



**Crook County Planning Department**  
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**STAFF REPORT**

**APPEAL FILE NUMBER 217-22-000686-PLNG**

**APPEAL OF A RESIDENTIAL LAND PARTITION (217-21-000417-PLNG)**

**May 18, 2022**

**OWNER:** Daniel Brown  
5024 SW Williams Rd  
Powell Butte, OR 97753

**SURVEYOR:** Povey & Associates  
Attn: Paul  
338 SW 7<sup>th</sup> St  
Redmond, OR 97756

**ROAD**  
**ENGINEER:** H.A. McCoy Engineering & Surveying  
Hayes McCoy  
PO Box 533  
Redmond, OR 97756

**APPELLANTS:** Dennis & Delores Marston  
11040 SW Red Cloud Rd  
Powell Butte, OR 97753

Terrence & Janelle Strom  
10944 SW Red Cloud Rd  
Powell Butte, OR 97753

**LOCATION:** The subject property is located on SW Red Cloud Rd. It is identified on the County Assessor's maps as 1515310003700.

**ZONING:** Rural Residential Zone - R-5

**NEWSPAPER &  
NEIGHBOR**

**NOTICE:** May 5, 2020

**HEARING**

**DATE:** May 25, 2020

**I. BACKGROUND**

In the spring of 2021, staff was notified by neighboring property owners that a road was being constructed through the subject parcel, and the parcel to the east (Map/Tax Lot: 1515310003800). On March 10, 2021, the Crook County Code Compliance Officer, Louis Seals, contacted the landowner regarding the development. His letter stated, "I have stopped and talked with McKenzie Cascade and

they explained that they are building you a county spec road to the top of your two lots and possible a third lot. Please reach out to Katie McDonald in our planning department to verify that the current site development is within specifications for R5 zoning”. No response was received from the landowner.

In July of 2021, the landowner contacted staff regarding a proposed partition for the subject property and the neighboring property. When a tentative plan was submitted, staff identified that in accordance with CCC 17.36, the already constructed road would need to meet the design standards. Staff did not accept the application for the partition and notified the owner that the design standards would need to be met, and the road design would need to be certified by a professional engineer. On January 14, 2022, the owner applied for review of the road design (217-22-000031-PLNG). The application included a letter from Hayes A. McCoy, a Professional Engineer with H.A McCoy Engineering & Surveying, LLC. The letter dated January 6, 2022, provided a retroactive review of the road constructed without county approval. Robert O’Neil, the Crook County Road Master, provided a letter on February 2, 2022, stating that as illustrated and proposed by the landowner and their professional engineer, the Road Master is satisfied that the road has been constructed to Crook County Standards.

On March 23, 2022, the Owner applied to partition the subject property into two properties. Staff reviewed the proposal and tentatively approved the proposal, with notice sent on April 14, 2022, and a 12-day appeal period that followed. Staff then received correspondence from neighboring landowners regarding the safety of the road, and informed staff that an additional driveway was being constructed from the road that had been reviewed, and was constructed onto the proposed southern parcel. Staff then received an appeal from the Appellants on April 26, 2022. The Appellant identified that the development is not in compliance with CCC 17.24.040(6), and identified the following grounds for appeal:

- Staff did not identify a need for on-site improvements, or a need for additional setback, screening, landscaping, or other requirements relative to the protection of adjoining and area land uses.

In the documents submitted they address concerns towards drainage, water/snow run-off, road safety, setbacks, existing easements, and visual effects.

## **II. APPLICABLE CRITERIA**

### **Title 17, Subdivisions**

#### **Chapter 17.24 Land Partitioning**

- |           |                                     |
|-----------|-------------------------------------|
| 17.24.020 | Filing Procedures and Requirements. |
| 17.24.030 | Requirements for Approval.          |
| 17.24.060 | Final Map for Partitioning.         |

#### **Chapter 17.36 Design Standards**

- |           |                                    |
|-----------|------------------------------------|
| 17.36.010 | Compliance required.               |
| 17.36.020 | Road Standards.                    |
| 17.36.030 | Subdivision roads and public ways. |
| 17.36.050 | Maintenance of roads.              |

### **Title 18, Zoning**

#### **Chapter 18.88 Rural Residential Zone, R-5**

- |           |                          |
|-----------|--------------------------|
| 18.88.010 | Uses permitted outright. |
| 18.88.030 | Lot size.                |

### **III. BACKGROUND**

The Applicant has proposed to divide a 9.68-acre property into two parcels. Proposed Parcel 1 will be 4.84 acres and will be vacant. Proposed Parcel 2 will be 4.84 acres and will be vacant. Crook County allows for a 5% reduction in acreage requirements for loss of right-of-way dedications, so parcels in the R-5 zone must be at least 4.75 acres. Both proposed parcels will meet the minimum parcel size requirement in the R-5 zone.

**Documentation of Ownership:** MF 2020-301673 – Recorded 07/28/2020.

**Wastewater:** The proposed parcels have been evaluated for on-site systems (217-21-001487-EVAL). The evaluation indicated that the sites are not suitable for standard systems, and that alternative treatment systems will be required.

**Domestic Water:** Both proposed parcels will be served by Avion Water Co.

**Irrigation Rights:** The subject property does not have irrigation water rights.

**Fire Protection:** The subject property is within the Crook County Fire Protection District.

**Access:** Access for the proposed parcels will be via a newly constructed road. The road was submitted for approval concurrently with the proposed partition, and has received approval from the Crook County Road Department.

### **IV. FINDINGS OF FACT**

#### ***Title 17, SUBDIVISIONS***

##### ***Chapter 17.24 Land Partitioning***

##### ***17.24.020 Filing procedures and requirements for land partitioning.***

*Any person proposing a land partitioning, or his authorized agent or representative, shall prepare and submit five copies of the tentative plan for the proposed partitioning together with an application for partitioning and the appropriate filing fee to the county planning department at least 30 days prior to the commission meeting at which consideration is desired, except as otherwise provided in this chapter.*

*The tentative plan for partitioning, when submitted, shall include the following:*

- (1) A vicinity map locating the proposed partitioning in relation to adjacent subdivisions, roadways and adjoining land use and ownership patterns.*
- (2) A plan of the proposed partitioning showing tract boundaries and dimensions, the area of each tract or parcel, and the names, right-of-way widths, and improvement standards of existing roads.*
- (3) Names and addresses of the landowner, the partitioner, a mortgagee if applicable, and the engineer or surveyor employed or to be employed to make necessary surveys and prepare the legal descriptions of each parcel to be created.*

- (4) *A statement regarding contemplated water supply, sewage disposal, solid waste disposal, fire protection, access, etc.*
- (5) *North point, scale and date or map, and property identification by tax lot, section, township and range.*
- (6) *Statement regarding past, present and intended use of the parcel(s) to be created, or the use for which the parcel(s) are to be offered.*
- (7) *Where a tract of land is within the boundaries of an irrigation district, an application for partitioning of the tract shall be accompanied by a water rights division plan approved by the irrigation district or other water district holding the water rights, or when there is no such district, by the district watermaster or his representative serving the Crook County area.*
- (8) *Legal access to the proposed parcels. (Ord. 231 § 1 (Exh. A), 2010; Ord. 19 § 5.020, 2003)*

**PROPOSED FINDING:** The vicinity map and application materials submitted included all the criterion identified in subsection (1)-(8) above.

***17.24.030 Requirements for approval.***

*No application for partitioning shall be approved unless the following requirements are met:*

- (1) *Proposal is in compliance with the comprehensive plan.*
- (2) *Proposal is in compliance with the applicable zoning.*
- (3) *An approved water rights division plan.*

**PROPOSED FINDING:** The proposed land partition is in compliance with the Crook County Comprehensive Plan, which has identified the property for residential use. The proposed partition will result in two parcels that meet the minimum lot size established by the underlying zone. Crook County allows for a 5% reduction in acreage requirements for loss of right-of-way dedications. The properties are not within an identified irrigation district, a water rights division plan is not required.

***17.24.040 Additional factors to be considered***

*In addition to the requirements set forth in CCC 17.24.030, the following factors may be considered by the commission for approval or disapproval of an application for land partitioning:*

- (1) *Placement and availability of utilities.*
- (2) *Safety from fire, flood, and other natural hazards.*
- (3) *Adequate provision of public facilities and services.*
- (4) *Possible effects on natural, scenic, and historical resources.*
- (5) *Need for on-site or off-site improvements.*

*(6) Need for additional setback, screening, landscaping, and other requirements relative to the protection of adjoining and area land uses.*

**PROPOSED FINDING:** Originally, staff found that utilities and services were identified within the tentative plan. Crook County Fire & Rescue will provide services to the property. The property is not located within an area of special flood hazard, or any other natural hazard areas. The properties will be served by Avion Water for municipal water, but no other public facilities are located in the area. No natural, scenic, or historic resources are located within the vicinity of the proposed partition. Staff did not identify a need for on-site or off-site improvements, or a need for additional setback, screening, landscaping, or other requirements relative to the protection of adjoining and area land uses.

In the Appellants grounds for appeal submitted on April 26, 2022, and additional information submitted on May 17, 2022, they cited subsection (6) above as the primary criteria their concerns are directed towards. In the documents submitted they address concerns towards drainage and water/snow run-off, road safety, setbacks, existing easements, and visual effects.

Drainage & Water/Snow Runoff: In their grounds for appeal, the Appellant's identify a dry creek running from the subject property, onto the Appellant's property. The Appellant states that prior to the road being constructed, water would accumulate at the base of that drainage on their property. They also point to the fact that water runoff from the newly constructed road will drain onto their properties. They also state that with the amount of snow accumulation that upper Powell Butte receives compared to lower areas, runoff from the snowmelt will be a detriment to their properties. Safety regarding driving conditions in snow is addressed below.

The proposed road was reviewed through application 217-22-000031-PLNG. Within that application, a letter from McCoy, the Applicants Professional Engineer states, "The road provides clearly excavated ditches at switchback locations dispersing runoff away from the road. The shed design allows runoff to be collected at the cut bank and directed to the ditches at the switchbacks. This design will adequately collect and convey runoff. Occasional check dams may be required near the cut bank to minimize erosion if encountered during the use of the road." In materials submitted by the applicant on May 17, 2022, they state that "the slope of the road into the hill will actually cause any drainage to funnel along the road and down to the head of the end of the shared County Spec road also situated at the top of the ridge dividing runoff which goes towards the Appellants' property and runoff which stays on Applicant's property. The bottom line is that potential run-off into the drainage where the drainage mentioned is located would be reduced, not increased. This assessment is supported by the professional engineer opinion letter also provided."

Based on the information provided by the Applicant and their engineer, it is not clear on how drainage will be addressed at the switchbacks. They state that the water will be collected in the cutbank on the uphill side of the road, but do not address what will happen to it once it reaches the switchbacks. Staff contacted the Applicant's professional engineer, McCoy, on May 18, 2022, regarding this issue. McCoy stated that the landowner was provided a couple of options moving forward on how to address drainage at the switchbacks. To ensure the protection of adjoining land uses, staff recommends the Planning Commission adopts a condition of approval that states all road drainage shall be contained to proposed Parcel 1 & Parcel 2. Drainage for the road shall not leave the road drainage at any of the switchbacks. Drainage shall be contained within the road and will exit the property along the northern property line. All drainage constructed to connect with any drainage along SW Red Cloud Rd, shall first be approved by the Crook County Road Master prior to construction. The required road maintenance agreement shall address the maintenance of drainage and shall include requirements regarding the retention of drainage onto the proposed parcels. Prior to filing the final plat, the Applicant shall provide a signed and stamped report from their engineer detailing compliance with the DEQ Central Oregon Stormwater Manual.

Road Safety: In the grounds of appeal submitted by the Appellants, their primary concern with regard to road safety is related to cars losing control, going off the road, and sliding down the hill potentially crashing into their homes. They stated that this risk could be increased during winter months in snowy and icy conditions.

In materials submitted by the applicant on May 17, 2022, they state “Though I appreciate the concern that long term residents may have for being on a north slope, this is hardly an unusual situation and many areas of Central Oregon must contend with such conditions. Additionally, with respect specifically to Appellant’s Parcel 1, Tax Lot 3601 the property is located in a swale and sheltered from the winter sun in such a way as to aggravate conditions on that property. To make things worse, if one looks at the topography of Appellants Parcel 1, Tax Lot 3601, you will note that their driveway actually appears to be on an approximately 16.7% grade which FAR exceeds current CCFD maximums for grade (10%). Even the other Appellants driveway exceeds CCFD guidelines by nearly 50% (14.8% vs. CCFD max of 10%). In contrast Applicant accesses each resulting partition property via a County Spec Road, 20’ wide, and not exceeding 8% grade that has a recorded shared maintenance agreement. Additionally, access roads extending beyond the shared County Spec Road are planned to adhere to CCFD grade specifications and therefore not exceed 10% grade. This standard was adopted specifically to address safety concerns such as winter weather traction. Finally, I must note that at the ends of each straight run for the shared County Spec Road, there is an area of near 0% grade bordered by boulders which would allow for any straight ahead slide to be controlled again without potential to accidentally leave the road surface.”

Due to the unique topographical circumstances on the subject property, the factors the development proposal faces are not usual situations that many areas of Central Oregon must contend with. Based on concerns raised by the Appellants, staff recognizes these concerns as valid points of concern regarding the protection of adjoining properties. The Applicant’s first portion of their response to the appeal only identifies issues with neighboring properties, which does not address the protection of adjoining properties next to the proposed partition and fails to address the applicable criteria. That portion of their response is not acknowledged as relevant evidence. The second portion of their response discusses the development standards for the road. The design standards proposed by the applicant address the county code requirements, but do not address further mitigation to ensure the protection of neighboring property owners. Staff recommends that the Planning Commission consider and adopt additional mitigation measures to ensure the protection of adjoining properties.

Setbacks: The Appellant states in their grounds for appeal that, “The new road runs near the property line and at the turn at the upper corner actually touches the property line. There is a property stake installed and it actually appears to be over the line, maybe a foot. See image group #B. I was under the impression that there is a county setback. I suppose the interpretation is whether the road embankment created to support the driveable portion of the road is considered part of the road.” The “new road” that the Appellant discusses was constructed after the primary road was constructed. This road was also constructed without consulting Planning staff first.

In materials submitted by the applicant on May 17, 2022, they address the Appellants statements regarding rock having rolled onto their property. They state, “To put this in context, the picture is taken basically from the site of the previously discussed gazebo. Note, the view from the gazebo is impacted only if one decides they must focus on Appellants property to the east. The indicated rock rolled only a short distance onto the Appellant’s property during construction and was over 250’ from the actual dwelling. If additional work is done upon the road, additional care will be taken to avoid any further rock intrusions but to be clear there was no danger of physical harm or property damage from the construction of the access road.”

In accordance with the Crook County Code, roads are not required to meet setbacks. That being stated, development must be contained to the subject property. The evidence provided by both the Appellant and the Applicant are hand drawings, pictures, or aerials from GIS or Google Maps. The applicant did not respond to the issue regarding potential encroachment. To ensure the development has been contained to the subject property, staff recommends the Planning Commission adopt a condition of approval that states prior to the final plat being filed, the Applicant shall have a survey completed for the western property line of both proposed Parcel 1 & 2, which will illustrate all road spoils and address whether or not the development is contained to only the subject property. The survey shall be stamped and signed by the certified Surveyor/Engineer chosen to complete the work.

Existing Easements: The Appellant states in their grounds for appeal that there is an existing recreational easement along the western property line of the subject parcel that the newly constructed road may have been built in. Easements are a civil matter that are not addressed by the Planning Department. The Crook County Code only requires that any existing or proposed easements be identified on the final plat, and are the responsibility of the Applicant and their Surveyor to identify. Any development which violates an easement is a civil matter between the grantor and grantee of the easement. Staff does not acknowledge this issue as a valid ground for appeal.

Visual Effects: The Appellant states in their grounds for appeal that, "Finally, the aesthetics of large rock piles and severe road construction on those lots to the east make them a visual nuisance. The properties in question are out of character with the high dessert ruralness of the Red Cloud Ranch Sub-Division. It would appear some landscaping be required to mitigate the visual impact. Especially the new road constructed next to the west property line on applicant's parcel #2. The road was cut so close to a backyard gazebo located in the upper corner of the adjacent lot rendering it nearly useless." As stated above in staff's original finding, no natural, scenic, or historic resources are located within the vicinity of the proposed partition. Staff does not acknowledge this issue as a valid ground for appeal.

#### ***17.24.060 Final map for partitioning***

**PROPOSED FINDING:** The final map for partitioning will meet the requirements of 17.24.060.

#### ***Chapter 17.36 Design Standards***

**PROPOSED FINDING:** The proposed road constructed to serve the proposed partition and neighboring property to the east has been reviewed in accordance with the criterion of CCC 17.36. To ensure compliance, conditions have been included addressing the applicable design standards.

### ***Title 18, Zoning***

#### ***Chapter 18.88 Rural Residential Zone, R-5***

##### ***18.88.030 Lot Size***

*The minimum property size for a new parcel shall be five acres in size.*

**PROPOSED FINDING:** Proposed parcel 1 will be 4.84 acres. Proposed parcel 2 will be 4.84 acres. In accordance with the 5% exception policy provided by the county, the minimum parcel size can be reduced down to 4.75 acres. Since the proposed parcels will remain above that minimum, they will meet the minimum lot size in the R-5 zone.

## **V. STAFF RECOMMENDATION**

1. Approval of the proposed partition, with the proposed amendments to findings and conditions as presented by staff.
2. Approval of the proposed partition, with amendments to the findings and conditions as proposed by the Planning Commission.
3. Denial of the proposed partition, based on specific grounds identified by the Planning Commission.

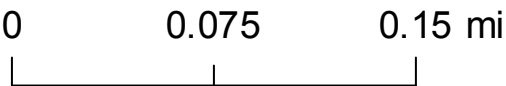
## **VI. PROPOSED CONDITIONS OF APPROVAL**


1. The owner/applicant shall have two years from the expiration of the appeal period to file the final plat (April 26, 2024). The final plat shall be in conformance with the criteria in Section 17.24.60 of the Crook County Code.
2. All necessary taxes, fees, and assessments shall be paid before the final plat is filed.
3. Site plan approval is required prior to any development on proposed either parcel.
4. Road design standard conditions:
  - a. Prior to submittal of the final plat to the Planning Department for approval, a road name shall be applied for and approved.
  - b. During construction, the Crook County Roadmaster shall have the authority to visit and inspect the road construction operations. Prior to any development permits being submitted to the county for review, the Roadmaster shall inspect and approve the road in accordance with the construction standards approved by the Applicants engineer.
  - c. Prior to submittal of the final plat to the Planning Department for approval, a road maintenance agreement shall be dedicated for the future maintenance of the road. A copy of the dedication shall be provided to the Planning Department
5. All road drainage shall be contained to proposed Parcel 1 & Parcel 2. Drainage for the road shall not leave the road drainage at any of the switchbacks. Drainage shall be contained within the road and will exit the property along the northern property line. All drainage constructed to connect with any drainage along SW Red Cloud Rd, shall first be approved by the Crook County Road Master prior to construction. The required road maintenance agreement shall address the maintenance of drainage and shall include requirements regarding the retention of drainage onto the proposed parcels. Prior to filing the final plat, the Applicant shall provide a signed and stamped report from their engineer detailing compliance with the Central Oregon Stormwater Manual.
6. prior to the final plat being filed, the Applicant shall have a survey completed for the western property line of both proposed Parcel 1 & 2, which will illustrate all road spoils and address whether or not the development is contained to only the subject property. The survey shall be stamped and signed by the Surveyor/Engineer chosen to complete the work.






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**COMMUNITY DEVELOPMENT**

PLANNING

BUILDING

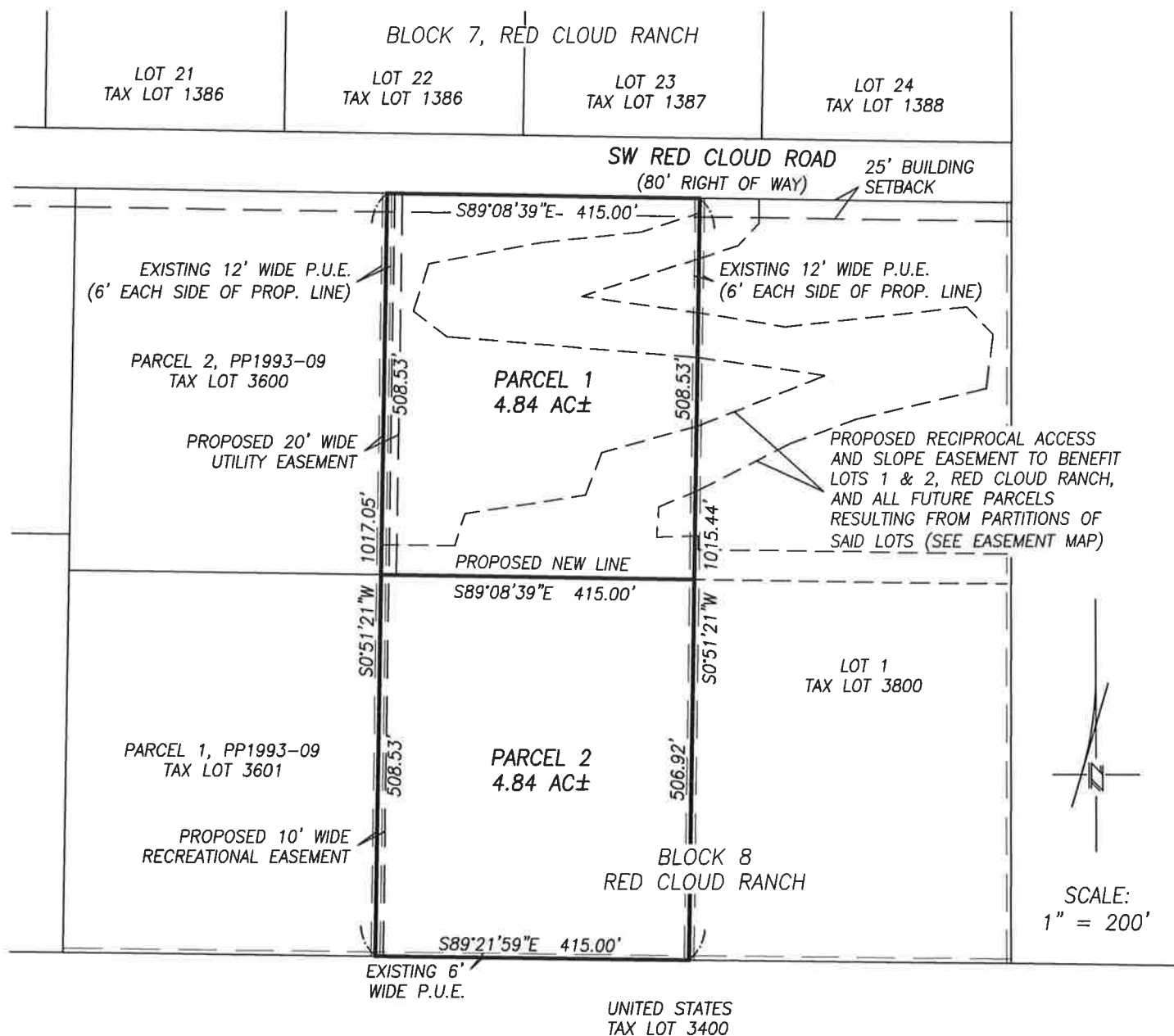
ON-SITE



PROPOSED LOT PARTITION FOR DAN BROWN,  
LOCATED IN LOT 2, BLOCK 8, RED CLOUD RANCH,  
CROOK COUNTY, OREGON

TAX LOT 15-15-31-3700

ZONE: R5



PREPARED: MARCH 16, 2022

MEASUREMENTS SHOWN HEREON ARE BASED  
ON THE PLAT OF RED CLOUD RANCH. THIS  
MAP IS PRELIMINARY IN NATURE AND IS FOR  
PLANNING PURPOSES ONLY.

**P&A** POVEY AND  
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