

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 CENTRAL OREGON LANDWATCH,

5 *Petitioner,*

6  
7 vs.

8  
9 DESCHUTES COUNTY,

10 *Respondent,*

11 and

12  
13 BANK OF WHITMAN,

14 *Intervenor-Respondent.*

15  
16 LUBA No. 2010-085

17  
18 FINAL OPINION

19 AND ORDER

20  
21  
22 Appeal from Deschutes County.

23  
24 Paul D. Dewey, Bend, filed the petition for review and argued on behalf of petitioner.

25  
26 No appearance by Deschutes County.

27  
28 Tia M. Lewis, Bend, filed the response brief and argued on behalf of intervenor-  
29 respondent. With her on the brief was Schwabe Williamson & Wyatt, PC.

30  
31 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,  
32 participated in the decision.

33  
34 REMANDED

05/03/2011

35  
36 You are entitled to judicial review of this Order. Judicial review is governed by the  
37 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a decision by the county approving a partition.

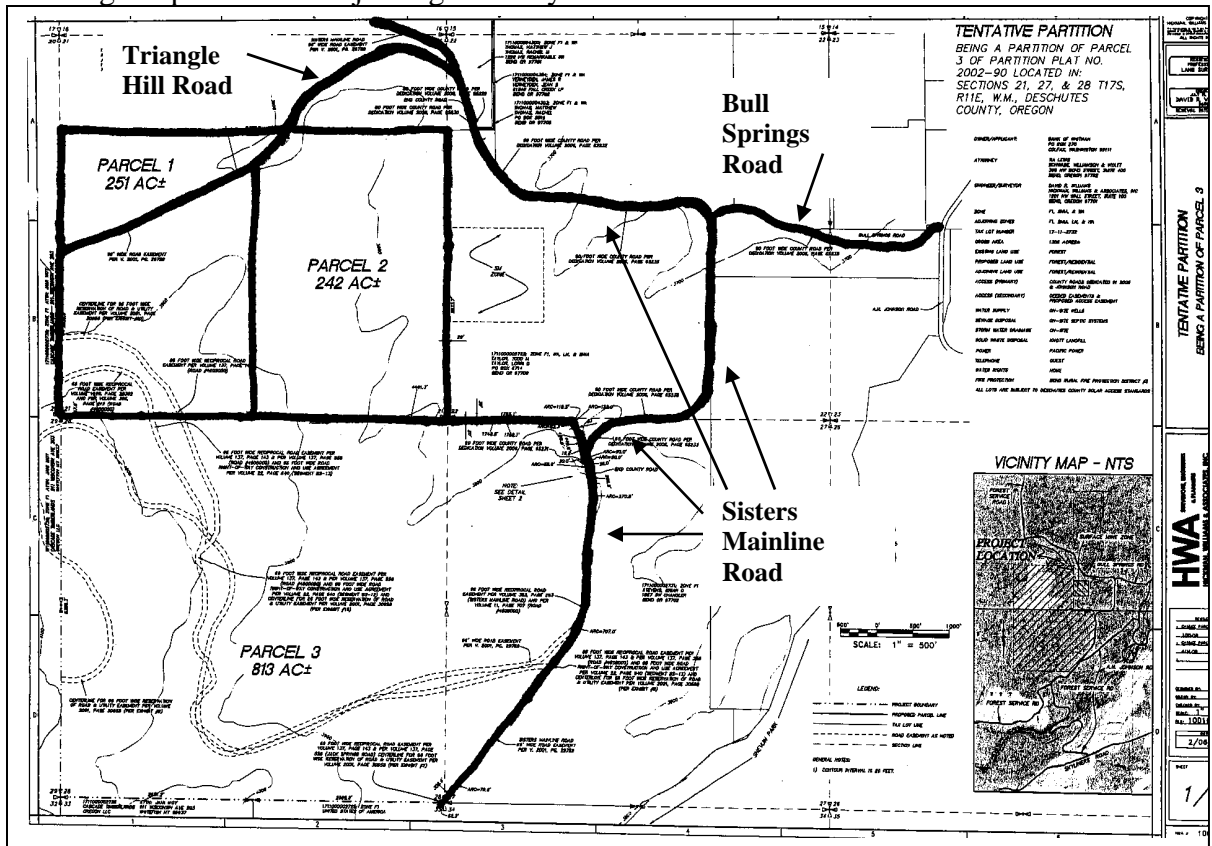
**MOTION TO INTERVENE**

Bank of Whitman, the applicant below, moves to intervene on the side of respondent.

There is no opposition to the motion and it is allowed.

**FACTS**

The subject property is a 1,306-acre property zoned Forest Use (F-1) located northwest of the city of Bend. The property is bounded on its southeastern side by Sisters Mainline Road, a public road that connects to the north and east of the property to Bull Springs Road, also a public road. Bull Springs Road travels east and connects with another public road, Johnson Market Road. A road called Triangle Hill Road, which is not a public road, crosses a small portion of the northwest part of the subject property. Intervenor applied to partition the subject property into three parcels: Parcel 1 is approximately 251 acres, Parcel 2 is approximately 242 acres, and Parcel 3 is approximately 813 acres. A map showing the parcels and adjoining roadways is set out below.



1

2           Parcels 1 and 2 each include side by side access strips, or flagpoles, that connect  
3 Parcels 1 and 2 to Sisters Mainline Road. At each parcel’s connection to Sisters Mainline  
4 Road, the flagpole is 50 feet wide. From its connection with Sisters Mainline Road, each  
5 flagpole curves to the north for an approximate distance of 500 feet. Each flagpole also  
6 decreases in width as it moves farther from Sisters Mainline Road, and each flagpole is 20  
7 feet wide along the east/west portion of the flagpole. Parcel 1 is located the farthest from  
8 Sisters Mainline Road, immediately west of Parcel 2. Parcel 1’s flagpole begins at the  
9 southeast corner of Parcel 1 and runs east along the southern boundary of Parcel 2 and a  
10 neighboring parcel a total distance of approximately 4,900 feet to Sisters Mainline Road.  
11 Parcel 2’s flagpole begins at Parcel 2’s southeast corner and travels east approximately 2,205  
12 feet alongside Parcel 1’s flagpole to Sisters Mainline Road. Parcel 3 is located south of  
13 Parcel’s 1 and 2, and Parcel 3’s eastern property line adjoins Sisters Mainline Road.

14           The hearings officer approved the partition, and petitioner appealed the decision to  
15 the board of county commissioners, which declined to review the decision. This appeal  
16 followed.

17 **FIRST ASSIGNMENT OF ERROR**

18           Deschutes County Code (DCC) 17.22.020 provides the standards for approval of a  
19 partition. DCC 17.22.020(A) provides in relevant part that a partition may be approved  
20 where:

21           “(3) The partition is *accessed* either by roads dedicated to the public or by  
22 way of United States Forest Service or Bureau of Land Management  
23 roads where applicant has submitted a written agreement with the  
24 appropriate land management agency providing for permanent legal  
25 access to the parcels and any required maintenance. This provision  
26 shall not be subject to variance.” (Emphasis added.)

27 The hearings officer concluded that the proposed partition satisfies DCC 17.22.020(A)(3):

28           “In [a decision on a different partition application], I held this criterion  
29 requires the partition applicant to demonstrate that the proposed partition

1 parcels would have both permanent legal access and actual physical access  
2 from either a dedicated public road or a USFS or Bureau of Land  
3 Management (BLM) road. As shown on the revised partition plat, access to  
4 the subject property is from three dedicated public roads: Johnson Market  
5 Road, Bull Springs Road, and the dedicated segment of Sisters Mainline Road  
6 which abuts the subject property along the proposed eastern boundary of  
7 Parcel 3. As a result of the proposed flag-lot configurations of Parcels 1 and  
8 2, all three proposed parcels would have at least 50 feet of frontage on the  
9 dedicated portion of Sisters Mainline Road at the northeast corner of Parcel 3.

10 “ \* \* \* \* \*

11 “[I]t appears [petitioner] also objects to the proposed partition because the  
12 applicant has not demonstrated that roads or driveways providing access *to*  
13  *dwellings* have been or can be constructed within the 50-foot-wide flag poles  
14 for Parcels 1 and 2. The Hearings Officer finds no such demonstration is  
15 required by this partition access criterion. Rather, the adequacy of road or  
16 driveway access *to dwellings* on forest-zoned land is determined at the time an  
17 application for a dwelling is considered under [the DCC].” Record 28, 30  
18 (emphases in original.)

19 In its first assignment of error, petitioner argues that the hearings officer  
20 misconstrued applicable law when she determined that DCC 17.22.020(A)(3) is satisfied  
21 because the flagpoles for proposed Parcels 1 and 2 connect to a public road, Sisters Mainline  
22 Road, with the 50 feet of frontage on that public road that is required by DCC 17.36.180.<sup>1</sup>  
23 According to petitioner, the fact that the flagpoles connecting Parcels 1 and 2 to Sisters  
24 Mainline Road provide a point of access onto that road from the Parcel 1 and 2 flagpoles is  
25 not sufficient. According to petitioner, DCC 17.22.020(A)(3) requires a demonstration that  
26 the flagpoles can be improved with a driveway that will connect the proposed homesites to  
27 Sisters Mainline Road. According to petitioner, the evidence in the record indicates that  
28 there is no driveway constructed on the flagpole portions of the parcels and intervenor has

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<sup>1</sup> DCC 17.36.180 provides in relevant part:

“Each lot or parcel shall abut upon a public road, or when located in a planned development or cluster development, a private road, for at least 50 feet[.]”

1 indicated that it does not intend to use the flagpoles or improve the flagpoles with a  
2 driveway.<sup>2</sup>

3         Moreover, petitioner argues, even if the applicant intended to improve the flagpoles  
4 with driveways that will connect the developable (flag) portion of the parcels with Sisters  
5 Mainline Road, the flagpoles are too narrow along the southern boundaries of the parcels and  
6 the terrain is too steep and rocky to improve the flagpoles with a driveway. Petitioner argues  
7 that it is almost certainly impracticable to construct a driveway across rough terrain within a  
8 perfectly straight, 20-foot wide, almost one mile-long corridor without some curvature or  
9 deviation to account for topography. According to petitioner, the hearings officer erred in  
10 failing to at least consider whether it is practicable to develop the flagpoles with driveways to  
11 provide vehicular and emergency access to the developable (flag) portion of Parcels 1 and 2.  
12 Petitioner emphasizes that the DCC 17.22.020(A)(3) access requirement is not subject to  
13 variance, unlike other partition standards, suggesting that the DCC 17.22.020(A)(3) access  
14 requirement serves an important function. Petitioner argues that that function is to ensure  
15 actual, physical connection between Sisters Mainline Road and the developable portion of  
16 the parcels for emergency and passenger vehicles. In the context of a flag lot, petitioner  
17 argues, that means an actual driveway connection between the public road and the  
18 developable flag portion of the parcel is required.

19         Intervenor argues that the requirement for access under DCC 17.22.020(A)(3) is  
20 solely concerned with the legal right to cross the boundary between a public road and  
21 adjoining parcel, and is not concerned with providing vehicular access to the interior of the  
22 parcel, or specifically to the developable flag portion of a flaglot. In support, intervenor cites  
23 the DCC definition of “access,” which is found at DCC 17.08.030:

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<sup>2</sup> We use the term “driveway” in this opinion to refer to a travelway that is improved in some way to allow pedestrians and vehicles to travel from the road or street that provides access to a parcel to the developed areas within the parcel.

1           “Access’ means the right to cross between public and private property  
2           allowing pedestrians and vehicles to enter and leave the property.”

3       Consistent with DCC 17.08.030, intervenor argues that because there are no physical barriers  
4       to access from the public road onto the Parcel 1 and Parcel 2 flagpoles, the hearings officer  
5       properly found that the partition complies with DCC 17.22.020(A)(3).

6           At the outset, we note that it is not entirely clear based on the above-quoted findings  
7       what the hearings officer thinks is required to satisfy DCC 17.22.020(A)(3)’s requirement  
8       that “the partition is accessed” by a public road. In the first paragraph quoted above, the  
9       hearings officer concludes that the criterion requires “actual physical access from \* \* \* a  
10      dedicated public road[.]” Record 28.<sup>3</sup> However, in the remaining portion of the findings  
11     quoted above, the hearings officer appears to conclude that the fact that each flagpole  
12     connects with Sisters Mainline Road and has 50 feet of frontage satisfies the requirement to  
13     provide “permanent legal access and actual physical access” from that road.

14           However, even with that lack of clarity, the hearings officer appears to agree with  
15     intervenor’s limited view of DCC 17.22.020(A)(3). The hearings officer does not discuss the  
16     DCC 17.08.030 definition of “access,” but we agree with intervenor that the DCC definition  
17     of “access” states that “access” means the legal right to cross the boundary between a public  
18     road and adjoining property. Neither DCC 17.22.020(A)(3) nor the definition of “access” at  
19     DCC 17.08.030 include language suggesting that “access” is also concerned with whether  
20     vehicles and pedestrians can, after entering the property from a public road, actually reach  
21     the portions of the parcel that are to be developed. While we do not believe the hearings

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<sup>3</sup> The hearings officer relied heavily on the board of commissioners’ decision in a different partition application, which was appealed to LUBA and affirmed. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003) (*Thomas*). That case also involved a partition creating two flag lots, and the issue of access to a public road under DCC 17.22.020(A)(3) where the proposed parcels did not have direct frontage on or access to a public road but rather had direct frontage on and access to a private easement road. The main legal issue in this case is whether the proposed access is sufficient to provide access from the flag portions of the parcels to Sisters Mainline Road, a public road, over the flagpoles. The *Thomas* decision is not particularly relevant to the present case, and it does not provide clear support for either petitioner’s or intervenor’s view of DCC 17.22.020(A)(3).

1 officer was required to interpret DCC 17.22.020(A)(3) so narrowly, the hearings officer's  
2 interpretation is not inconsistent with the text of DCC 17.22.020(A)(3) or the definition of  
3 "access." Of course there may be other DCC standards that operate in concert with DCC  
4 17.22.020(A)(3) that will be difficult or impossible to satisfy if DCC 17.22.020(A)(3) is  
5 interpreted to allow the "access" requirement of DCC 17.22.020(A)(3) to be met by a legal  
6 access that only provides access to a small part of a lot or parcel that is inaccessible to the  
7 remainder of the lot or parcel where development is proposed. We address those standards  
8 below.

9 The first assignment of error is denied.

## 10 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

11 DCC 17.22.020(A)(5) provides in relevant part that a partition may be approved  
12 where:

13 "Each parcel is suited for the use intended or offered, considering the size of  
14 the parcels, natural hazards, topography and access."

15 There is no dispute that one of conditionally allowed uses in the F-1 zone is a single family  
16 dwelling and that the parcels were approved to permit the parcels to be used for any of the  
17 uses that are potentially allowable in the F-1 zone, including development of single family  
18 dwellings. There is also no dispute that, as Parcels 1 and 2 are configured, any dwelling sited  
19 in those parcels would have to be sited in the "flag" portion of those parcels.

### 20 **1. Access (Second Assignment of Error)**

21 The hearings officer concluded that the partition satisfies DCC 17.22.020(A)(5):

22 "As discussed in detail elsewhere in this decision, the Hearings Officer has  
23 found the proposed parcels will have adequate access from dedicated and  
24 improved public roads." Record 35.

25 In its second assignment of error, we understand petitioner to argue that it was error for the  
26 hearings officer to find that simply because the proposed access for Parcels 1 and 2 via  
27 lengthy flagpoles satisfies the hearings officer's narrow interpretation of DCC

1 17.22.020(A)(3), it necessarily follows that such access satisfies the requirement under DCC  
2 17.22.020(A)(5) that the parcel be “suited for” all F-1 uses, including single family  
3 residential development, considering the nature of the parcels and access proposed.  
4 Petitioner took the position below that the narrow flagpoles cross rugged terrain and it would  
5 be difficult or impossible to construct a driveway on those flagpoles. The hearings officer  
6 ultimately took the position that the practicality of actually constructing a driveway that  
7 would connect Sisters Mainline Road with the only parts of Parcels 1 and 2 on which a  
8 dwelling could be constructed is as irrelevant under DCC 17.22.020(A)(5) as it was under  
9 DCC 17.22.020(A)(3). Petitioner contends the hearings officer erroneously conflated the  
10 requirements of DCC 17.22.020(A)(3) and (5).

11 We agree with petitioner. The proposed and approved access apparently would  
12 permit a pedestrian or vehicle to cross from Sisters Mainline Road onto the Parcel 1 and 2  
13 flagpoles. As the hearings officer interprets DCC 17.22.020(A)(3), the proposed access  
14 satisfies DCC 17.22.020(A)(3). But DCC 17.22.020(A)(5) poses a different and broader  
15 question: whether the proposed parcels, as configured, are suitable for the intended use,  
16 considering access. There does not appear to be any serious question in this case that at least  
17 one of the intended uses is residential development. Neither is there any serious question  
18 that the only parts of Parcels 1 and 2 that can be developed for residential use are located far  
19 from the proposed point of entry from and exit onto Sisters Mainline Road, in the flag  
20 portion of those parcels. As discussed below, there is substantial, unrebutted expert evidence  
21 in the record that the configuration of parcels 1 and 2 is unsuitable for the intended  
22 residential use, because travel to and from the developable flag portions of those parcels via  
23 the lengthy flagpoles would be unsafe. In addition, petitioner argued below that one or more  
24 driveways cannot be practicably constructed within the proposed flagpoles, due to their  
25 narrow width, length, and topographic challenges. The hearings officer concluded  
26 essentially that the practicability of constructing one or more driveways along the flagpoles



1 is irrelevant under DCC 17.22.020(A)(5). As noted above, the hearings officer’s finding  
2 with respect to the suitability of access for purposes of DCC 17.22.020(A)(5) appears to  
3 simply refer to the findings under DCC 17.22.020(A)(3) that access exists allowing vehicles  
4 and pedestrians to cross the property boundary between Sisters Mainline Road and the  
5 subject property.

6 We agree with petitioner that the hearings officer appears to have conflated the  
7 requirements of DCC 17.22.020(A)(3) and DCC 17.22.020(A)(5) with respect to access, and  
8 failed to adequately address whether Parcels 1 and 2, as configured, are “suitable for the  
9 intended use” considering access. Although access may be complete and sufficient to  
10 comply with DCC 17.22.020(A)(3) as soon as it is possible to pass from Sisters Mainline  
11 Road onto the Parcel 1 and 2 flagpoles, at that point a pedestrian or vehicle is 4900 feet from  
12 the developable flag portion of Parcel 1 and 2,205 feet from the developable portion of  
13 Parcel 2. If the flagpoles do not provide a safe, practicable way to travel to and from t hose  
14 developable portions of Parcels 1 or 2, as petitioner alleges, then a serious question arises  
15 under DCC 17.22.020(A)(5) whether those parcels, as configured, are suitable for the  
16 intended use, considering access. The hearings officer failed to address that question, under  
17 the mistaken view that compliance with the access requirement of DCC 17.22.020(A)(3) is  
18 sufficient, in itself, to demonstrate that the parcels are suitable for the intended use,  
19 considering access, for purposes of DCC 17.22.020(A)(5).

20 The second assignment of error is sustained.

21 **2. Natural Hazards (Third Assignment of Error)**

22 As described in the decision, “the subject property is a large forested parcel  
23 characterized by a moderate to dense vegetative cover including juniper and pine trees and  
24 native brush and grasses.” Record 31. The subject property is located in a high risk fire  
25 area. The hearings officer concluded that the parcel was suitable for residential use  
26 considering fire hazard threat. She reached that conclusion because (1) the subject property

1 has been included in the Deschutes Rural Fire Protection District (RFPD); and (2) the  
2 proposed parcels exceed the minimum parcel size for large forest tract dwellings in the F-1  
3 zone (240 acres) and thus are large enough to meet dwelling siting standards such as setback  
4 and fire and fuel break standards. Record 31-33.

5 In a portion of its third assignment of error, petitioner challenges the hearings  
6 officer's reliance on the subject property's inclusion in the RFPD and the fact that the parcels  
7 meet the minimum parcel size requirements to conclude that the property is suitable for  
8 residential use considering fire hazards. Although those considerations may or may not be  
9 sufficient, we disagree with petitioner that they are irrelevant considerations. Inclusion  
10 within a RFPD and the corresponding availability of fire protection services appears to us to  
11 be relevant in considering whether fire hazards make the parcels suitable for residential use.  
12 Additionally, the ability of the parcels to meet future setback and fire and fuel break  
13 requirements for dwellings can also be relevant in considering whether the property is  
14 suitable for residential use.

15 Petitioner submitted testimony from a fire expert concluding, essentially, that access  
16 to the developable flag portions over the flagpoles is unsafe, due in part to the distance  
17 between the developable portions and Sisters Mainline Road, and argued based on that  
18 testimony that Parcels 1 and 2 are not suitable for residential use, considering natural  
19 hazards.<sup>4</sup> Petitioner argues that the hearings officer ignored the fire expert's testimony,  
20 viewing it to be irrelevant for purposes of DCC 17.22.020(A)(5), and concluded that fire

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<sup>4</sup> That testimony provided in relevant part:

“Reasonably fast and safe access to all potential building locations must be given to afford fire medical and law enforcement personnel the ability to perform their duties. Delayed response allows hazardous situations to develop to an unnecessary level and puts occupants, fire fighters and adjacent landowners at an additional and avoidable risk. Mapping out a ‘flag line’ does not provide the access to each parcel that is needed. Only close, direct, all weather roads is the logical and correct answer. Only a ‘wink and a nod’ answer is proposed here. This cannot be found to be acceptable.” Record 204.

1 safety issues regarding specific building sites within the developable flag portion can be  
2 addressed when specific dwelling approvals are sought under the fire siting standards of  
3 DCC 18.36.040(B):

4 “[W]here, as here, no specific dwelling sites have been proposed for any of  
5 the partition parcels, the only parcel-specific information in the record  
6 consists of a large-scale topographical map and aerial photograph, and there is  
7 no analysis of fire risks from dwellings at those sites or alternative sites, I find  
8 it is simply not possible to make the determinations required under DCC  
9 18.36.040(B). And for the same reasons, I cannot find, as [petitioner]  
10 apparently asks me to do, that there are *no* dwelling locations on the proposed  
11 parcels that could satisfy the fire siting standards. Moreover, the Hearings  
12 Officer has not been cited, nor have I found, any provisions in Title 17 or  
13 elsewhere in the county code authorizing me to approve a partition for a  
14 particular use or uses but not for others – i.e. for forestry but not for  
15 residential. And even if such authority existed, I find such a limitation would  
16 not preclude a subsequent application for dwelling approval. \* \* \*” Record 35  
17 (emphasis in original.)

18 We agree with petitioner that the hearings officer appears to have misunderstood the  
19 requirement in DCC 17.22.020(A)(5) to determine at the partition stage whether fire hazards  
20 make the proposed parcels unsuitable for residential use, because she apparently presumed  
21 that the dwelling siting standards at DCC 18.36.040(B) that would apply to a future  
22 application to site a dwelling on the subject property would provide adequate assurance that  
23 the proposed parcels are suitable for the intended residential use, considering fire hazards.  
24 Based on that misunderstanding, we understand the hearings officer to have rejected the  
25 testimony and evidence of petitioner’s fire expert, Johnson. However, that unchallenged  
26 testimony took the position that the proposed parcels are not suitable for residential use  
27 because the proposed driveways over the flagpoles are not direct and fast enough for  
28 emergency services and because the subject property is located to the west of the West Bend  
29 Fuel Break in a high fire risk area, without regard to the adequacy of access to specific  
30 dwelling sites within the flag portions of Parcels 1 and 2. Record 204. That is, the question  
31 under DCC 17.22.020(A)(5) is not whether specific dwelling sites are suitable considering  
32 fire hazards, but whether the proposed parcel configuration, with long flagpoles and the only

1 developable portions of the parcels located some distance from the nearest public road, is  
2 suitable for the intended residential use, considering natural hazards. The only meaningful  
3 time to ask and answer that question is at the time the parcels are created. The fire expert's  
4 unrebutted testimony seems quite relevant to the question posed by DCC 17.22.020(A)(5). It  
5 was error for the hearings officer not to consider that evidence and testimony in determining,  
6 under DCC 17.22.020(A)(5), whether the proposed parcels are suitable for residential use,  
7 considering natural hazards.

8 The third assignment of error is sustained.<sup>5</sup>

9 **FOURTH ASSIGNMENT OF ERROR**

10 DCC Title 17, Chapter 36 provides design standards for land divisions. DCC  
11 17.36.260, titled "Fire Hazards," provides:

12 "Whenever possible, a minimum of two points of access to the subdivision or  
13 partition shall be provided to provide assured access for emergency vehicles  
14 and ease resident evacuation."

15 We restate the definition of "access" from DCC 17.08.030:

16 "'Access' means the right to cross between public and private property  
17 allowing pedestrians and vehicles to enter and leave the property."

18 The hearings officer found that if DCC 17.36.230 applies, DCC 17.36.230 is satisfied  
19 because (1) each parcel will have direct access from Sisters Mainline Road, a public road,  
20 and (2) Parcels 1 and 2 will also have access to and from Triangle Hill Road:

21 "[T]he modified partition plat shows each *parcel* will have at least two points  
22 of access, including direct access from Sisters Mainline Road for all three  
23 parcels, and for Parcels 1 and 2 frontage on and access to Triangle Hill Road,  
24 a [United States Forest Service] USFS Road over which the subject property  
25 has a perpetual access easement, a copy of which is included in the record

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<sup>5</sup> Petitioner also challenges the hearings officer's speculation as to whether she could under the DCC approve a partition for a particular use but prohibit other uses. Intervenor responds, and we agree, that the hearings officer's discussion of possible authority to limit the uses approved by a partition, even if error, provides no basis for reversal or remand of the decision. While we see nothing in the DCC that limits the ability of the county, through conditions of approval, to limit the uses allowed on a newly created parcel in the F-1 zone, we need not address petitioner's challenge to what is essentially dicta in the decision.

1           \*\*\*. I also find all three parcels would have additional emergency  
2           ingress/egress via existing dirt roads and easements that traverse the subject  
3           property.” Record 40 (italics in original.)

4           In its fourth assignment of error, petitioner argues that the hearings officer erred in  
5           relying on the direct connection of Parcels 1 and 2 to Sisters Mainline Road, a public road, to  
6           provide one of the two access points required by DCC 17.36.260 because the flagpole  
7           accesses are not currently developed and are not required to be developed in the future by  
8           any condition of approval, and therefore do not provide the “*assured* access for emergency  
9           vehicles and ease of resident evacuation” that DCC 17.36.260 requires. Petitioner also  
10          argues that, contrary to the hearings officer’s statement quoted above, the evidence in the  
11          record demonstrates that Triangle Hill Road is not a USFS Road but rather a private road  
12          across a private easement. We understand petitioner to argue that because Triangle Hill  
13          Road is not a public road, it cannot provide “access” as defined in DCC 17.08, since at most  
14          it would provide a right to cross from intervenor’s private property to another privately  
15          owned property, rather than a public road. Finally, petitioner challenges the hearings  
16          officer’s reliance on “existing dirt roads and easements that traverse the subject property” to  
17          provide the “assured access for emergency vehicles and to ease resident evacuation” that is  
18          required by DCC 17.22.260.

19          We agree with petitioner that the hearings officer’s conclusion that DCC 17.36.260 is  
20          satisfied fails to consider how the undeveloped flagpoles that connect Parcels 1 and 2 with  
21          Sisters Mainline Road can provide the “assured access” that is required by the criterion.  
22          While the flagpole connections to Sisters Mainline Road may provide “access” under the  
23          DCC 17.08 definition of that term, and may be adequate to satisfy the DCC 17.22.020(A)(3)  
24          requirement for access, DCC 17.36.260 requires a demonstration of “*assured access for*  
25          *emergency vehicles and to ease resident evacuation.*” (Emphasis added.) As was the case  
26          under the second assignment of error, just because the proposed access is minimally  
27          sufficient to comply with the hearings officer’s interpretation of DCC 17.22.020(A)(3) does

1 not mean that access is sufficient to “provide assured access for emergency vehicles and ease  
2 resident evacuation.” Access that could leave emergency vehicles thousands of feet from the  
3 developed portion of Parcels 1 and 2 where there are residents who may need evacuation is  
4 not sufficient to satisfy DCC 17.36.260.

5 Similarly, we agree with petitioner that the frontage that Parcels 1 and 2 have on  
6 Triangle Hill Road does not provides the “access” (as defined in DCC 17.08) that is required  
7 by DCC 17.36.260, where the evidence in the record indicates that Triangle Hill Road is a  
8 private easement. Record 196. Finally, we agree with petitioner that the hearings officer’s  
9 conclusion that “existing dirt roads and easements that traverse the subject property” supply  
10 the “assured access” that is required by DCC 17.36.260 is not supported by substantial  
11 evidence in the record where there is no evidence in the record regarding the ability of those  
12 roads to carry emergency vehicles or evacuating residents.

13 The fourth assignment of error is sustained.

14 The county’s decision is remanded.