

Sisters Shelter Proposal

Review: House Bill 2006 (and as revised by HB 3395)

Applicant: Sisters Cold Weather Shelter

Owner: Desert Wind Holding, LLC

Address: 192 W. Barclay Drive



LOCATION



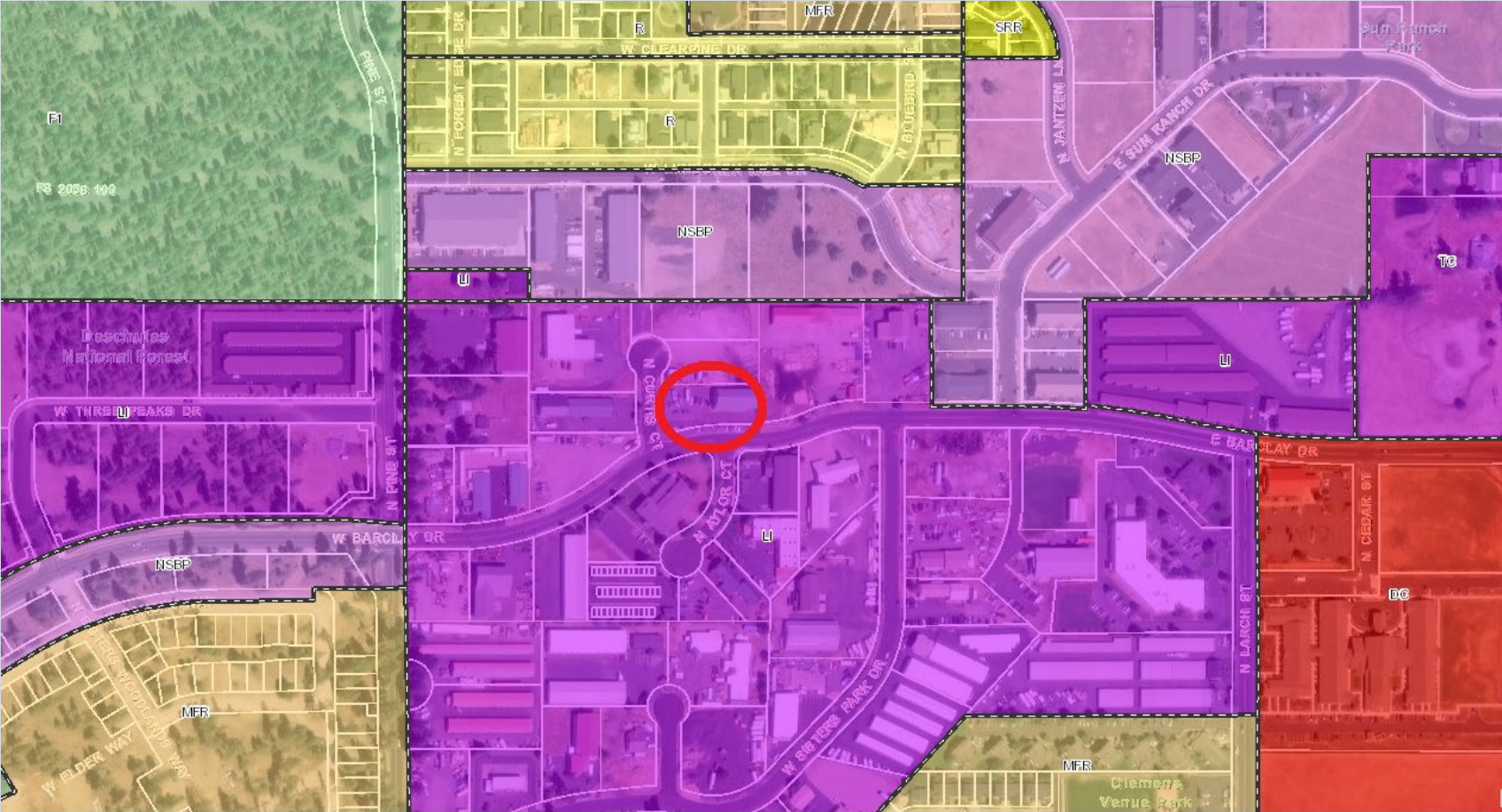
Project Area:

0.53Acres

Zoning:
Light
Industrial



LOCATION



APPLICANT REQUEST

Approval of an emergency shelter to accommodate up to 20 sleeping pads or cots and resource center providing services such as showers, laundry and case management and mental health and addiction and housing resources.

- Winter Operations: November – March 6 pm – 7 am
 - Volunteers to serve food and monitor 6 pm – 10 pm
 - Paid staff to monitor 10 pm – 7 am
- Summer Operations: On an as needed basis (from extreme heat or smoke)
- Resource Center: to provide “essential services” (showers and laundry) and counseling resources
 - Paid staff and volunteers to operate for “limited” hours each week (specific times not disclosed)
 - Code of conduct



LEGISLATIVE HISTORY

HB 2006 (2021) signed into law to remove barriers for the siting of emergency shelters.

- Requires local governments to approve an application for an emergency shelter, regardless of conflicts with other state or local land use regulations, if the application meets specific approval criteria outlined in the bill.

HB 3395 (June 30, 2023): extended HB 2006 until the state homeless population falls below certain thresholds and made several amendments to HB 2006:

- Changed the operator requirement timeline as exempt from income tax on or before January 1, 2018, to “at least three years before the date of the application for a shelter”;
- Clarified that approval or denial of an emergency shelter can be made with or without a hearing; and
- Specified when attorney fees are awarded as part of any “Writ of Review” of a local government decision on an emergency shelter.



PROCEDURAL HISTORY

- Original Application Submitted June 27, 2023
- Applicant withdrew its prior application for an emergency shelter on August 14, 2023
- Applicant then filed a new application on August 15, 2023
- The re-filed application purports to be filed under HB 3395, which staff understands as intending to take advantage of amendments to HB 2006 contained within HB 3395



DECISION MAKING PROCESS

1. HB 2006 controls over any conflicting statewide land use planning goals, LCDC rule or any local zoning ordinance or comprehensive plan.
2. A decision on an emergency shelter is not a “land use decision” and is not subject to appeal to the LUBA (Oregon Land Use Board of Appeals).
3. HB 2006 (as amended) does not provide any direction on the procedures for processing an application for an emergency shelter.
4. Given the level of public attention to the application, City Council elected to hold a public hearing.



CITY COUNCIL DECISION

City Council options:

1. Approve the application as submitted
2. Deny the application as submitted
3. Approve the application with conditions.

HB 2006 (as amended) does not expressly address conditions of approval.

If the Council decides to approve the application subject to conditions, staff recommended conditions are provided in Exhibit D.



PUBLIC COMMENT

- 142 total comments (92 different individuals)
- Notice sent to property owners within 250 feet of subject site.
- Full record to comments at:
<https://www.ci.sisters.or.us/administration/page/emergency-shelter-siting>



HB 2006/3395 REVIEW CRITERIA

- 1) **A local government shall approve an application for the development or use of land for an emergency shelter, as defined in ORS 197.782, on any property, notwithstanding this chapter or ORS chapter 195, 197A, 215 or 227 or any statewide land use planning goal, rule of the Land Conservation and Development Commission or local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:**
 - a) **Includes sleeping and restroom facilities for clients;**

Staff Analysis:

 - Per the application, the proposed shelter will include sleeping and restroom facilities for clients,
 - Large, open area on the first floor of the building where sleeping mats or cots can be laid down. The building already includes restrooms that can be used by shelter clients.
 - No floor plans were submitted, but city staff did conduct a site visit and can confirm that the sleeping space and restroom facilities.



HB 2006/3395 REVIEW CRITERIA

b) Will comply with applicable building codes;

Staff Analysis:

- The applicant has coordinated with the County and State Fire Marshal
- A variety of building/fire code related approval will be required for various uses of building.
- Building code administrators indicate that the proposal could comply with applicable codes.
- Criteria satisfied as long as the applicant pursues and receives applicable building permits and approvals, and otherwise meets requirements of the Deschutes County Building Department and State Fire Marshal
- Should City Council approve the emergency shelter, staff recommends a condition of approval that the applicant obtain all applicable building permits.



HB 2006/3395 REVIEW CRITERIA

- a) Is located inside the urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;

Staff Analysis: According to the Sisters Zoning Map, the subject property is located within the City's Urban Growth Boundary.



HB 2006/3395 REVIEW CRITERIA

- a) Will not result in the development of a new building that is sited within an area designated under a statewide planning goal relating to natural disasters and hazards, including flood plains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;

Staff Analysis:

- Will not result in a new building proposed
- Subject property is not located with a floodplain
- Not designated under the City's comprehensive plan as mapped for a natural disaster or environmental health hazard.



HB 2006/3395 REVIEW CRITERIA

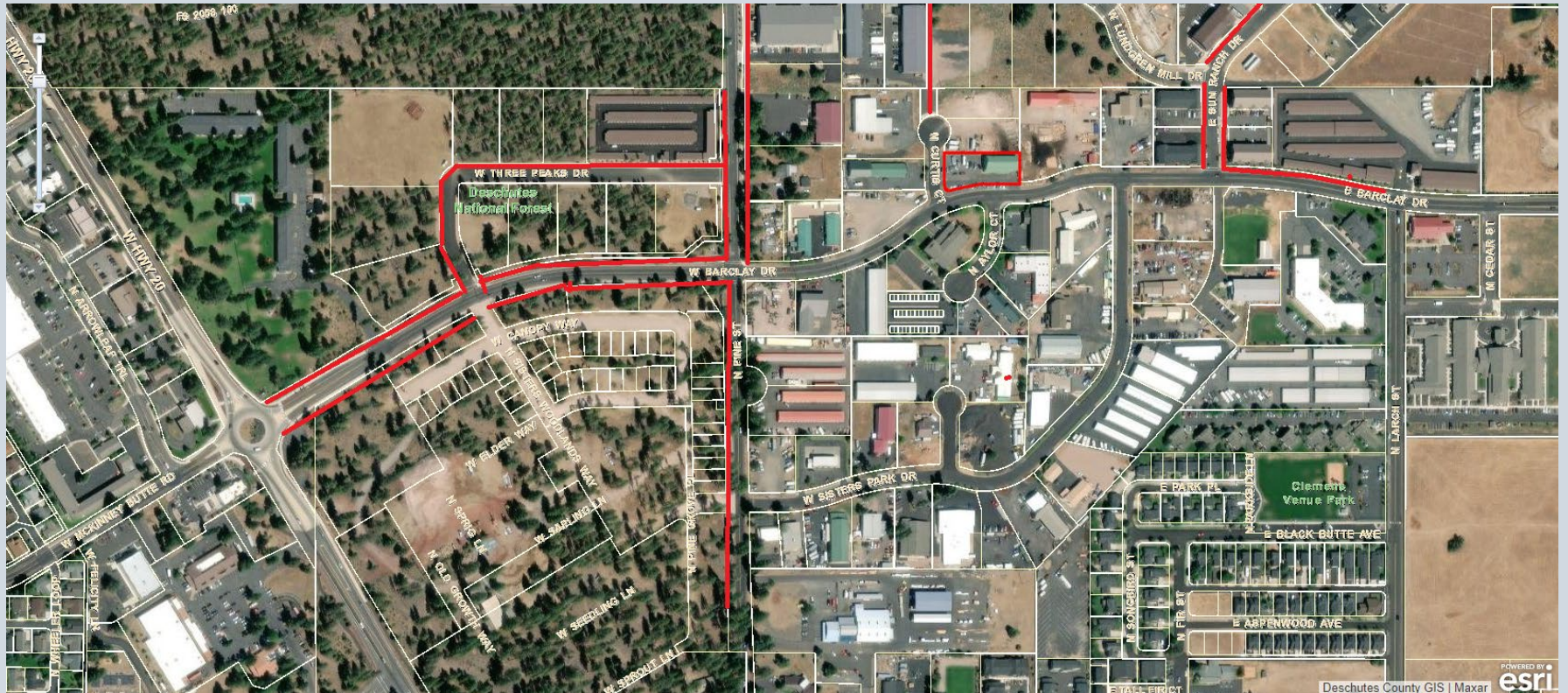
a) **Has adequate transportation access to commercial and medical services; and**

Staff Analysis:

- Criterion: adequacy of transportation access to commercial and medical services - not whether the commercial and medical services themselves are adequate.
- No guidance what constitutes “adequate transportation access”. Staff assumes that this provision requires at least some consideration of the various modes of transportation.
- Public commenters have noted:
 - No emergency department or urgent care facility within the City
 - No sidewalks/lighting on Barclay Drive
 - No on-street parking nearby facility



HB 2006/3395 REVIEW CRITERIA



HB 2006/3395 REVIEW CRITERIA

a) **Has adequate transportation access to commercial and medical services; and**

Staff Analysis:

- The city has plans to add multi-use paths on both sides of Barclay Drive,. The start date is TBD.
- Transit: Cascade East Transit has transit stop on Main Avenue with regular service to Bend, Redmond and other Central Oregon communities, in addition to Dial-A-Ride services.
- Parking: no on-street parking, but available on-street parking (20-25 spaces)
- This plausibly provides access to additional commercial and medical services at destinations within the service area.



HB 2006/3395 REVIEW CRITERIA

a) Will not pose any unreasonable risk to public health or safety.

Staff Analysis:

- The criterion does not set the bar at *any* risk to public health and safety rather whether risk is “unreasonable”.
- HB 2006 (as amended) does not set out any further guidance as to what constitutes an “unreasonable risk”.
- Public comments have identified concerns, including:
 - Proximity to businesses and homes where children play and along school routes
 - Insufficient law enforcement staffing and availability to serve the shelter or its clients
 - Shelter guests under the influence of drugs/alcohol and who may have violent tendencies.
 - Lack of sidewalks and lighting along Barclay and the risk posed to pedestrians/bicyclists
 - Concern about vandalism to neighboring businesses where expensive equipment is stored
 - Inadequate planning or resources to accommodate an emergency facility of this scale.
 - Inadequate staffing (either numbers or experience).
 - Lack of monitoring of emergency shelter guests outside of shelter operational hours
 - Concern that the facility will morph into full-time shelter with other services
 - Will attract new houseless people from other communities



HB 2006/3395 REVIEW CRITERIA

a) Will not pose any unreasonable risk to public health or safety.

Staff Analysis:

- The applicant contends that the proposed emergency shelter will not pose any unreasonable risk to public health or safety due to:
 - Paid staff on site from 10 pm-7 am to monitor the guests and volunteers on site from 6 pm-10 pm.
 - Code of conduct:
 - Behave in a respectful manner
 - Prohibit the use of drug and alcohol use on premises
 - No loitering near the building or in the neighborhood before and after open hours
 - May not re-enter the emergency shelter once they arrive for the evening
 - Few incidents during its prior emergency shelter operations.



HB 2006/3395 REVIEW CRITERIA

a) Will not pose any unreasonable risk to public health or safety.

Staff Analysis:

- Deschutes County Sheriff's Office offices located a ¼ mile away
 - The force consists of 4 personnel with a 5th to start January of 2024. There is 24-hour coverage.
 - Lieutenant state the Sheriff's Office is not unable to serve the proposed emergency shelter.
- The Sisters-Camp Sherman Fire District Fire is also located within a mile of this facility.

Similar to the previous criterion, HB 2006 does not provide any guidance as to what constitutes “unreasonable risk”. City Council will have to resolve whether (a) any of the identified risks are “unreasonable” in nature given conflicting arguments/evidence in the record, and (b) whether the mitigation proposed by the applicant is sufficient to reduce any “unreasonable risks” to the realm of “reasonable”.



HB 2006/3395 REVIEW CRITERIA

- 2) An emergency shelter allowed under this section must be operated by:
- a) A local government as defined in ORS 174.116;
 - b) An organization with at least two years' experience operating an emergency shelter using best practices that is:
 - A. A local housing authority as defined in ORS 456.375;
 - B. A religious corporation as defined in ORS 65.001; or
 - C. A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals, that has been recognized as exempt from income tax under 501(a) of the Internal Revenue Code for at least three years before the date of the application for a shelter; or
 - c) A nonprofit corporation partnering with any other entity described in this subsection.



HB 2006/3395 REVIEW CRITERIA

Staff Analysis (Operational Experience):

- Criterion unclear: does it require at least 730 days of operation in the aggregate (365 days/year x 2 years) or operation for part of at least two calendar years?
- HB 2006 does not address what constitutes “best practices”
- Applicant: we have size seasons of experience operating cold weather shelter, starting in 2017 (but provide no further details on days in operation or whether best practices were implemented).
- City Records: Four Resolutions approved:
 - Nov. 1, 2018 to March 31, 2019
 - Nov. 1, 2019-March 15, 2020
 - Dec 1, 2021 to Feb 28, 2022
 - Feb. 1, 2022 to March 31, 2022



HB 2006/3395 REVIEW CRITERIA

Staff Analysis (Tax Exemption):

- Applicant registered with the state as a domestic public benefit corporation on August 12, 2020
- Applicant asserts its charitable purpose is to support homeless persons by providing shelter during periods of extreme weather.
- The applicant supplied a letter from the IRS dated 1/22/21 that says applicant is “exempt from federal income as a “public charity”.
- Criterion is ambiguous as to how to measure the duration of tax exemption: From date of letter or from “effective date of exemption”?
- Staff inclined to support “effective date” as it measures “tenure’ of organization, not arbitrary date IRS issued letter.



HB 2006/3395 REVIEW CRITERIA

Staff Analysis (Partner):

- Applicant can meet criterion if partnering with a qualifying organization
- HB 2006 provides no guidance as to what constitutes “partnering” with another qualified entity.
- Applicant has made reference to “operating under the umbrella”, receiving “technical assistance”, and even an intent to “partner” in the provision of certain emergency shelter related services from third parties.
- Staff is unclear whether the applicant made these statements for purposes of demonstrating “partnering” under this criterion
- Staff notes that the applicant has not provided any evidence demonstrating that third parties acknowledge any partnership arrangement or that such third parties would independently qualify.



HB 2006/3395 REVIEW CRITERIA

Staff Analysis (Eligibility):

City Council will have to resolve whether:

(a) applicant has “two years” of experience operating an emergency shelter using “best practices”, and

(b) whether the applicant has been “recognized” as tax exempt for the requisite period, and

(c) if the intent is to establish partnership with a qualifying organization, whether there is sufficient evidence to establish a partnership and whether the partner would independently qualify.



NEXT STEPS

At the conclusion of the testimony, the Council can consider the following options:

1. Continue the hearing to a date certain;
2. Close the hearing and leave the written record open to a date certain;
3. Close the hearing and set a date for deliberations; or
4. Close the hearing and commence deliberations



QUESTIONS?



RESERVE SLIDES



CONDITIONS OF APPROVAL

If the Council decides to approve the application with conditions, staff recommends at least the following:

1. The approval is limited to the submitted application which includes an emergency shelter accommodating up to 20 guests per night during instances of extreme weather and may provide the services permitted under HB 2006 (as amended). Any material modification from the submitted application from the will require submission and approval of a new application to allow for review of the modified emergency shelter under the criteria of HB 2006 (as amended). A substantial alteration includes, but is not limited to, expanding the shelter to accommodate more persons or permitting any outdoor camping (including allowing persons to occupy vehicles overnight). Any non-emergency shelter use of the facility, including any accessory use not permitted under HB 2006 (as amended) will require separate application and approval consistent with applicable land use laws and regulations.
2. The proposed emergency shelter must begin operations within two years from the date of this approval or it shall be voided. Additionally, this authorization shall be voided if the use of the subject property as emergency shelter is interrupted or abandoned for any period of more than two years.
3. The applicant shall obtain all required building permits, approvals, and inspections from the Deschutes County Building Department and State Fire Marshall prior to commencing the use or HB 2006 (as amended) permitted accessory use that requires such building permit, approval, or inspection and shall otherwise comply at all times with the requirements of the County Building Department and State Fire Marshall.
4. Applicant will only charge for services in a manner consistent with HB 2006 (as amended).

