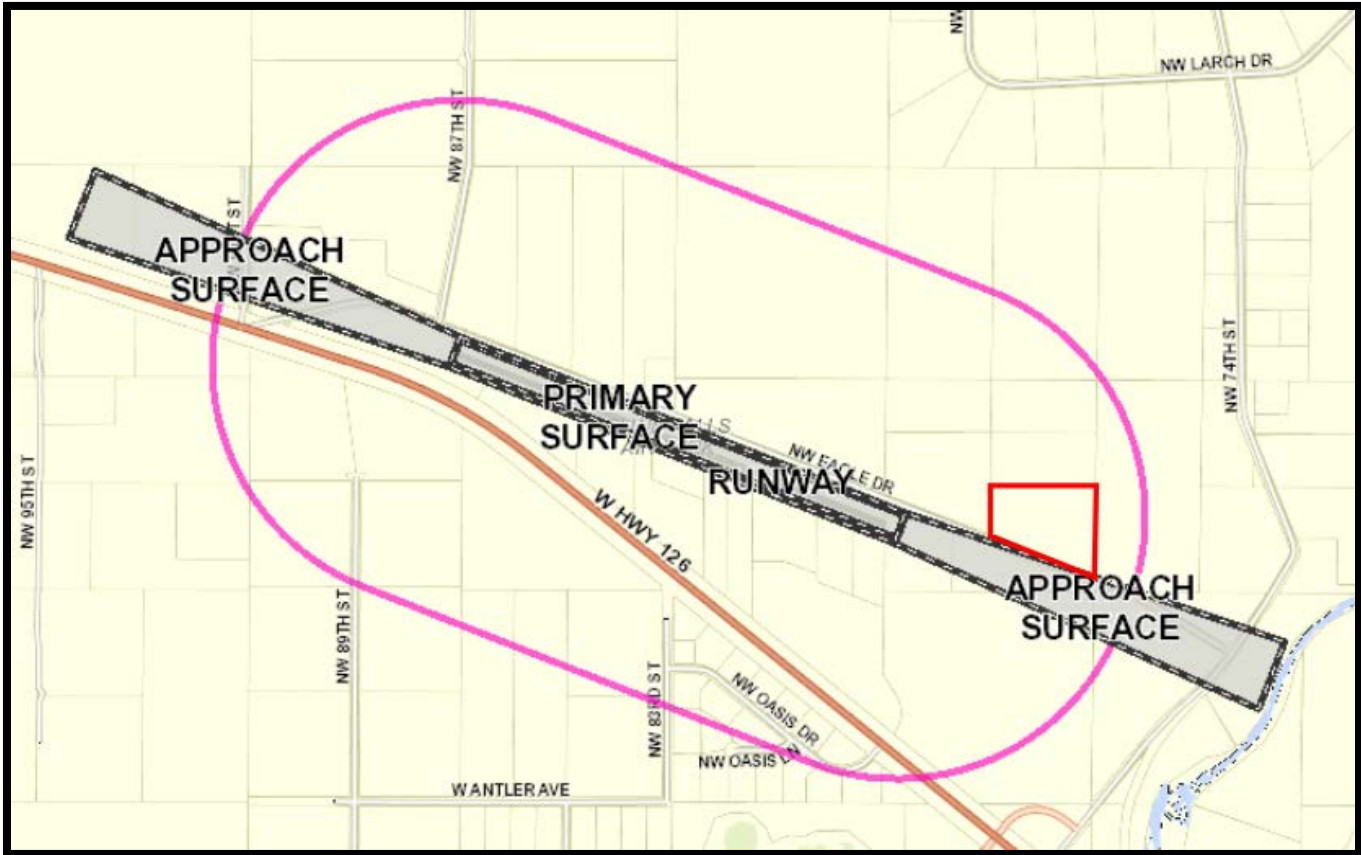
Section 18.80.024. Imaginary Surface and Noise Impact Boundaries.

For the Redmond, Bend, Sunriver, and Sisters airports, the airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface shall be delineated for each airport subject to this overlay zone and shall be made part of the official Zoning Map. All lands, waters and airspace, or portions thereof, that are located within these boundaries (including direct and secondary impact boundaries) or surfaces shall be subject to the requirements of this overlay zone.

For the Cline Falls and Juniper airports, The airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface and approach surface shall be delineated for each private use airport subject to this overlay zone and shall be made part of the official Zoning Map. All lands, waters and airspace, or portions thereof, that are located within these surfaces shall be subject to the requirements of this overlay zone.

FINDING: The subject property is not located under any of the imaginary surfaces for the Cline Falls Airpark. However, the subject property is located within the Noise impact Boundary for the Cline Falls Airpark (see *Figure 4* below). Therefore, the provisions of this chapter apply.

Figure 4 – Cline Falls Airpark Noise Impact Boundary (Pink) & Subject Property (Red)



Section 18.80.028. Height Limitations.

All uses permitted by the underlying zone shall comply with the height limitations in DCC 18.80.028. When height limitations of the underlying zone are more restrictive than those of this overlay zone, the underlying zone height limitations shall control. [ORS 836.619; OAR 660-013-0070]

- A. Except as provided in DCC 18.80.028(B) and (C), no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface. [ORS 836.619; OAR 660-013-0070(1)]**
- B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development penetrate or would penetrate the airport imaginary surfaces, a local government may authorize structures up to 35 feet in height.**
- C. Other height exceptions or variances may be permitted when supported in writing by the airport sponsor, the Department of Aviation and the FAA. Applications for height variances shall follow the procedures for other variances and shall be subject to such conditions and terms as recommended by the Department of Aviation and the FAA (for Redmond, Bend and Sunriver.)**

FINDING: The subject property is not located under an imaginary surface of the Cline Falls Airpark.

These criteria does not apply.

Section 18.80.044. Land Use Compatibility.

Applications for land use or building permits for properties within the boundaries of this overlay zone shall comply with the requirements of DCC 18.80 as provided herein. When compatibility issues arise, the Planning Director or Hearings Body is required to take actions that eliminate or minimize the incompatibility by choosing the most compatible location or design for the boundary or use. Where compatibility issues persist, despite actions or conditions intended to eliminate or minimize the incompatibility, the Planning Director or Hearings Body may disallow the use or expansion, except where the action results in loss of current operational levels and/or the ability of the airport to grow to meet future community needs. Reasonable conditions to protect the public safety may be imposed by the Planning Director or Hearings Body. [ORS 836.619; ORS 836.623(1); OAR 660-013-0080]

- A. Noise. Within airport noise impact boundaries, land uses shall be established consistent with the levels identified in OAR 660, Division 13, Exhibit 5 (Table 2 of DCC 18.80). Applicants for any subdivision or partition approval or other land use approval or building permit affecting land within airport noise impact boundaries, shall sign and record in the Deschutes County Book of Records, a Declaration of Anticipated Noise declaring that the applicant and his successors will not now, or in the future complain about the allowed airport activities at the adjacent airport. In areas where the noise level is anticipated to be at or above 55 Ldn, prior to issuance of a building permit for construction of a noise sensitive land use (real property normally used for sleeping or as a school, church, hospital, public library or similar use), the permit applicant shall be required to demonstrate that a noise abatement strategy will be incorporated into the building design that will achieve an indoor noise level equal to or less than 55 Ldn. [NOTE: FAA Order 5100.38A, Chapter 7 provides that interior noise levels should not exceed 45 decibels in all habitable zones.]**

FINDING: As noted above, the subject property is located within the Noise Impact Boundary for the Cline Falls Airpark. DCC 18.80 Table 2, Noise Compatibility establishes restrictions on certain uses in close proximity to an airport. Staff believes the following use categories and potential compatibility restrictions from Table 2 may apply to the Applicant’s proposal:

Land Uses	Yearly Day-Night Average Sound Levels (DNL) in decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
Recreational						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N

Numbers in parentheses refer to notes.

***The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.**

Key to Table:

Y (Yes) = Land Use and related structures compatible without restrictions.

N (No) = Land Use and related structures are not compatible and should be prohibited.

Notes for Table 2:

...

5. Land use compatible provided special sound reinforcement systems are installed.

The Deschutes County GIS mapping program (DIAL) shows the subject property is within the 55 DNL contour. However, it is unclear to staff what the expected yearly DNL in decibels will be at proposed ROF and whether the use fits within those identified in Table 2. The Applicant did not clearly address what is the expected yearly DNL or how the proposal complies with Table 2. In similar instances, applicants have hired an acoustical engineer to address the requirements of this subsection. Staff notes the noise level from the use itself may be at higher decibels than what is expected from aircraft and staff assumes riders will be wearing helmets that will likely have sound dampening features. For these reasons, staff asks the Hearings Officer to verify if the Applicant has demonstrated compliance with requirements of DCC 18.80 Table 2.

As part of a previous land use approval, the property owner has recorded a Declaration of Anticipated Noise (reference Deschutes County Official Records of Deschutes County as instrument number 2001-36494). Therefore, staff finds this requirement has been met. Additionally, staff finds the proposed use is not considered a noise sensitive use. Therefore, no noise abatement strategy, as described under this subsection, is required to be incorporated into the Applicant's proposal.

B. Outdoor lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

FINDING: The proposal is a recreational use. Therefore, the use cannot project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces and all lighting must incorporate shielding in their designs to reflect light away from airport approach surfaces. As shown

in Figure 5 below, the Approach Surface associated with Cline Falls Airpark abuts the south property line and the airport runway is nearby.

Figure 5 – Cline Falls Airpark Approach Surface/Runway & Subject Property (Red)



The Applicant provided the following response to this criterion on pgs. 23-24 of the Burden of Proof Statement (Amended 3.23.2023):

Below is an image of the lighting to be used. Lighting will pointed straight down or at a minimum of 45 degrees downward as shown. Applicant has contacted the Oregon Department of Aviation (ODA), Brandon Pike, requesting the verification the proposed lighting will not imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting. Sponsor from airport. See "EXHIBIT ODA RESPONSE TO LIGHTING" (Oregon Dept of Aviation). This Exhibit from ODA approved the two images below as long as they are adjusted downward. Applicant agrees to be conditioned that the subject lights be adjust downward on to the proposed courses. Applicant did obtain a Sponsor Letter from an airport resident and active pilot of Cline Falls Airpark. See "EXHIBIT SPONSOR LETTER SEAN VANHATTEN". Applicant has also been in contact with the Cline Fall Airport Board to obtain a Sponsor Letter and approval on the lighting items contained in DCC 18.80. (Doris Kelly is the agent & Secretary 541-548-5523. Ambers Thornburgh 541-480-9934 is President 19419 W HWY 126 Board meets quarterly including members: Ambers Thornburgh, Jerry Parks, Joe Shelton, Judy Moser, Janie Barton, Cheri Cooley, Cody Peden.



Staff reviewed the exhibits submitted by the Applicant and notes that ODA stated the Cline Falls Airpark is a private-use airport and is outside the State’s jurisdiction in terms of aviation. Nevertheless, staff believes the following excerpt from ODA’s response is noteworthy:

This is the type of code that is in place to ensure that hazardous situations are avoided or eliminated if and when they arise. I.e., if this were an airport under the State’s jurisdiction and we started receiving complaints about the lighting, that could be an indicator that the lighting doesn’t meet this standard. Based on your photos, the one of the left appears to meet our standards. The one on the right could go either way, depending on which directions the lights are pointed at a given time. Ultimately in this case, it’s up to the local jurisdiction to determine if your proposal meets their code.

Additionally, on April 14, 2023, the Applicant submitted a letter from the elected officers of the Cline Falls Airport Association stating:

Our airport is a day use only facility, having no lighting on the runway. Therefore, Justin’s lights would have little or no impact on our facility. We would ask that the lights be directed towards the ground as a courtesy to all surrounding neighbors.

On April 18, 2023, staff conducted a site visit¹² and has added the following photos of the lighting that was observed on the property at that time (see *Figures 6-8* below). Staff notes there appear to be four (4) different light poles within the proposed course/track areas. However, the Applicant’s submitted materials only identify three (3).

¹² Staff did not enter the subject property.

Figure 6 – Fixed Pole Mounted Lighting Located Along the Southeast Property Line



*Figure 7 – Exterior Lighting Located on the Southeastern Quarter of the Property
(Photo taken from NW Eagle Dr)*



Figure 8 – Light Poles Located in Course Areas during Staff Site Visit



Staff asks the Hearings Officer to confirm if the proposed lighting complies with this subsection and suggests conditions of approval be added for ongoing compliance.

- C. *Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.***

FINDING: Staff finds the proposed development is on nearby lands to the Cline Falls Airpark where glare could impede a pilot's vision. The Applicant does not propose any new structures as part of this request. However, staff has asked the Hearings Officer to make findings on this issue. To the extent the Hearings Officer finds structures are proposed, staff suggests a condition of approval be added to ensure ongoing compliance.

- D. *Industrial emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.***

FINDING: The proposed use is not an industrial, mining or similar use. This criterion does not apply.

E. *Communications Facilities and Electrical Interference. No use shall cause or create electrical interference with navigational signals or radio communications between an airport and aircraft. Proposals for the location of new or expanded radio, radiotelephone, and television transmission facilities and electrical transmission lines within this overlay zone shall be coordinated with the Department of Aviation and the FAA prior to approval. Approval of cellular and other telephone or radio communication towers on leased property located within airport imaginary surfaces shall be conditioned to require their removal within 90 days following the expiration of the lease agreement. A bond or other security shall be required to ensure this result.*

FINDING: The Applicant’s proposal does not include a sound system or communication facilities (e.g. a cellular and other telephone or radio communication towers). Additionally, no comments in the record from ODA, Cline Falls Airpark, or others indicate any concerns regarding electrical interference with navigational signals or radio communications between an airport and aircraft associated with the proposed use. For these reasons, staff finds the Applicant’s proposal complies with this criterion.

F. *Limitations and Restrictions on Allowed Uses in the RPZ, Approach Surface, and Airport Direct and Secondary Impact Areas. For the Redmond, Bend, Sunriver, and Sisters airports, the land uses identified in DCC 18.80 Table 1, and their accessory uses, are permitted, permitted under limited circumstances, or prohibited in the manner therein described. In the event of conflict with the underlying zone, the more restrictive provisions shall control. As used in DCC 18.80.044, a limited use means a use that is allowed subject to special standards specific to that use.*

FINDING: The subject property is not located within/beneath one of the surfaces identified above. This criterion does not apply.

Section 18.80.054 Conditional Uses.

Uses permitted conditionally shall be those identified as conditional uses in the underlying zone with which the AS Zone is combined, and shall be subject to all conditions of the underlying zone except as provided in DCC 18.80.044.

FINDING: The proposed use is permitted conditionally in the underlying zone. Above, staff identified the applicable criteria under DCC 18.80.044 and staff asks the Hearings Officer to confirm all the requirements have been met.

Chapter 18.116, Supplementary Provisions

Section 18.116.020, Clear Vision Areas.

- A. *In all zones, a clear vision area shall be maintained on the corners of all property at the intersection of two streets or a street and a railroad. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height, measured from the top of the curb or, where no curb exists, from the established street centerline grade, except that trees exceeding this height may be located in this area provided all branches and foliage are removed to a height of eight feet above the grade.*
- B. *A clear vision area shall consist of a triangular area on the corner of a lot at the intersection of two streets or a street and a railroad. Two sides of the triangle are sections of the lot lines adjoining the street or railroad measured from the corner to a distance specified in DCC 18.116.020(B)(1) and (2). Where lot lines have rounded corners, the specified distance is measured from a point determined by the extension of the lot lines to a point of intersection. The third side of the triangle is the line connecting the ends of the measured sections of the street lot lines. The following measurements shall establish clear vision areas within the County:*
 - 1. *In an agricultural, forestry or industrial zone, the minimum distance shall be 30 feet or at intersections including an alley, 10 feet.*
 - 2. *In all other zones, the minimum distance shall be in relationship to street and road right of way widths as follows:*

<i>Right of way Width</i>	<i>Clear vision</i>
<i>80 feet or more</i>	<i>20 feet</i>
<i>60 feet</i>	<i>30 feet</i>
<i>50 feet and less</i>	<i>40 feet</i>

FINDING: The subject property does not contain a clear vision area. These criteria do not apply.

Section 18.116.030, Off street Parking and Loading.

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

FINDING: As described herein, the off street parking and loading requirements are met. If the Applicant’s request is approved, staff recommends as a condition of approval, the subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

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

- 1. Commercial, industrial and public utility uses which have a gross floor area of 5,000 square feet or more shall provide truck loading or unloading berths subject to the following table:**

Sq. Ft. of Floor Area	No. of Berths Required
Less than 5,000	0
5,000-30,000	1
30,000-100,000	2
100,000 and Over	3

FINDING: Staff asks the Hearings Officer to determine if the proposed use is a commercial use. Nevertheless, the proposed development does not include floor area. This criterion does not apply.

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

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

FINDING: The proposed development does not include any floor area. No loading berth is required.

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

FINDING: No loading berth is required.

- 4. If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use.**

FINDING: No elimination of a loading space is proposed.

- 5. ***Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.***

FINDING: If the Applicant’s request is approved, staff recommends as a condition of approval, off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

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

FINDING: Staff finds this criterion requires parking be provided and maintained for all uses. As noted above, it is unclear to staff if the Applicant’s proposal includes any “buildings”. If yes and the Applicant’s request is approved, staff recommends as a condition of approval, required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use.

- D. ***Number of Spaces Required. Off-street parking shall be provided as follows:***

...

- 9. ***Other uses not specifically listed above shall be provided with adequate parking as required by the Planning Director or Hearings Body. The above list shall be used as a guide for determining requirements for said other uses.***

FINDING: The Applicant argues the proposed ROF is not a use listed under DCC 18.116.030(D)(1-8). Specifically, the Applicant provided the following response to this criterion on pg. 14 of the Burden of Proof Statement (Amended 3.23.2023):

[T]he applicant calculates 15 on-site vehicles would be the maximum number of vehicles. Two-three participants tend to arrive in a single vehicle and in some cases there would be one participant to one vehicle. The “EXHIBIT SITE PLAN DESIGN” does allow for larger parking stalls, but will limit large vehicles and/or trailers. Per this Exhibit there is enough parking for 30 spaces per DCC 18.116.030(G)(3). Applicant is not having any participant parking in the residence front yard & adjacent to Eagle Dr to address DCC 18.116.030 (E)(5.) &(F)(1.) screening with structures behind the residential home and barn. See “EXHIBIT SITE PLAN DESIGN (traffic flow)” to see parking spaces and building barriers. The parking spaces configuration utilizes the shown barn, residential home and Course Obstacles to screen vehicles from adjacent parcels. Per the “EXHIBIT STRUCTURES DISTANCES” parking spaces would be screened for TL606 & TL607 by the Course Obstacle “Jump 10'Hx20'Lx20'W” on “EXHIBIT COURSE OBSTACLES”, the Barn, residential home and existing trees for TL900. The remaining adjacent TL603 home is more than 750’ away from then parking spaces. The owner of TL603 & TL606 submitted a letter of support of this application and use attesting to the parking spaces not being a concern and mitigated well in the past. See “EXHIBIT Neighbor Statements” from BriAnna Peter, Cody Borges and Scot Clark.

It is unclear to staff if 15 *required* parking spaces will be sufficient if the ROF will have up to 20 riders as requested by the Applicant. For example, it is unclear to staff if additional people will arrive onsite with the rider or to spectate. Staff asks the Hearings Officer to address this issue and staff recommends a condition of approval be added that establishes a limit on the number of riders and other visitors on the site at any given time to ensure there is sufficient parking.

E. General Provisions. Off-Street Parking.

- 1. *More Than One Use on One or More Parcels. In the event several uses occupy a single structure or parcel of land, the total requirement for off-street parking shall be the sum of requirements of the several uses computed separately.***

FINDING: The total requirement for off-street parking is calculated as the sum of requirements of all on-site uses computed separately.

- 2. *Joint Use of Facilities. The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point of time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidence by a deed, lease, contract or other appropriate written document to establish the joint use.***

FINDING: Based on the Applicant’s site plan, the proposed ROF parking will be in a different area separate from single-family dwelling parking. Therefore, no joint use of parking facilities is proposed.

- 3. *Location of Parking Facilities. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located on the same parcel or another parcel not farther than 500 feet from the building or use they are intended to serve, measured in a straight line from the building in a commercial or industrial zone. Such parking shall be located in a safe and functional manner as determined during site plan approval. The burden of proving the existence of such off-premise parking arrangements rests upon the applicant.***

FINDING: The proposed required parking spaces are be located on the same parcel.

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

FINDING: Staff recommends as a condition of approval, required parking space shall be available for the parking of operable passenger automobiles of customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.

- 5. ***Parking, Front Yard. Required parking and loading spaces for multi-family dwellings or commercial and industrial uses shall not be located in a required front yard, except in the Sunriver UUC Business Park (BP) District, Airport Development (AD) Zone, and properties fronting Spring River Road in the Spring River Rural Commercial Zone, but such space may be located within a required side or rear yard.***

FINDING: As noted above, it is unclear to staff if the proposed use is a commercial use. Nevertheless, no required parking associated with the ROF will be located in a required front yard.

- 6. ***On-Street Parking Credit. Notwithstanding DCC 18.116.030(G)(2), within commercial zones in the La Pine Planning Area and the Terrebonne and Tumalo unincorporated communities, the amount of required off-street parking can be reduced by one off-street parking space for every allowed on-street parking space adjacent to a property up to 30% of the required off-street parking. On-street parking shall follow the established configurations in the parking design standards under DCC 18.116.030 Table 1. To be considered for the parking credit, the proposed parking surface, along the street frontage under review, must have a defined curb line and improved as required under DCC 17.48, with existing pavement, or an engineered gravel surface. For purposes of establishing credit, the following constitutes an on-street parking space:***
 - a. ***Parallel parking (0 degree), each 20 feet of uninterrupted curb;***
 - b. ***Diagonal parking (60 degree), each with 11 feet of curb;***
 - c. ***Perpendicular parking (90 degree), each with 10 feet of curb;***
 - d. ***Curb space must be connected to the lot that contains the use;***
 - e. ***Parking spaces that would not obstruct a required clear vision area, nor any other parking that violates any law or street standard; and***
 - f. ***On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street spaces are permitted.***

FINDING: No on-street parking is proposed.

- F. ***Development and Maintenance Standards for Off-Street Parking Areas. Every parcel of land hereafter used as a public or private parking area, including commercial parking lots, shall be developed as follows:***
 - 1. ***Except for parking to serve residential uses, an off-street parking area for more than five vehicles shall be effectively screened by a sight obscuring***

fence when adjacent to residential uses, unless effectively screened or buffered by landscaping or structures.

FINDING: The Applicant’s Exhibit Site Plan Design (Traffic Flow) shows there will be five (5) parking spaces on the north side of the existing barn. As noted in the Basic Findings section, the property abutting the north property line is developed with a single-family dwelling. The applicant argues, and staff agrees, that the proposed course obstacles will screen or buffer these parking spaces from this adjacent residential use (see Exhibit Course Obstacles and *Figure 9* below).

Figure 9 – Adjacent Single-Family Dwelling on the Property Abutting the Northern Property Line



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

FINDING: Staff recommends a condition of approval be added to ensure compliance.

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

FINDING: Parking spaces are located more than 100 feet from NW Eagle Drive and are therefore

designed to prevent the need to back vehicles into a street or right of way.

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

FINDING: The Applicant has requested an exception to the paving requirements. Specifically, the Applicant requests the following on pg. 17 of the Burden of Proof Statement (Amended 3.23.2023):

To mitigate dust the current soil surface in the parking area shown on "EXHIBIT SITE PLAN DESIGN" in yellow will be watered graded and compacted with heavy equipment to eliminate dust. When this soil is compacted it becomes very hard and emits no dust. (Pictures to be provided) A watering system/truck and gravel as conditioned will also insure gravel dust does not become problematic for neighboring properties. At other similar facilities typically do not use gravel because gravel emits more dust than compacted soil. Applicant is requesting an exception to paving or graveling for this reason."

Staff assumes, at a minimum, areas used for standing and maneuvering of vehicles must have a gravel surface to be considered an "all weather surface". Moreover, the BOCC found in *Shepherd* (247-14-000228-CU) that cinder is not an all-weather surface. Additionally, it is not clear if compacted soil will drain as to contain any flow of water on the site. For these reason, staff believes a soil surfaced parking area does not meet the requirements to be granted an exception under this section. Staff asks the Hearings Officer to make findings on whether the Applicant's proposal complies with these criteria.

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

FINDING: The applicant proposes two-way access aisles, which requires a minimum width of 24 feet. The Applicant's site plan is not drawn to scale. Therefore, staff is not able to confirm the 24-foot aisle width will be met. Additionally, the areas identified for parking/access do not match on the various plans (see highlighted areas on Applicant's Exhibit Site Plan vs. Exhibit Site Plan Design). Staff asks the Hearings Officer to confirm if the Applicant has demonstrated compliance with this criterion.

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

FINDING: For the purposes of this decision, staff finds a “service drive” includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space.

The proposed site plan shows there will be one (1) service drive for the proposed ROF accessed from NW Eagle Drive. The proposed two-way access aisle funnels traffic past the residential use on the property to the proposed parking area. Additionally, it appears there is a large turnaround area for vehicles at the north end of the parking lot. The proposed service drive is clearly marked by fencing and a gate. No “drive-in” establishment is proposed.

However, as noted above, the site plan is not drawn to scale. For this reason, staff cannot confirm the minimum aisle widths are met. It is also unclear if or how pedestrian walkways have been integrated into the site plan. Typically, landscaping and walkways provide for a safe design for pedestrians on the site. However, these details are not included in the submitted materials or an explanation on why they are not required. For these reasons, it is not clear if the Applicant has demonstrated compliance with these criteria and staff asks the Hearings Officer to make specific findings on this issue.

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

FINDING: For the purposes of this decision, staff finds a “service drive” includes any vehicle maneuvering surface that connects to a road or street, but is not immediately adjacent to a parking space. Staff finds “vision clearance area” became “clear vision area” in 1991 (Ord 91-038) but that this reference was not updated. For this purposed of this staff report, staff uses “vision clearance area” and “clear vision area” as the equivalent.

The subject property has a required service drive clear vision area located at driveway access point onto NW Eagle Drive. As proposed this area will contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three and one-half feet in height. Staff recommends a condition of approval that the service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A).

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

FINDING: Staff finds a curb or bumper rail are only needed under this criterion where needed to prevent a motor vehicle from extending over an adjacent property line or a street right of way. No parking area is immediately adjacent to a property line or a street right of way.

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

(SEE TABLE 1 AT END OF CHAPTER 18.116)

- 1. ***For one row of stalls use "C" + "D" as minimum bay width.***
- 2. ***Public alley width may be included as part of dimension "D," but all parking stalls must be on private property, off the public right of way.***
- 3. ***For estimating available parking area, use 300-325 square feet per vehicle for stall, aisle and access areas.***
- 4. ***For large parking lots exceeding 20 stalls, alternate rows may be designed for compact cars provided that the compact stalls do not exceed 30 percent of the total required stalls. A compact stall shall be eight feet in width and 17 feet in length with appropriate aisle width.***

FINDING: The applicant has not provided a drawn to scale site plan. For this reason, staff is not able to confirm the Applicant’s proposal complies with these criteria. The Applicant provided the following response on pg. 18 of the Burden of Proof Statement (Amended 3.23.2023):

Applicant has more parking area than required for the 10-15 anticipate vehicles. Applicant has calculated as shown on the “EXHIBIT SITE PLAN DESIGN” & “EXHIBIT SITE PLAN DESIGN (Traffic Flow)”.

Staff notes G(3) provides a methodology for *estimating* the area needed for a parking area. However, the Applicant cannot solely rely on this calculation to demonstrate compliance with these criteria, because the parking area must also reasonably accommodate a 24-foot-wide access aisle between opposing parking spaces.

For these reasons, staff asks the Hearings Officer to make findings on whether the Applicant has demonstrated compliance with these criteria.

Section 18.116.031, Bicycle Parking.

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

- A. ***Number and Type of Bicycle Parking Spaces Required.***

1. **General Minimum Standard.**

...

- c. **When the proposed use is located outside of an unincorporated community, a destination resort, and a rural commercial zone, exceptions to the bicycle parking standards may be authorized by the Planning Director or Hearings Body if the applicant demonstrates one or more of the following:**
 - i. **The proposed use is in a location accessed by roads with no bikeways and bicycle use by customers or employees is unlikely.**
 - ii. **The proposed use generates less than 50 vehicle trips per day.**
 - iii. **No existing buildings on the site will accommodate bicycle parking and no new buildings are proposed.**
 - iv. **The size, weight, or dimensions of the goods sold at the site makes transporting them by bicycle impractical or unlikely.**
 - v. **The use of the site requires equipment that makes it unlikely that a bicycle would be used to access the site. Representative examples would include, but not be limited to, paintball parks, golf courses, shooting ranges, etc.**

FINDING: The applicant has requested an exception to the bicycle parking standards. The proposed ROF is located outside of an unincorporated community, a destination resort, and a rural commercial zone. The Applicant provided the following response on pg. 19 of the Burden of Proof Statement (Amended 3.23.2023) to address the exception requirements:

Regarding 18.116.031 Bicycle Parking applicant is asking for an exception to include bicycle parking. Per 18.116.031 A. 1. c. (1)-(5), all below apply and/or are true.

- 1. The proposed use is in a location accessed by roads with no bikeways and bicycle use by customers or employees is unlikely.
- 2. The proposed use generates less than 50 vehicle trips per day.
- 3. No existing buildings on the site will accommodate bicycle parking and no new buildings are proposed.
- 4. The size, weight, or dimensions of the goods sold at the site makes transporting them by bicycle impractical or unlikely.
- 5. The use of the site requires equipment that makes it unlikely that a bicycle would be used to access the site. Representative examples would include, but not be limited to, paintball parks, golf courses, shooting ranges, etc.

Staff notes the Applicant’s only needs to demonstrate it meets one of exceptions described under i-v above. Staff agrees with the applicant’s reasons for granting an exception as described under 1, 2, and 5 of their response.

Section 18.116.035, Bicycle Commuter Facilities.

- A. Each commercial or public building having a work force of at least 25 people shall have bicycle commuter facilities consisting of shower(s) and changing rooms(s). For facilities with more than one building (such as a college), bicycle commuter facilities may be located in a central location.**
- B. This provision shall apply to (1) new development requiring off-street parking and (2) any construction, renovation or alteration of an existing use requiring a site plan review under DCC Title 18 for which planning approval is applied for after the effective date of Ordinance 93-005.**

FINDING: No commercial or public building having a work force of at least 25 people exists or is proposed for this site.

Chapter 18.120, Exceptions

Section 18.120.030, Exceptions to Yard Requirements.

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

...

- B. Architectural features such as cornices, eaves, sunshades, gutters, chimneys and flues may project into a required yard in accordance with DCC 18.116.100. Also, steps, terraces, platforms, porches having no roof covering and fences not interfering with the vision clearance requirements may project into a required yard. Signs conforming to the requirements of DCC Title 18 and all other applicable ordinances shall be permitted in required yards.**

FINDING: The exceptions to yard requirements are provided for reference. Staff notes these exceptions are specific to “yards” and do not apply to “setbacks” such as stream or rimrock setbacks.

Section 18.120.040, Building Height Exceptions.

- A. The following structures or structural parts are not subject to the building height limitations of DCC Title 18:**
 - 1. Chimneys, not more than three feet six inches above the highest point of the roof, vertical support structures for telephone and power transmission lines in utility easements or public rights-of-way, not requiring a site plan review as defined in DCC 18.124.060, flagpoles not exceeding 40 feet, agricultural structures as defined in DCC 18.04.030 not exceeding 36 feet, and amateur radio facilities as outlined in DCC Title 18.116.290. This exception does not apply to an Airport Development Zone, Airport Safety Combing Zone or Landscape Management Combining Zone.**

FINDING: The exceptions to height requirements are provided for reference. Staff note these exceptions are not applicable in the Airport Safety Combing Zone.

Chapter 18.124, Site Plan Review

Section 18.124.030. Approval Required.

- A. No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to DCC 18.124.030, nor shall such a use be commenced, enlarged, altered or changed until a final site plan is approved according to DCC Title 22, the Uniform Development Procedures Ordinance.**
- B. The provisions of DCC 18.124.030 shall apply to the following:**
 - 1. All conditional use permits where a site plan is a condition of approval;**
 - 2. Multiple family dwellings with more than three units;**
 - 3. All commercial uses that require parking facilities;**
 - 4. All industrial uses;**
 - 5. All other uses that serve the general public or that otherwise require parking facilities, including, but not limited to, landfills, schools, utility facilities, churches, community buildings, cemeteries, mausoleums, crematories, airports, parks and recreation facilities and livestock sales yards; and**
 - 6. As specified for Flood Plain Zones (FP) and Surface Mining Impact Area Combining Zones (SMIA).**
 - 7. Non-commercial wind energy system generating greater than 15 to 100 kW of electricity.**
- C. The provisions of DCC 18.124.030 shall not apply to uses involving the stabling and training of equine in the EFU zone, noncommercial stables and horse events not requiring a conditional use permit.**
- D. Noncompliance with a final approved site plan shall be a zoning ordinance violation.**
- E. As a condition of approval of any action not included in DCC 18.124.030(B), the Planning Director or Hearings Body may require site plan approval prior to the issuance of any permits.**

FINDING: The proposed use requires actions described in section (A), above, and falls within a use category described in section (B). Site plan review is required.

Section 18.124.060. Approval Criteria.

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

- A. The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.**

FINDING: In *Father’s House*, files 247-18-000061-CU, 247-18-000062-SP, 247-18-000624-A, and 247-18-000643-A, the Board of County Commissioners (Board) made the following finding regarding this standard.

The Board agrees that DCC 18.124.060(A) is subjective and, at times, difficult to apply as the Hearings Officer observed. However, as the Board interprets the provision, DCC

18.124.060(A) does not require a particularly onerous exercise. It requires an applicant to show that its proposed site plan relates “harmoniously” to the natural environment and existing development. Unlike the conditional use standards of DCC 18.128.015(B), this standard does not indicate harmony achieved with “surrounding properties.” However, the Board understands that the standard implies that the proposed development shall relate harmoniously on and off the subject property and generally speaking, in the vicinity, by “minimizing visual impacts and preserving natural features including views and topographical features.”

The code does not define what it means to “relate harmoniously.” The Hearings Officer reported that the online Oxford Living Dictionary defines “harmoniously” to mean arranging something “in a way that forms a pleasing or consistent whole.” Both parties in this case, provided various interpretations of the term “harmonious.” The Board is not adopting one interpretation of the term over another as each contributes equally to this evaluation. The Board concurs with the Hearings Officer that there is no “particularly useful case law defining or applying this term.” In addition, the Board agrees, that the Hearings Officer is correct that a site plan should be approved in light of this meaning of “harmonious,” so long as the proposed site plan does not create “more disharmony than other uses allowed by right or conditionally in the MUA-10 zone.” In this regard, the Board finds that this standard presumes the use is approved and evaluates only whether the site plan for the use “relates harmoniously.” The Board finds that the proposed church site plan meets the standard set forth in DCC 18.124.060(A).

Specifically, the Board interprets DCC 18.124.060(A) to mean that an applicant must demonstrate that the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features. Minimizing visual impact, as with this case, may include introduced landscaping, design layout, and specific design elements such as siding and roofing color and material. In doing so, this enables the County decision maker to find that the site plan’s impacts create no more disharmony than other uses allowed by right or conditionally in the MUA Zone.

The Board agrees, in part, with the Hearings Officer that this standard is considered differently when compared to the term “compatibility” and its associated standard of DCC 18.128.015(B). The chief differences between the two standards is that the DCC 18.128.015(B) compatibility standard evaluates the compatibility of the proposed use on existing and projected uses of surrounding properties and does so in light of specific factors that are not reproduced in DCC 18.124.060(A). The DCC 18.124.060(A) “harmonious” standard evaluates whether a proposed site plan “relates harmoniously to existing development and the natural environment” considering whether the site plan shows that the applicant has reasonably mitigated its impacts and reasonably preserved views. The Board observes that not every use that requires site plan approval also requires a conditional use permit. However, the Board finds that it is possible that a

permitted or approved use is arranged so poorly on a site, that a proposed site plan must be denied under this standard. That is not the case here.

Staff understands the Board’s findings, cited above, to make clear the use itself is not the subject of review under this criterion. Rather, this criterion only evaluates whether the site plan for the use “relates harmoniously.” Staff reads *Father’s House* to require a demonstration, “...the site plan has arranged the development in a way that evaluates the natural environment and existing development in the area and in the process has minimized visual impacts and reasonably preserved natural features including views and topographic features.”

The Applicant provided the following responses to this criterion on pg. 12 of the Burden of Proof Statement (Amended 3.23.2023):

[DCC 18.124.060] A. & E. were noted by planning during the pre-application meeting. The subject property and surrounding parcels have been flat farm land prior to 1980. The natural vegetation is primarily wild oats planted by prior farming owner with some native brush and tumbleweeds. Property is currently under farm remonstrance and airport noise declaration agreements, related to farming and airport activities, including noise, dust & topographical restrictions.

...
See “EXHIBIT SITE PLAN”. The subject parcel and its neighboring parcels to the South, North and West had been farmed prior with Wild Oats. These Wild Oats existed prior to 1999 when the owner purchased the subject property. On the Exhibit the Existing Structures, Use areas, Existing Driveways for Dwelling, Gate and Parking Access point, Trees, Light Poles, Electric/Telephone Poles and building improvements. See “EXHIBIT Site Plan Contour” & “EXHIBIT Course Obstacles” for on parcel contours. See “EXHIBIT Contour-Topography” for aerial contours related to subject parcel and surrounding parcels.

The natural topography of the subject property and surrounding area is generally level with little to no changes. The course/track areas that will be used for the proposed ROF are already developed on the subject property. In other words, the existing topography of the site has already been altered in conjunction with the existing use. Moreover, even if there were no existing course/track areas on the subject property, it is unclear to staff if it is possible to preserve the topography of the site given the nature and operating characteristics of the proposed use. For this reason, it is unclear how this standard is supposed to be applied to the Applicant’s proposal and staff asks the Hearings Officer to address this requirements of this criterion.

Staff notes it is does not appear the Applicant’s proposal includes any mitigation measures to minimize visual impacts. For example, there is no screening vegetation or similar buffering proposed along the property lines to minimize visual impacts. Staff asks the Hearings Officer to determine if the use needs to be screened or buffered to minimize visual impacts.

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

FINDING: As noted above, the proposed ROF will be established within the existing course/track areas on the subject property. Staff finds the landscape and existing topography will be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Staff finds all trees and shrubs existing on-site, not removed by necessity of the proposed development, must be “preserved trees and shrubs.” Staff recommends, as a condition of approval, all trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.

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

FINDING: The Applicant did not provide an explanation on how the site plan is designed to provide a safe environment as required under this criterion. Staff finds this criterion requires demonstration the site is designed to address common safety hazards, including fire safety, and to address any site-specific natural hazards. Staff believes more information is needed from the Applicant to demonstrate compliance with this criterion. For example, what measures are proposed to reduce conflicts between pedestrians on the site, the vehicular maneuvering areas, and/or riders on the courses/tracks? Is there sufficient demarcation between these areas to provide a safe environment?

Staff asks the Hearings Officer to verify if the Applicant has demonstrated compliance with this requirement.

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

FINDING: The Deschutes County Building Division was sent a request for comment on this application. In the State of Oregon, ORS 455.720 and 447.210 through 447.992 are administered by the Deschutes County Building Safety Division. Deschutes County Building Safety Division is required to determine if a structure is an Affected Building and if so, apply the appropriate sections of Chapter 11 and the American National Standards Institute code A117.1-2009. Consequently, the structures will comply with state and federal ADA requirements. If an Affected Building is approved, inspected and finalized by the Deschutes County Building Safety Division, it meets all code requirements as an accessible structure. Staff finds that such a review is required prior to the issuance of building permits.

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

FINDING: Staff finds this criterion is met where the described facilities provide for a safe and efficient flow of vehicular and pedestrian traffic. In addition, such facilities must be “harmonious with proposed and neighboring buildings and structures”. Staff finds this means that such facilities

must not significantly adversely impact on-site and/or neighboring proposed and existing buildings and structures.

The Applicant provided the following responses to this criterion on pg. 12 of the Burden of Proof Statement (Amended 3.23.2023):

The access point to the subject property is off of NW Eagle Dr, Deschutes County public road, 1/2 mile from HWY 126. There are no residences or driveways between HWY 126 and the subject property. Traffic will not be passing any dwelling between HWY 126 and access driveway. Parking as shown on the site design plan illustrates there is 4,450 sq feet of paved/graveled and 10,300 sq feet of packed dirt parking available for parking spaces, adequate for the proposed users and DCC. SEE "EXHIBIT SITE PLAN DESIGN", "EXHIBIT LANDMARK DISTANCES" & "EXHIBIT Neighbor Statements".

Staff finds the singular gated access point onto the site meets the requirements of this criterion. However, the County has only approved a *residential* driveway access point at this location. For this reason, the Applicant will need to apply for a new driveway access permit for the ROF as required under DCC 17.48.210(A). Staff recommends a condition of approval be added to ensure compliance.

It is unclear to staff how the interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures will be harmonious with the proposed development. For example, no information has been provided on if or how pedestrian walkways have been incorporated.

Given the distance from any nearby building and structures, staff finds the access, parking, and maneuvering areas will be harmonious with the neighboring buildings and structures. Additionally, the existing structures and vegetation will largely screen these areas.

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

FINDING: Generally, the County requires an engineered design surface drainage system is required to demonstrate compliance with this criterion and recommends that the licensed, professional engineer use the Central Oregon Stormwater Manual as the basis for this analysis. However, it is unclear to staff if this is necessary for the Applicant’s proposal. The applicant’s proposal does not include the establishment of any new impervious surfaces. However, the applicant does propose to establish a “packed dirt” parking area. Staff has concerns regarding the drainage of this area and, as noted above, finds this type of parking surface is not an all-weather surface. Staff asks the Hearings Officer to determine if the Applicant has demonstrated compliance with this criterion.

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

FINDING: The Applicant has not submitted a response to this criterion. It is unclear to staff where refuse will be stored onsite and there appear to be platforms, ramps, and/or similar features that are stored on the site. Staff believes these items must be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties. Therefore, staff asks the Hearings Officer to determine if the Applicant has demonstrated compliance with this criterion.

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

FINDING: The applicant has not proposed above ground utility installations as a part of this project.

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

FINDING: Specific criteria for each zone mapped on the subject property have been addressed above.

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

FINDING: The applicant has proposed exterior lighting as a part of this project. Staff recommends, as a condition of approval, all exterior lighting shall be shielded so that direct light does not project off site.

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

- 1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.**
- 2. Mitigation for transportation-related impacts shall be required.**
- 3. Mitigation shall meet applicable County standards in DCC 18.116.310, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.**

FINDING: The Deschutes County Road Department and Deschutes County Transportation Planner were sent a request for comment on this application. No infrastructure concerns and no required improvements are identified in the record.

Section 18.124.070. Required Minimum Standards.

A. Private or shared outdoor recreation areas in residential developments.

- 1. Private Areas. Other than a development in the Sunriver UUC Town Center District, each ground level living unit in a residential development subject to site plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.**

FINDING: No residential development subject to site plan approval is proposed.

- 2. **Shared Areas. Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:**
 - a. **Units with one or two bedrooms: 200 square feet per unit.**
 - b. **Units with three or more bedrooms: 300 square feet per unit.**

FINDING: No apartment residential development is proposed.

- 3. **Usable outdoor recreation space shall be provided in the Sunriver UUC Town Center District on a district-wide basis as follows:**
 - a. **A minimum of one hundred square feet of outdoor recreation space per Multi-family Dwelling unit or Townhome that is accessible to residents or guests staying in Multi-family Dwelling or Townhome units.**
 - b. **Outdoor recreation spaces may include bicycle paths, plazas, play areas, water features, ice rinks, pools and similar amenities that are located outdoors.**
 - c. **Outdoor recreation space must include recreation for children who are district residents, such as a maintained playground area with approved equipment such as swings or slides.**

FINDING: The proposal is not located in the Sunriver UUC Town Center District.

- 4. **Storage. In residential developments, convenient areas shall be provided for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.**

FINDING: No residential development is proposed.

- B. **Required Landscaped Areas.**
 - 1. **The following landscape requirements are established for multi family, commercial and industrial developments, subject to site plan approval:**
 - a. **A minimum of 15 percent of the lot area shall be landscaped.**
 - b. **All areas subject to the final site plan and not otherwise improved shall be landscaped.**

FINDING: It is unclear to staff if the proposed use is a commercial use and whether the criteria above apply. The Applicant has not identified what areas will be landscaped. Staff asks the Hearings Officer to determine what areas must be landscaped. Staff notes such areas are "required landscaping" for the purposes of the DCC.

- 2. ***In addition to the requirement of DCC 18.124.070(B)(1)(a), the following landscape requirements shall apply to parking and loading areas:***
 - a. ***A parking or loading area shall be required to be improved with defined landscaped areas totaling no less than 25 square feet per parking space.***

FINDING: Staff finds that, unlike section (B)(1), this criterion requires “defined landscaping”. Staff finds that “defined landscaping” does not have a definition in the code. Merriam–Webster’s dictionary definition of “defined”¹³ is “to show the shape, outline, or edge of (something) very clearly”. Thus this criterion cannot be met by un-differentiated natural landscaping.

The proposed ROF has a required parking area. However, the Applicant has not identified any landscaped areas for the proposed parking area. If the Hearings Officer finds 15 parking spaces are required, the site plan must identify at least 375 square feet of landscaping in the parking area and if additional spaces are proposed each of those spaces must have 25 square feet of landscaping..

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

FINDING: The Applicant’s Exhibit Site Plan Design (Traffic Flow) shows the northeastern portion of the participant-only parking area will be adjacent to a lot line. However, the site plan is not drawn to scale and staff could not identify any proposed landscaping in this area. Therefore, staff asks the Hearings Officer to determine if the Applicant had demonstrated compliance with this criterion.

- c. ***A landscaped strip separating a parking or loading area from a street shall contain:***
 - 1) ***Trees spaced as appropriate to the species, not to exceed 35 feet apart on the average.***
 - 2) ***Low shrubs not to reach a height greater than three feet zero inches, spaced no more than eight feet apart on the average.***
 - 3) ***Vegetative ground cover.***

FINDING: The proposed parking area for the ROF is not adjacent to or nearby a street.

- d. ***Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.***

FINDING: No landscape plan was submitted by the Applicant and staff was not able to verify the defined landscaped areas, if proposed, are uniformly distributed throughout the parking area. Therefore, staff asks the Hearings Officer to determine if the Applicant had demonstrated

¹³ <https://www.merriam-webster.com/dictionary/defined>

compliance with this criterion.

- e. *The landscaping in a parking area shall have a width of not less than five feet.***

FINDING: No landscape plan was submitted by the Applicant and staff was not able to verify the landscaping in the parking has a width of not less than five feet. Therefore, staff asks the Hearings Officer to determine if the Applicant had demonstrated compliance with this criterion.

- f. *Provision shall be made for watering planting areas where such care is required.***

FINDING: It is unclear to staff if the Applicant is proposing landscaping and, if yes, how provisions for watering the plants will be made. Staff believes the Applicant needs to submit more information to demonstrate compliance with this criterion or to demonstrate it does not apply.

- g. *Required landscaping shall be continuously maintained and kept alive and attractive.***

FINDING: It is unclear to staff if the Applicant is proposing landscaping and, if yes, how it will be continuously maintained and kept alive and attractive. Staff believes the Applicant needs to submit more information to demonstrate compliance with this criterion or to demonstrate it does not apply.

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

FINDING: There are overhead utility lines along the property frontage. However, it is unclear to staff if the Applicant is proposing landscaping and, if yes, whether any trees will be planted in this area. Staff believes the Applicant needs to submit more information to demonstrate compliance with this criterion or to demonstrate it does not apply.

C. *Non-motorized Access.*

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

FINDING: Staff finds no bicycle parking is required for the proposed ROF. This criterion does not apply.

2. *Pedestrian Access and Circulation:*

- a. *Internal pedestrian circulation shall be provided in new commercial, office and multi family residential developments through the***

clustering of buildings, construction of hard surface pedestrian walkways, and similar techniques.

FINDING: It is unclear to staff if the proposed use is a commercial use and if this criterion applies. Staff asks the Hearings Officer to make findings on this issue.

- b. Pedestrian walkways shall connect building entrances to one another and from building entrances to public streets and existing or planned transit facilities. On site walkways shall connect with walkways, sidewalks, bikeways, and other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi family, public or park use.**
- c. Walkways shall be at least five feet in paved unobstructed width. Walkways which border parking spaces shall be at least seven feet wide unless concrete bumpers or curbing and landscaping or other similar improvements are provided which prevent parked vehicles from obstructing the walkway. Walkways shall be as direct as possible.**
- d. Driveway crossings by walkways shall be minimized. Where the walkway system crosses driveways, parking areas and loading areas, the walkway must be clearly identifiable through the use of elevation changes, speed bumps, a different paving material or other similar method.**
- e. To comply with the Americans with Disabilities Act, the primary building entrance and any walkway that connects a transit stop to building entrances shall have a maximum slope of five percent. Walkways up to eight percent slope are permitted, but are treated as ramps with special standards for railings and landings.**

FINDING: In *Shepherd* (file nos. 247-17-000573-AD and 574-SP, 247-18-000179-A and 182-A) the Board of County Commissioners found, "Subsections (b) through (e) apply to any use subject to site plan review." Specifically, this means that uses not listed in section (2)(a) are also subject to these criteria.

As noted above, staff has asked the Hearings Officer to determine if the applicant’s proposal includes any “buildings”. If yes, pedestrian walkways may be required and staff asks the Hearings Officer to make findings on the requirements of subsections (b-e) above. Based on staff’s review of the submitted materials, it does not appear any pedestrian walkways are proposed. Additionally, staff finds there are no walkways, sidewalks, bikeway or other pedestrian or bicycle connections on adjacent properties planned or used for commercial, multi-family, public or park use.

D. Commercial Development Standards:

- 1. New commercial buildings shall be sited at the front yard setback line for lots with one frontage, and at both front yard setback lines for corner lots, and oriented to at least one of these streets, except in the Sunriver UUC**

Business Park (BP) District and Town Center (TC) District and properties fronting Spring River Road in the Spring River Rural Commercial Zone. The building(s) and any eaves, overhangs or awnings shall not interfere with the required clear vision area at corners or driveways.

FINDING: It is unclear to staff if the proposed use is a commercial use and if this criterion applies. Staff asks the Hearings Officer to make findings on this issue. As noted above, staff has asked the Hearings Officer to determine if the applicant’s proposal includes any “buildings”.

- 2. ***To meet the standard in paragraph (1) of this subsection, buildings developed as part of a shopping complex, as defined by this title, and planned for the interior, rear or non-street side of the complex may be located and oriented toward private interior streets within the development if consistent with all other standards of paragraph (1) above and this paragraph. Interior streets used to satisfy this standard may have on-street parking and shall have sidewalks along the street in front of the building. Such sidewalks shall connect to existing or future sidewalks on public streets accessing the site. The master plan for the shopping complex shall demonstrate that at least one half of the exterior perimeter of the site that abuts each public street, will be developed with buildings meeting the standards of paragraphs (D)(1) or (D)(3) of this subsection.***

FINDING: No shopping complex is proposed.

- 3. ***An increase in the front yard setback may be allowed where the applicant can demonstrate that one or more of the following factors makes it desirable to site the new building beyond the minimum street setback:***
 - a. ***Existing development on the site;***
 - b. ***Lot configuration;***
 - c. ***Topography of the lot;***
 - d. ***Significant trees or other vegetative features that could be retained by allowing a greater setback;***
 - e. ***Location of driveway access. Such an increase in the front yard shall be the minimum necessary to accommodate the reason for the increase.***
 - f. ***Architectural features, driveways, landscaping areas equal to or greater than the depth of the structure, and outdoor commercial areas, when at least one half of the structure meets the minimum street setback.***

FINDING: No increase in the front yard setback has been requested.

- 4. ***Off street motor vehicle parking for new commercial developments in excess of 10,000 square feet shall be located at the side or behind the building(s), except in the Sunriver UUC Business Park (BP) District and Town Center (TC)***

District. Off-street parking proposed with a shopping complex, as defined by this title, and intended to serve buildings located in the interior or rear of the complex may have parking in front of the building provided the overall master plan for the site satisfies paragraph (2) of this subsection.

FINDING: No off street motor vehicle parking for new commercial developments in excess of 10,000 square feet is proposed.

Section 18.124.080, Other Conditions.

The Planning Director or Hearings Body may require the following in addition to the minimum standards of DCC Title 18 as a condition for site plan approval.

- A. An increase in the required yards.**
- B. Additional off street parking.**
- C. Screening of the proposed use by a fence or landscaping or combination thereof.**
- D. Limitations on the size, type, location, orientation and number of lights.**
- E. Limitations on the number and location of curb cuts.**
- F. Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.**
- G. Improvement, including but not limited to paving, curbing, installation of traffic signals and constructing sidewalks or the street system that serves the proposed use where the existing street system will be burdened by the proposed use.**
- H. Improvement or enlargement of utilities serving the proposed use where the existing utilities system will be burdened by the proposed use. Improvements may include, but shall not be limited to, extension of utility facilities to serve the proposed use and installation of fire hydrants.**
- I. Landscaping of the site.**
- J. Traffic Impact Study as identified in Title 18.116.310.**
- K. Any other limitations or conditions that are considered necessary to achieve the purposes of DCC Title 18.**

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.

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 existing prior to the effective date of DCC Title and 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:

FINDING: The use subject to conditional use review is a ROF requiring large acreage. In this case, the Applicant proposes to establish four (4) motocross courses/tracks.

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:

Site

The 6.67-acre site is developed with a single-family dwelling, barn, and the property owner has constructed a number of motocross courses/tracks for personal use. There is mature vegetation adjacent to the existing dwelling located at the southeast corner of the property. The Applicant proposes to convert the existing courses/tracks into the ROF and complete other onsite improvements for access and parking.

Staff notes comments from the Deschutes County Onsite Wastewater Division raise concerns regarding a conflict with the proposed areas to be used as part of the ROF and the onsite wastewater systems. Additionally, it is not clear to staff if the Applicant has provided sufficient information on the proposed site plan to demonstrate compliance with the parking standards and landscaping requirements. For these reasons, staff asks the Hearings Officer to determine if the Applicant has demonstrated the site is suitable for the proposed ROF.

Design

Staff finds the proposed access and parking areas are design to take advantage of existing improvement and available buffering and screening from on-site vegetation, topography, distance, and/or buildings to limit impacts to the remainder of the site.

However, as staff noted above, the Applicant may need to plant landscaping or fencing to minimize

visual impacts of the use. Ultimately, it is not clear to staff if the Applicant has provided sufficient information on the design of the site (e.g. proposed landscaping, pedestrian circulation, lighting, etc.) to demonstrate compliance with this criterion. For these reasons, staff asks the Hearings Officer to determine if the Applicant has demonstrated the design of the proposal is suitable to the site.

Operating Characteristics

Below staff has attempted to summarize the operating characteristics of the Applicant’s proposal:

Type of Facility:

The proposed facility with include four (4) courses/tracks designed for use of two-wheeled off-road vehicles, including electric, gas, and hybrid motorized/manual powered motocross related vehicles.

Number of Customers:

It appears the proposed facility will have a maximum of 20 riders at any given time. However, it is unclear if the Applicant anticipates additional people will be on-site beyond the 20 riders, such as spectators, family and/or friends. Staff expects there will be persons interested in watching the riders. The Applicant has stated there is no demand for visitor seating and none is proposed.

Services Offered:

The main purpose of the facility is to offer supervised training/camps and/or coordinated practice laps. Additionally, it appears the Applicant would like to offer general access¹⁴ to the facility (staff assumes this means no instruction/training would be provided at part of the access). In summary, the following services are proposed:

- 1. Training instruction;
- 2. Proficiency instruction;
- 3. Trainings camps;
- 4. Training schools; and
- 5. General rider access to the courses/tracks.

Operating Hours:

The Applicant appears to be requesting approval for year-round use of the proposed facility. However, the hours will change depending on the season. Staff notes the Applicant has not clearly stated the hours of operation and requests this be clarified, if an approval is granted.

¹⁴ Reference pg. 4. Item 3 of the Burden of Proof Statement (Amended 3.23.2023).

Season	Months	Days of the Week	Hours ¹⁵
Fall/Winter/Spring	Oct-March	Monday-Friday	Sunrise to 7:30PM
		Saturday-Sunday	Sunrise to 7:30PM
Summer	April-Sept	7 days	Sunrise to 9PM ¹⁶

Other Items:

The facility will have portable bathrooms available for customers. As noted above, the On-Site Wastewater Division expressed concern that portable restrooms may not be appropriate. Additionally, the Applicant proposes to have a water truck/water system. No sound system is proposed. No overnight camping is proposed.

The Applicant provided the following responses on pg.9 of the Burden of Proof Statement (Amended 3.23.2023):

Site design shows the proposed use is suitable for the use, as the courses are contained within the parcel, access points are within DCC requirements, parking is adequate and the use is an off-road vehicle track, as specified by the DCC as an allowed conditional use in an RR10 zoning. Three of the four courses have existed for over 15 years used privately by the homeowner. The fourth course, the turn track course, has existed for over 2 years. The occupants of the home have historically practiced & trained on these courses for over 20 years. Occupants of the home include youth amateur & professionally licensed motocross competitive athletes. The site and its courses have proven to be a great resource in training skills at this recreation-oriented facility. The design has courses separated by fencing, parking is screened by the existing home, barn and one large obstacle in the center of the parcel. General Operating characteristics of the use would be structured supervised training/camps and/or coordinated practice laps on a closed course(s). Anticipated use would be an average of 2 days per week during the months of Oct through March. Primarily on Saturdays and Sundays between 10am-4pm for groups and select weekdays for private one-on-one trainings between the hours of 10AM-3PM. During the months of April-September group training would occur on Weekdays and Weekends between 6-9PM when there is an abundance of daylight and historically low wind conditions. In the Spring and Summer training needs to be in the evenings due to heat, wind conditions and the specific disciplines of training that is proposed to occur. IE Advanced level participants who are learning Supercross & Freestyle Motocross require low wind conditions.

SEE "EXHIBIT GROUND AND AERIAL VIEWS", "EXHIBIT SITE PLAN CONTOUR" & "EXHIBIT SITE PLAN".The points above and exhibits demonstrate the subject property is suitable for the proposed recreation-oriented facility.

At this time, staff believes the Applicant has not provided sufficient information on the operating characteristics of the proposed ROF. It is important to note this type of approval runs with the land

¹⁵ The Burden of Proof Statement has conflicting information on the proposed hours. For example, certain sections specify hours of operation and other specify sunrise/sunset for hour of operation (see pg. 4, Item 4).

¹⁶ It is not clear to staff if this is generally when the facility will close or if this is the proposed closing time.

and not the current Applicant. For this reason, staff believes it will be imperative for the Applicant to further clarify the operating characteristics to ensure ongoing compliance. Staff asks the Hearings Officer to determine if the Applicant has demonstrated the operating characteristics of the use are suitable for the site.

2. Adequacy of transportation access to the site; and

FINDING: Transportation access is provided to the site by NW Eagle Road, a paved public road maintained by the County . Comments from the Deschutes County Road Department and Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies . 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 does not contain any natural features, other than native grasses, and presents no topographical constraints on the proposed use. The *Deschutes County Natural Hazards Mitigation Plan* (2015) identifies drought, earthquake, flood, landslide, volcanic, wildfire, windstorm, and winter storm hazards in the County. Natural resource values typically include agricultural soils, forest lands, wildlife and their habitats, wetlands, and natural water features. Comments from agencies and the general public did not identify any site unsuitability due to general topography, natural hazards, or natural resource values.

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 criterion requires the proposed ROF to 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 primarily include residential uses and agricultural uses. Additionally, Cline Falls Airpark is located +/- 660 feet to the west. Lastly, staff notes there is a wastewater treatment facility for the Eagle Crest Destination Resort to the south and it appears treated effluent from the facility is applied the land abutting the east boundary of the subject property. Projected uses on surrounding properties are those that have received approvals or are allowed outright and are typical of development of the areas. 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.

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

Staff finds the proposed use 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 believes the proposed ROF could have visual, noise, and dust impacts on surrounding properties.

The Applicant provided the following responses on pgs. 8-9 of the Burden of Proof Statement (Amended 3.23.2023):

Applicant will mitigate erosion and dust pollution by implementing a water plan (water truck) & heavy equipment/skidsteer when needed or preparing the surface to not cause dust. Primary operation will occur in the Fall/Winter/Spring when soil has water content and dust is not emitted. Applicant agrees to A. & B. as the proposed courses have not caused erosion or pollution outside of the areas of current activity over 15 years of use. Applicant will be agreeable to conditions that will prevent or minimize erosion or pollution. See "EXHIBIT Neighbor Statements".

...
On "EXHIBIT ZONING MAP" Subject property (Tax Lot 600/6.57 acres with residential improvements) is surrounded on the East (Tax Lot 1000/19.72 acres with no improvements and active farming activities), directly North (Tax Lot 606/5.00 acres with residential improvements & farming activities), West (Tax Lot 607/6.18 acres with residential improvements and equestrian activities) & South (Tax Lot 603/5.43 acres with residential improvements and farming activities). All properties are in the RR10 Zone subject to the same DCCode.

The design shows the property is fenced with barb wire fencing, has courses separated by fencing, parking is screened by the existing home, barn and one large berm/obstacle in the center of the parcel. General Operating characteristics of the use would be structured supervised training/camps and/or coordinated practice laps on closed course(s). The DCC specifically conditionally allows for the proposed use in the RR10 zone as it allows for the above stated adjacent parcel uses. The proposed activity has occurred for nearly two decades with no complaints, with strong supporting relationships with all adjacent and neighboring parcel owners.

Staff believes the Applicant's proposed dust mitigation measures will likely address the anticipated impacts. However, it is not clear how visual and noise impacts will be addressed. Staff asks the Hearings Officer to determine if the Applicant has sufficiently addressed how visual and noise impacts on surrounding property have been mitigated to ensure the use is compatible with surrounding properties.

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

Staff finds the proposed use would be unsuitable if access to the site would have significant adverse impacts on existing and projected uses on the surrounding properties. Deschutes County Transportation Planner did not identify any transportation infrastructure deficiencies. Comments from other agencies and the general public did not identify any transportation infrastructure deficiencies. Therefore, staff finds transportation access to the site is compatible with the surrounding uses.

(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. Staff finds the topography on surrounding properties will not be impacted by the Applicant’s proposal.

There are no outstanding natural hazards associated with surrounding properties other than the threat of wildfire, which staff notes is a county-wide natural hazard concern. The RR10 limitations on conditions uses allows the Hearings Officer to require the establishment and maintenance of fire breaks, the use of fire resistant materials in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce fire hazards or prevent the spread of fire to surrounding areas. Staff has asked the Hearings Officer to determine if this is necessary given the site design.

Surrounding natural resource values include agricultural soils and wildlife and their habitat. The proposed ROF could potentially have dust, noise, and visual impacts on these natural resource values. Staff believes the Applicant has provided details on how dust impacts will be mitigated. However, it is unclear if mitigation/screening is necessary to address the noise and visual impacts to ensure compatibility with natural resource values on the surrounding properties. Staff asks the Hearings Officer to address this issue.

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.

Section 18.128.040, Specific Use Standards.

A conditional use shall comply with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370.

FINDING: As described herein, the proposed conditional use complies with the standards of the zone in which it is located and with the standards and conditions set forth in DCC 18.128.045 through DCC 18.128.370, as applicable.

Section 18.128.090. Religious Institution or Assembly, Medical Clinic, Veterinary Clinic, Club, Lodge, Fraternal Organization, Community Center, Grange Hall, Golf Course, Horse Stable and Horse Events Requiring Conditional Uses, Grounds and Buildings For Games or Sports, Country Club, Swimming, Boating, Tennis Clubs and Similar Activities, Government Structures and Land Uses, Parks, Playgrounds.

In considering the above, the Planning Director or Hearings Body may authorize the conditional use after it has been determined that the following will be provided:

FINDING: Staff believes the provisions of this section apply to the Applicant’s proposal as the ROF fall within the “Grounds and Buildings For Games or Sports, Country Club, Swimming, Boating, Tennis Clubs and Similar Activities” category.

- A. Access from principal streets subject to Deschutes County Road Department standards.**

FINDING: This standard requires access to be taken from a “principal street”. However, DCC 18.04.030 does not define “principal street”. Additionally, staff reviewed the legislative history and prior County decisions did not find any guidance on interpret this requirement. As noted above, access will be taken from NW Eagle Dr, which is a paved public road maintained by the County. Staff asks the Hearings Officer to determine what this means in the context of the current application. It is unclear to staff if “principal street” means the primary street from which access is taken or if it refers to the classification of the street (i.e. local, collector, arterial).

The Applicant provided the following response on pg. 11 of the Burden of Proof Statement (Amended 3.23.2023):

Road Access Permit Record ID: 247-22-007773-DA/IVR# 247059259586 and Second Road Access Permit Record ID: 247-22-007773-DA-01/IVR# 247001910192 were granted by Deschutes County in January of 2023.

Staff notes the driveway access permits referenced above are residential driveway accesses. The Applicant is required to obtain a new driveway access permit under DCC 17.41.210 for the proposed ROF access, unless waived by the Deschutes County Road Department. Staff recommends a condition of approval be added to ensure compliance.

B. Off-street parking subject to DCC 18.116.030.

FINDING: Compliance with the off-street parking subject to DCC 18.116.030 is addressed above.

C. Building and site design provisions, including landscaping, that will effectively screen neighboring uses from noise, glare, odor and other adverse impacts.

FINDING: Staff believes the proposed ROF may result in noise, glare, dust, and visual impacts on surrounding properties. To demonstrate compliance with this criterion the applicant must submit information to demonstrate how the proposed site design, including landscaping, will effectively screen neighboring uses from these impacts. For example, will landscaping be planted to screen and buffer any potential glare and dust impacts? Does the course design (i.e. berms) block or reduce sound impacts on surrounding properties?

The Applicant provided the following response on pg. 11 of the Burden of Proof Statement (Amended 3.23.2023):

See "EXHIBIT SITE PLAN DESIGN (TRAFFIC FLOW)" along with "EXHIBIT SITE PLAN". These Exhibits show the parking area has been consolidated to entirely North of the residence screened by the residential home, existing barn and course/berm. N/A. The applicant site design & application addresses the historic and proposed uses related to these impacts as discussed with Planning in pre-application meeting, of which concerns or issues have not occurred over the past 15 year of the same proposed use. Applicant will comply with conditions of approval. SEE EXHIBIT(S): "EXHIBIT GROUND AND AERIAL VIEWS" & "EXHIBIT SITE PLAN DESIGN"

Staff believes more information is needed from the Applicant to demonstrate use of the ROF will not cause noise, glare, and visual impacts on surrounding properties and/or how these impacts will be effectively screen from neighboring uses. For this reason, Staff asks the Hearings Officer to determine if the Applicant has demonstrated compliance with this criterion.

D. *Playgrounds, religious institutions or assemblies, recreation facilities and community centers in the Wildlife Area Combining Zone are subject to the provisions of DCC 18.88.*

FINDING: The subject property is not located in the Wildlife Area Combining Zone. This criterion does not apply.

IV. OUTSTANDING ISSUES

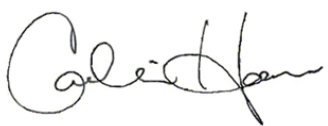
Staff asks the Hearing Officer to focus his review on the issue areas identified by staff in this Staff Report.

V. RECOMMENDED CONDITIONS OF APPROVAL

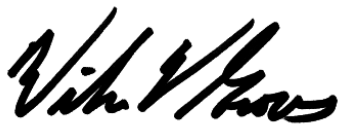
- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any substantial change in this approved use will require review through a new land use application.
- B.** The property owner shall obtain any necessary permits from the Deschutes County Building Division and Environmental Soils Division.
- C.** No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- D.** No lighting associated with the proposed use shall project directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel.
- E.** Lighting shall incorporate shielding in their designs to reflect light away from airport approach surfaces.
- F.** No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- G.** No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures.
- H.** The subsequent use of the property for which the permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18.

- I. Off-street parking areas used to fulfill the requirements of DCC Title 18 shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.
- J. Required parking facilities shall be provided prior to or concurrently with construction and/or initiation of the proposed use.
- K. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use.
- L. Any lighting used to illuminate off-street parking areas shall be so arranged that it will not project light rays directly upon any adjoining property in a residential zone.
- M. The service drive clear vision area shall be maintained in accordance with DCC 18.116.020(A).
- N. All trees and shrubs existing on-site, not removed by necessity of the proposed development, shall be protected, unless lawfully changed/removed by outright uses (such as farm use) or such change/removal is approved by future land use approvals.
- O. The Applicant shall apply for a new driveway access permit for the proposed use as required under DCC 17.48.210(A).
- P. All exterior lighting shall be shielded so that direct light does not project off site.
- Q. Provision shall be made for watering planting areas where such care is required.
- R. Required landscaping shall be continuously maintained and kept alive and attractive.

DESCHUTES COUNTY PLANNING DIVISION



Written by: Caroline House, Senior Planner



Reviewed by: Will Groves, Planning Manager

- Attachments:
- Applicant's Exhibit Site Plan
 - Applicant's Exhibit Site Plan Design
 - Applicant's Exhibit Site Plan Design (Traffic Flow)

Exhibit Site Plan



Assessed Parcel Acreage is 6.57
Proposed Use requires 6+ acres

640'

EXHIBIT SITE PLAN DESIGN

328'

550'

NW Eagle Dr

726'

- Service Drives 100 feet +
- Light Poles 20'
- Parking (10,300 sq feet)
- Gate & traffic access
- Boundary with footage calls (6.62ac)

— Course used with lighting (.68 ac) *Measurements/images by Google Earth

□ Telephone Poles 27'

T1 Tree 1 20' T2 Tree 2 25' T3 Tree 3 25'

Barn 20' Dwelling 25'

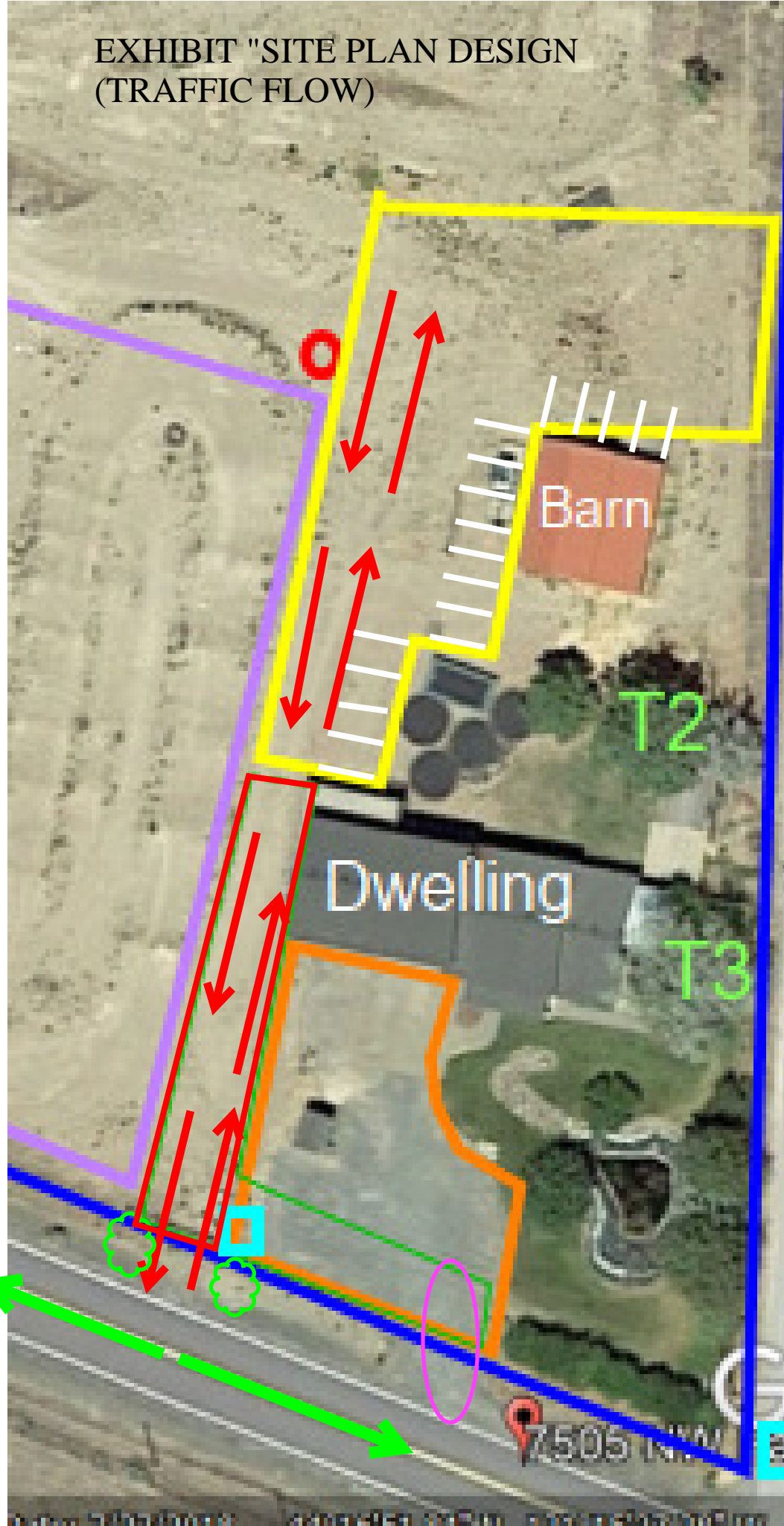
ELEVATION PROFILE: Street Pin on Map "7505 NW Eagle Dr" is 2921' above sea level.
Subject parcel: NW Corner 2922', NE Corner 2920', SW Corner 2922' & SE Corner 2921'











Google Earth

7505 NW Eagle Dr

EXHIBIT "SITE PLAN DESIGN (TRAFFIC FLOW)

550'



-  Parking Space
-  Participant Only Parking
-  Resident parking only
-  light pole
-  telephone pole
-  Gated Entrance
-  Traffic Direction
-  Straight line on Eagle Dr 500' each direction
-  Driveway to Dwelling
-  Gate & Parking Access

Google

7505 NW Eagle Dr



CERTIFICATE OF MAILING

FILE NUMBERS: 247-22-000812-CU / 813-SP

DOCUMENT(S) MAILED: Staff Report

MAP/TAX LOT NUMBER(S): 15-12-11, Tax Lot 600

I certify that on the 24th day of April, 2023 the attached document was mailed to the person(s) and address(es) set forth below.

Dated this 24th day of April 2023

COMMUNITY DEVELOPMENT DEPARTMENT

By: Caroline House, Senior Planner

HOMAN, JUSTIN M 7505 NW EAGLE DR REDMOND, OR 97756	
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