



For Recording Stamp Only

Deschutes County Board of Commissioners  
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## MINUTES OF WORK SESSION

### DESCHUTES COUNTY BOARD OF COMMISSIONERS

**WEDNESDAY, MAY 11, 2016**

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*Present were Commissioners Alan Unger, Tammy Baney and Anthony DeBone. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; and Dave Doyle, County Counsel. Attending for a portion of the meeting were Will Groves, Anthony Raguine, Peter Russell and Nick Lelack, Community Development; Judith Ure, Administration; Nathan Garibay, Sheriff's Office; Whitney Hale, Communications; Tom Kuhn, Health Services; and five other citizens, including Richard Coe of The Bulletin.*

*Chair Unger opened the meeting at 1:30 p.m.*

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#### **1. Approval of Emergency Management Performance Grant Application.**

Nathan Garibay said that the grant is higher this year to cover staffing for awareness campaigns and other efforts. No one has been identified for this position. The Department is guaranteed a certain amount, but anticipates more, and it is budgeted. The plan is to go forward with the position regardless.

Chair Unger noted that in previous discussions, he has not seen a lot of engagement from FEMA. He would like to know if there was a Cascadia event tomorrow, what they would do. Mr. Garibay said that they have been bantering with FEMA regarding expectations. Planning assumptions are changing, but FEMA has not updated its information.

There needs to be more attention given to this now to help FEMA realize that local input is important. Some groups think they will be able to go into the Fairgrounds, but not everyone is aware of how this might be handled. After the Cascadia Rising exercise, there should be more clarity. Some current assumptions are inaccurate. They might need more input from federal legislators as well.

BANEY: Move approval of the application.

DEBONE: Second.

VOTE: BANEY: Yes.

DEBONE: Yes.

UNGER: Chair votes yes.

## **2. Economic Development Loan Program Discussion.**

Roger Lee and Tom Rowley of EDCO came before the Board. Judith Ure explained that the loan program was formed in 2010 by Resolution, but is mostly silent on criteria. The current agreement is different from the original, however, with more refinements. Some agreements address family wage jobs and other issues that come up over time. They use a particular definition from the Oregon Labor Market Association. It is a baseline, however, and not a link to family wage amounts.

The Board also asked about granting multiple loans to the same company, which has happened a couple of times. In addition, benefits have come up, since some companies pay less than family wages and may not offer benefits.

The loan amount has been up to \$2,000 per job. Regarding geographic distribution, there is not much control over this since some communities are more ready than others. The Board has not required leveraging, perhaps with the cities weighing in, or matching dollars.

She asked if the Board wanted to formalize some of the criteria.

Commissioner DeBone said the big picture is that this was created when the economy was down, anticipating the future. It is a great program to offer but definitions would help. He wants to know if this was meant to be permanent. Is it even the right thing for the County to be doing this. And, is there appropriate funding for it.

Chair Unger stated that he would like it to be a permanent program since it works. Central Oregon has benefited from growth and economic development, and perhaps this played a part in that. They are not able to do much to enable a business to come or stay here. Central Oregon Trucking stayed but perhaps a few others went elsewhere. The benefits are a growing economy, more jobs, higher assessed value and more tax revenue. They can invest ahead to promote development and get long-term benefits.

Commissioner DeBone noted that is for diversification of the economy and growing foundational jobs. Some in small businesses end up buying themselves a job. This needs to be on a professional level.

Ms. Ure said that the Resolution says they are to be traded sector jobs, doing business outside of this area. Chair Unger said that they bring outside dollars into this area.

Roger Lee stated that they continue to refine the program. There can be a lot of flexibility but not a license to abuse it. It is the County's program and he will help them execute it. More direction is helpful.

Commissioner Baney said that she struggles with this when the wages are lower than they would like to see. She wants to know more about benefits or training. Mr. Lee replied that the majority of manufacturing jobs are above average most of the time. Some are adding jobs at the entry level. An average wage of jobs is being created, but overall the average is above this.

Ms. Ure added that if you look at the last three companies, there is a big disparity between the higher paid persons and other employees. An average would not break this out. Chair Unger said that he supports new jobs, and expects them to have a family wage component. He likes the idea of total compensation including health care, a pension and other benefits. He feels they should include this.

Commissioner DeBone asked for a definition of the wage issue. Commissioner Baney stated that she wants to see an average baseline. Regarding the \$21,000 jobs, she wondered if they are benefited. They would be on the Oregon Health Plan and she does not want this to happen. She supports some entry-level positions for job training, as this allows for experience. Commissioner DeBone noted that some people will not care about moving up. Commissioner Baney stated that they need a zone for what they want to see and define it further.

Mr. Lee said that the term ‘family wage’ is widely used but it is a debatable term, and there is a different number for each county. It is an average payroll of all industries by number of jobs. It does not say if the employees are able to pay the rent or buy food.

Mr. Rowley stated that some companies he has assisted are young and starting to grow, and cannot afford to pay higher wages at this time. Commissioner Baney said she would like to allow for this, but would like to see a number. Ms. Ure noted that there is a number in the contract but it has not been criteria for the application.

Commissioner Baney wants to offer some flexibility. She would like more scrutiny of multiple loans to the same company, since the well is only so deep.

Chair Unger stated that Medisiss started in Sisters but then moved to Redmond, and was bought out and the bigger company, Medline Industries, might have moved them away. He wonders if the loan helped to keep them here. It might have made sense, to keep them here. Ms. Ure said that it was not the same situation with Navis.

Commissioner Baney said she would like flexibility if a situation is unique. If someone wants a second loan, it would have to be extenuating circumstances. This is meant for startups or to keep someone in town, and not for each time they want to expand.

Mr. Lee stated that he does get those requests. One that was just forgiven wants to do it again. He understands that there is a preference for companies that did not get a loan in the past. Commissioner Baney stated that there needs to be a real need; that there is not enough capital behind them to come here or grow.

Commissioner DeBone said that this was put into place as the economy was going down. It is different now, but there will be another downside eventually.

Commissioner Baney likes to give preference to those who are entering the pool. Chair Unger added that it should not be used just to grow existing companies, but to expand the base further.

Mr. Anderson stated that the due diligence committee is to look at the business plan or specifics. He asked if they get information on wages and other information.

Mr. Lee replied that they could look at wage categories, but usually they look at the company's financial strength and position in the marketplace. They could possibly show the average benefit value. Commissioner Baney stated that she would like to know what is included in the overall package. Chair Unger added that he would like to see jobs that will give people some kind of future.

Commissioner DeBone noted that the company may not want to be locked into disclosing this in a public setting.

Ms. Ure confirmed that the loan basis is up to \$2,000 per new employee. She asked if the loan limit of \$100,000 is appropriate. Chair Unger replied that he likes it at \$50,000 but it depends on the opportunity. Commissioner Baney said she would look to EDCO as to whether it makes sense. They cannot keep taking money out of general fund for big requests. It is a fine line to use general fund for business support. Some would say this is not the role of the County.

Commissioner DeBone stated he would like some lead-time to make sure it can be planned out, and not receive these requests at the last minute.

Under geographic distribution, Chair Unger said they need to put money where it is needed. There are too many factors to limit it this way. Commissioner Baney added that there are EDCO representatives in each area to help advocate.

Regarding leveraging, Chair Unger said that this is a leverage of everything else. Mr. Anderson said that this is not the best term to use. The bigger question is if this is part of a package, with other sources of assistance, and who else is supportive. Commissioner Baney stated that it would be beneficial to know this. She asked if the cities participate. The County is using general fund to invest in the communities; the cities should do the same. Chair Unger said that Bend should have the resources for this. They have Desert Rise, which is land they could discount through staff time, and could expedite permitting and planning. They could bring that in instead of money. The County cannot do those things. Mr. Anderson agreed that it does not have to be just dollars.

Ms. Ure asked if the Board wants to know this when considering whether to grant a loan. Commissioner Baney replied that she would like EDCO to ask these questions. Mr. Lee said that there are a lot of investment programs, but he understands the County does not want to be out there alone.

Chair Unger stated that the Deschutes Watershed Council turns a grant into a lot more, as a match. To him, this is leverage. COIC has a loan program to support part of what a bank might bring in. This kind of thing could be part of the package to make it work.

Chair Unger said that all of this can be discussed when the loan is proposed. They are trying to help businesses move forward and grow, and be successful. He recognized that some of them might need startup funds. Maybe they need more help with getting workers. Perhaps some of this could help grow a qualified workforce. They are not looking at new money, but perhaps this is important, too. They can consider internships, training programs, vocational schools and on the job training.

Mr. Lee stated that this is happening somewhat already. They are taking people with no skills and giving them some on the job training, but it is just not formalized. Chair Unger said that the Better Together program works at how to get kids into jobs, with monitoring to help with this. Maybe companies can bring them in seasonally for training. They should be encouraged to do this.

Ms. Ure asked if they want project specific programs for something like this. Commissioner Baney said that successes help to mute any criticism. Chair Unger added that he likes the model they have, working with EDCO, and it seems to be effective.

### **3. Consideration of Discretionary Grant Request for J Bar J.**

Ms. Ure said that J Bar J is asking for a grant of \$2,285 to cover site plan review expenses. They were not anticipating this cost.

The Board is overspent in discretionary grants since a lot went to the Bend Opera. The Military Ball is not going to happen. The fundraising category is also overspent. There is money in the overall fund that could just not go into the beginning fund balance for 2016-17. It was pointed out that the radio system grant request of \$2,000 is not being used. The Board decided to fund the J Bar J request.

#### **4. Discussion of Whether to Hear an Appeal – Caldera Springs Resort.**

Anthony Raguine gave an overview of the appeal by Central Oregon Landwatch, whether the Board should consider individual overnight issues rather than the resort as a whole. They are requesting the Board not hear it but instead let it go to LUBA. Caldera Springs will also toll the clock in this case. Neither the appellant nor the applicant wants the Board to hear this.

These are interpretations at the State level and not covered by County code. The biggest issues are statutory language.

David Doyle added that the applicant will not otherwise waive the 150 days, so then there would be no decision to make.

BANEY: Move signature of the Order denying review.

DEBONE: Second.

VOTE: BANEY: Yes.

DEBONE: Yes.

UNGER: Chair votes yes.

#### **5. Preparation for Deliberations: Dreifuss Land Use Case.**

Will Groves provided a matrix of the items to be covered under the appeal of the Hearings Officer's decision. He gave the history of Board activity on this issue. There are seven issues that need direction or policy interpretation.

Decking too close to the river:

The question is whether the dock complies with river frontage standards of 200 feet minimum. It was surveyed to show over 200 feet. The purpose of this regulation is to limit the number of docks along the river. It is a reasonable argument that you would use a surveyor for any other property measurement.

Individual dock versus community dock:

The applicant says there is a walkway and the dock is separate, so the square footage is okay. The applicant will cut back the dock if required. A permit needed to do this and it involves various agencies.

Under fill standards, the wetlands are to be maintained but the Hearings Officer wanted more evidence. The riverbank was built up in the 1970's so there wasn't much, and the character not being altered. No mitigation is required by other agencies.

#### Bathhouse:

It was legally established in 1976, and staff feels there was a septic permit issued for RV use at the time. There was no requirement in code that RV use was even allowed on the property. In 1976, PL-5 may not have covered much. The structure was to support this use accessory, but the Hearings Officer says this is not one of them. The owner at the time says that he asked the County and no permits were needed. It is a murky issue. A decision is to be made on the preponderance of the evidence, which is all they have. Maybe it was not regulated or enforced at the time. Staff feels it was lawfully established in 1976. The Hearings Officer says that this doesn't legalize the use.

A technical issue of the Hearings Officer is that the Uniform Building Code was not submitted until after the record closed. However, it was part of PL-5 so the Board can take notice of it.

#### Bathhouse expansion in the river setback:

This applies to any structure in a yard, and there is one specific to river setbacks. Only a dwelling can be allowed to expand, not a separate shed or garage. This is an unusual structure, not just a shed, and was done at great cost. It is interpretive as to which code pertains. A reading to allow this is a stretch. The Hearings Officer recognizes it is a very nice development and not offensive. But it might open the door to other structures to expand in this way.

The Hearings Officer was questioned about potential adverse impacts to neighborhood by the septic system. Staff has a different conclusion. The Hearings Officer said this is DEQ's job. Staff says there needs to be no greater adverse impact. It is supposed to be used for RV camping and storage. Staff recommends a condition of approval due to neighbor testimony about visitors being at the site. Staff feels that no one should be able to spend the night in the outbuildings. Recreational use standards for vehicles would be applied, to mitigate the septic issue. Staff recommends the bathhouse be legal since it is primarily used for storage. Conditions of approval should handle this.

The question is whether the expansion is lawful. There are other questions in the Hearings Officer's decision that the owner is addressing.

Commissioner Baney asked if the deck is to be defined as a structure rather than landscaping. She is worried about a rippling effect. Mr. Groves replied that a structure is permanently constructed, like a fence. A deck is an easier call than a liner or a fence. The landscaping definition does not have to be just greenery, benches, a fountain or pathways. The Hearings Officer stated that decks might be part of landscaping, but are structures as well. Staff feels that allowing this might result in more decks. They want to protect the river corridor. This is a policy choice. The Board can let the definition be more flexible if it is not adversely affecting habitat or wetlands.

Chair Unger wants the deck and the dock to fall under acceptable standards.

## **6. Other Items.**

Ms. Ure said she drafted some interview questions for the lobbyist interviews. The department directors were asked if they had any questions as well. Commissioner Baney stated she wants to be able to cross-reference and use the same questions for each. The Board will review the questions and come up with what they feel is relevant. Mr. Anderson noted that structure and using the same criteria is important.

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Tom Kuhn presented an application for Central Oregon regional health improvement resources, which has a tight timeframe for submittal. It has to do with the diabetes prevention program, which is evidence based and shown to be 58% effective. The numbers of those with diabetes is increasing, and this will help address that problem. It is a three-year proposal totaling about \$500,000. They will need one FTE for a health educator, and they are already doing a pilot diabetes program.

Sara Worthington has partnered with Mosaic Medical and St. Charles – Redmond, who send clients to her. This would be a similar model with St. Charles, Crook County Health, and Mosaic in La Pine, Madras and Prineville. All three counties would be covered. The ultimate goal is to develop a sustainable diabetes prevention program. Medicaid is looking towards reimbursing for this as well. This is a recommended strategy in the regional health improvement plan and focuses on weight loss, activity and nutrition. It involves lifestyle coaches with special training who can help to modify daily activities. This will benefit families overall, by looking at the risk factors and determine how they can be modified.

Chair Unger noted that it is critical to get ahead of this to solve issues early and reduce health costs. Some people don't even know they have it. They need to build on what has already been done.

Mr. Anderson said that there can be many factors between now and three years from now. They will have to reassess this in the future to make sure it is working well. Mr. Kuhn stated that others will be providing staff resources, and funding will be shared with the other counties, with Deschutes County coordinating.

Commissioner Baney indicated these are COHC funds and it has to align with the health improvement plan for the region. These dollars are granted towards the Medicaid population. This is a competitive grant, but it helps that it is regional. Diabetes is a high health cost driver, too.

DEBONE: Move approval.

UNGER: Second.

VOTE: DEBONE: Yes.

BANEY: Abstain (due to her involvement with the COHC and WEBCO).

UNGER: Chair votes yes.

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Chair Unger said the Board is looking at reasonable rules for marijuana production and other issues, and wanted to talk more about access. Private roads are supported by those who live there, and there is a possible condition that someone would have to get permission from the neighbors to be able to apply for a marijuana grow license. He wants to know if they have to do this if the use is in line with the customary use of the private road. He asked if there would be any kind of a trip cap, and when they actually would need permission.

Commissioner Baney said that not all properties have a home on them or are buildable. She wants to know how to address this type of easement. Some companies might hire a lot of people who would be there year-round. She asked how to navigate this, and what if it was more residential or had a different crop.

Chair Unger noted that some said they will do it all themselves, so there is no additional impact. That's the issue. It could go from just a little use to a lot of traffic.

Peter Russell explained that the County has no regulatory authority over a private road. A private easement or road agreement is worked out between whoever owns the properties. The local public roads allow up to 9,000 trips per day, and it would probably never get to that point.

Someone might have a great year with alfalfa with two or three cuttings, but this is normal agricultural use. The County does not get involved in this. A trip cap sounds nice, but there are too many problems with monitoring and enforcement. The public road capacity would be fine. Easements can be worded in a lot of different ways; some might say 'any use' and some might say 'residence'.

Commissioner Baney asked what is required when someone is establishing a business. Mr. Russell replied that there is site plan review, but if there are less than 50 trips a day, there is no traffic analysis required for public roads. Again, the County does not have authority over private roads or easements. There might be SDC language if the use is intensifying, but that doesn't address agriculture. Historically that has been a low trip generator.

The public roads have a physical capacity to handle a lot of traffic, but the County can't get involved with private roads. Typically, in regard to business trips, they count employees and deliveries, but not the family that lives there.

Chair Unger asked about the road situation for Faith, Hope & Charity Vineyards. Mr. Russell said that there was a question about the road width for emergency vehicles. Nick Lelack added that the others using this easement road did not have veto authority over its use, since the land belongs to the Vineyard.

Chair Unger asked about the condition of the private road and who pays to keep it to standard. It is not fair for a neighbor to create a lot more wear and tear. Mr. Russell said he can look up any cases that might involve a special road district.

David Doyle pointed out that anyone has a right to be on a public road. A private easement is between the parties, and the County cannot enter into this. It is a civil issue if there are problems. One party can sue the other if there is a problem and they can't come to an agreement. It is not reasonable for the County to impose rules on private parties regarding private roads or easements. Much depends on how the easement or agreement was written. It needs to be worked out by the affected parties.

He stressed that the County cannot insert itself either way and take sides. This is just asking to be brought into a lawsuit and having to decide whether to take sides. His strong advice is to let the individual parties work it out.

Commissioner Baney said that most who granted easements did not imagine this happening. There could be a lot of employees and activities. Mr. Doyle emphasized that the County needs to leave this between the parties to work out.

Mr. Russell added that there won't be much of an impact on public roads in any case, so people can't try to stop the business on that basis. Fifty trips per day is the threshold for public roads, with ten trips for residential use. This is not tied to the size of the house or family. A type 3 home occupation allows twenty trips.

Mr. Doyle asked if the use is industrial, whether there is any say on how a private easement is used. Mr. Russell replied that they have to follow local road standards. The County cannot force anyone to improve an easement since it is not the County's road. There are no rural industrial standards, and they can't use the home occupation language.

Commissioner DeBone said he does not want to take risks getting involved in personal property issues. Nick: Jackson Co. required public access, with all parties allowing it for private easements.

Mr. Doyle explained that this is EFU land and not residential, so someone can't complain about farm use when they are in a farm zone. That is the underlying issue. They can't use the income basis to justify a dwelling. People sometimes try to use transportation to halt development.

Commissioner DeBone said he would like to remove the whole concept. Chair Unger added that it might impact one or two properties. Mr. Lelack said they could require production and processing to have public road access.

Commissioner Baney wants to attach requirements to tier 2, larger facilities. She said some want to have tours, lodging and tasting rooms, too. Mr. Doyle said they are already rolling this in with farm uses.

Mr. Russell asked about SC's. Bend Distillery was charged for this. Commissioner Baney asked if it would depend on the size or level of production or extraction. One owner thinks that hemp will be *carte blanche*. Chair Unger said that hemp is a farm crop.

Mr. Lelack said they could tie it to processing, not the growing. Mr. Russell said the SC's would be low grade. It is difficult to capture this for a particular agricultural product. This isn't the same as an SDC; it is just for road improvements, not development in general.

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Whitney Hale presented a draft media release regarding the marijuana decisions. Also, a reporter wants an on-camera interview. Commissioner Baney wants to add what it is and isn't to the media release. Medical marijuana has been legal since 2008, and the legislature continues to move forward with additional regulations. The Board recognizes the need for reasonable rules to find balance with the realities of legalization, taking into account property rights and protecting the rural nature of the County.

Some people might read that it can be grown anywhere, anytime; and that the Board could have made it all go away. This is not reality.

Chair Unger added that he wants them to correct some of the oversight of the medical that is already out there today. There need to be reasonable regulations to address the concerns of rural residents regarding sound, lights, odor, security and other potential impacts.

Commissioner Baney said they have no control over what the voters put in place, but they have to deal with the details. Continuing the opt out would not have made marijuana go away. It would remain lawful regardless of this decision, so they are doing the best they can to regulate some of it.

Chair Unger stated that they originally opted out because there was no time to work on reasonable regulations. Commissioner DeBone said they needed to talk about the meaty stuff. It had to be thumbs up or down eventually.

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Regarding the State of the County event, they are considering various ideas. A draft was presented to the Board for review. He asked who will be doing the talking for this and for the 'top ten'. The Chamber notification shows Commissioners Baney and Unger doing this. The Commissioners said they would alternate. The new draft will be ready by Monday's work session.

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Ms. Hale gave an overview of the Centennial upcoming events, starting with this weekend.

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The Board then discussed Planning Commission appointments. Mr. Lelack said the interview panel has recommended Leslie Hudson and Jim Beeger. There were others that were very qualified as well. All Commissioners met the two finalists. Mr. Beeger would represent the Bend area, and Mr. Hudson would be at large.

Mr. Lelack stated that he would share the decision with the other candidates before Friday. The Planning Commission meets this week and then again at the end of the month.

Chair Unger noted that Larry Fulkerson is doing a great job helping with the 911 levy and the MAC. He wants Mr. Lelack to remember this when he advises Mr. Fulkerson that he was not picked for Planning Commissioner. Commissioner DeBone noted that Mr. Fulkerson went from being neutral to an opponent on the MAC, but actually tried to demonstrate reasonable regulations. Mr. Lelack stated that other candidates were much more engaged in the process, and were interested in the entire County and strictly land use. It was very close as all the candidates were excellent.

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Erik Kropp revisited the proposed Access to Justice appointment of Seth Johnson of the Opportunity Foundation. The Board had suggested someone from Neighbor Impact. Jeff Hall explained that the local Bar created this program as a joint venture. The law library being moved to the public library was a good move. The core group consists of Bend residents and local professionals, and they wanted to include others to include the entire County.

They proposed the woman who runs the La Pine soup kitchen be involved, and also wanted to address those who are closer to this issue and has a connection with the local population. He has not met with Mr. Johnson, but knows that David Rosen of Access to Justice feels that it is important to appoint Mr. Johnson.

Commissioner Baney stated that the Opportunity Center is more for those who are intellectually disadvantaged, and she sees this group as providing access due to financial issues or to help navigating the system. If it was someone with a developmental disability, they have advocates to help them. Other people don't have funds or can't negotiate the system.

Mr. Hall said that there is a variety of reasons why this happens. Some people do not know they have a problem. Some know, but don't know what to do about it. It can occur due to poverty, disability, or a lack of education or benefits.

Like Saving Grace, some need the services but can't or won't access them. Mr. Johnson works for a certain group but that does not mean those people don't have legal problems or have the ability to access legal help. Mr. Johnson is from Redmond, and they want someone from Redmond on this group. It is important to represent the entire County. The Court is in Bend but serves the entire County.

Commissioner Baney stated that Neighbor Impact is in Redmond as well, and is a good place to do outreach. Commissioner DeBone said both serve the region. They can look at this next time.

BANEY: Move appointment of Seth Johnson.

DEBONE: Second.

VOTE: BANEY: Yes.

DEBONE: Yes.

UNGER: Chair votes yes.

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Commissioner DeBone said that the District Attorney is saying they need more help. Mr. Hall confirmed that they are overwhelmed at the Courts and need more judges. He doesn't know about anything specific at the D.A.'s Office, but they are working on some new programs. He does not think the addition of another Deputy D.A. would negatively impact the Courts.

The struggle is on Monday morning when they have to do screenings from the weekend, and filings come in late. Some D.D.A.'s come in on Sunday to try to get ahead of this issue. This is one area where an additional D.D.A. might help, unless the D.A. is declining prosecution due to not having enough help. They really need to have nine judges.

## **7. Adjourn.**

*Being no further discussion, the meeting was adjourned at 5:00 p.m.*

APPROVED this 25<sup>th</sup> Day of May 2016 for the  
Deschutes County Board of Commissioners.

Alan Unger  
Alan Unger, Chair

Tammy Baney  
Tammy Baney, Vice Chair

ATTEST:

Bonnie Baker  
Recording Secretary

Anthony DeBone  
Anthony DeBone, Commissioner





To: Deschutes County Board of Commissioners  
From: Sgt. Nathan Garibay  
Date: May 11, 2016  
Subject: Proposed Grant Application for the Deschutes County Sheriff's Office  
Commissioner/County Administrator Approval: \_\_\_\_\_  
Date: \_\_\_\_\_

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The Deschutes County Sheriff's Office is requesting the Board of Commissioners' approval to submit a grant application on behalf of the County. A summary of the grant opportunity follows.

**Program: Deschutes County Emergency Management Program**

The Sheriff's Office will utilize Emergency Management Performance Grant (EMPG) to fund the county's emergency management program.

The Deschutes County Sheriff's Office will be allocated funds pursuant to a successful grant application to the Oregon Military Department, Office of Emergency Management. Deschutes County has not received final allocations, but has developed a budget off of expected allocations. The funds will be used to pay half of the salary for the Deschutes County Sheriff's Office Emergency Services Manager and related program. The rest of the program (50%) will come from Sheriff's Office funds.

The Deschutes County Sheriff's Office Emergency Services Manager is responsible for all planning, coordination and oversight for the Emergency Services functions mandated to the Sheriff's Office by Oregon Revised Statute and Deschutes County Code.

An Emergency Services Manager must address four specific areas: Exercises; Plans; Training; and Public Education. Some of the activities required of the Emergency Services Manager include either creating or updating the county-wide Emergency Operations Plan (EOP), the Threats and Hazards Identification and Risk Assessment, and a Natural Hazard Mitigation Plan. Additionally, the Emergency Services Manager must participate in certain training requirements, such as participating in an annual EMPG workshop and in a state level multi-year training and exercise plan workshop.

**Funding Agency:** Oregon Office of Emergency Management, Emergency Management Performance Program. On March 25, 2016, OEM issued a state-wide notice that the application period is open until May 13, 2016.

**Due Date:** Application: May 13, 2016

**Amount:** No greater than \$141,320

**Matching Funds:** No less than \$141,320

**Duration:** July 1, 2016 through June 30, 2017

**Background:** If the County is awarded the funds, OEM will issue a formal grant document which will be presented to the Board/County Administrator for signature.

**Reporting:** Sgt. Garibay, the Deschutes County Emergency Manager, will be responsible for submitting quarterly reports to the Office of Emergency Management.

Please contact Sgt. Garibay at 541-617-3303 if you have questions concerning this request.

FY 2014-15 Discretionary Grant Applications - Updated 1/26/2016

Organization	Funded	Qtr	Reviewed	Req	Unger	Baney	DeBone	Fundraising	Total	Description
Arts Central	Y	1	7/6/2015	\$1,500.00	\$0.00	\$0.00	\$0.00	\$1,500.00	\$1,500.00	Black & White Fundraising Event
Beulah's Place	Y	1	7/6/2015	\$2,450.46	\$1,000.00	\$500.00	\$1,000.00	\$0.00	\$2,500.00	Shelter Security Wall and Gate
DiamondStone, Inc.	N	1	7/6/2015	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	The Newberry Event
Tumalo Business Association	Y	1	7/6/2015	\$2,500.00	\$500.00	\$500.00	\$1,000.00	\$0.00	\$2,000.00	Tumalo Monuments
League of Women Voters	Y	1	7/13/2015	\$150.00	\$50.00	\$50.00	\$50.00	\$0.00	\$150.00	They Represent You Brochure
Buckaroo Breakfast Association	Y	1	7/27/2015	\$500.00	\$100.00	\$100.00	\$100.00	\$0.00	\$300.00	Replacement Pans and Cooking Utensils
Opportunity Knocks	Y	1	7/27/2015	\$2,400.00	\$800.00	\$800.00	\$800.00	\$0.00	\$2,400.00	Organizational Restructuring
Deschutes County Rural Fire Protection District 2	N	1	9/9/2015	\$1,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Conference Attendance
Leadership Bend Foundation	Y	1	9/9/2015	\$1,500.00	\$400.00	\$400.00	\$400.00	\$0.00	\$1,200.00	Leadership Bend 2016
CLEAR Alliance	N	1	9/9/2015	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Educational Tool Development
Central Oregon Veterans Ranch	Y	1	9/23/2015	\$3,355.00	\$800.00	\$800.00	\$800.00	\$0.00	\$2,400.00	End of Life Housing
Leadership Redmond	Y	2	10/7/2015	\$1,200.00	\$400.00	\$400.00	\$400.00	\$0.00	\$1,200.00	Class of 2015-16
Hospice of Redmond	Y	2	10/7/2015	\$2,500.00	\$0.00	\$0.00	\$0.00	\$2,500.00	\$2,500.00	2015 Festival of Trees
Boys & Girls Club	Y	2	10/7/2015	\$1,500.00	\$0.00	\$0.00	\$0.00	\$1,500.00	\$1,500.00	Civil War Rally & Auction
Central Oregon Council on Aging	Y	2	10/7/2015	\$600.00	\$0.00	\$0.00	\$0.00	\$600.00	\$600.00	Mail Campaign
Bend Spay & Neuter Project	Y	2	10/7/2015	\$1,000.00	\$333.00	\$334.00	\$333.00	\$0.00	\$1,000.00	Free Rabies Outreach Clinics
Family Access Network	Y	2	10/7/2015	\$2,500.00	\$0.00	\$0.00	\$0.00	\$2,500.00	\$2,500.00	Luncheon for Children
Latino Community Association	Y	3	1/25/2016	\$1,500.00	\$0.00	\$0.00	\$0.00	\$1,500.00	\$1,500.00	Fundraising Events
OSU/Deschutes County Extension	Y	3	1/25/2016	\$2,500.00	\$500.00	\$500.00	\$500.00	\$0.00	\$1,500.00	Living on a Few Acres
United Way of Deschutes County	Y	3	1/25/2016	\$1,500.00	\$500.00	\$500.00	\$500.00	\$0.00	\$1,500.00	Paper Tiger & ACE's
Opera Bend	Y	3	1/25/2016	\$3,000.00	\$1,000.00	\$500.00	\$1,000.00	\$0.00	\$2,500.00	Via Lactea Opera
Sisters School District / KZSO Radio	Y	3	1/25/2016	\$2,500.00	\$1,000.00	\$0.00	\$1,000.00	\$0.00	\$2,000.00	Community Radio Station Maintenance
CLEAR Alliance	N	3	1/25/2016	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Equipment Replacement
Younity	Y	3	1/25/2016	\$1,500.00	\$500.00	\$500.00	\$500.00	\$0.00	\$1,500.00	Challenge Days
Central Oregon Film Office	Y	3	2/24/2016	\$5,000.00	\$1,666.00	\$1,666.00	\$1,668.00	\$0.00	\$5,000.00	Production Outreach
La Pine Lions Club Foundation	Y	4	4/13/2016	\$2,000.00	\$0.00	\$0.00	\$0.00	\$2,000.00	\$2,000.00	Concession Trailer
Saving Grace	Y	4	4/13/2016	\$2,000.00	\$0.00	\$0.00	\$0.00	\$1,200.00	\$1,200.00	Heroes' Luncheon
Sunriver Music Festival	Y	4	4/13/2016	\$2,000.00	\$0.00	\$0.00	\$0.00	\$1,000.00	\$1,000.00	Festival Faire
Coalition for Human Dignity	Y	4	4/13/2016	\$1,500.00	\$0.00	\$0.00	\$0.00	\$1,200.00	\$1,200.00	Fundraising Event
Band of Brothers	W/D	4	4/13/2016	\$1,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Military Ball
Bethlehem Inn	Y	4	4/13/2016	\$2,500.00	\$0.00	\$0.00	\$0.00	\$2,000.00	\$2,000.00	Spotlight on Homelessness
NeighborImpact	Y	4	4/13/2016	\$5,000.00	\$834.00	\$833.00	\$833.00	\$0.00	\$2,500.00	Transitional Housing Program
Tower Theatre Foundation	Y	4	4/13/2016	\$3,000.00	\$333.00	\$334.00	\$333.00	\$0.00	\$1,000.00	LessonPLAN Education Outreach
Central Oregon Symphony Association	Y	4	4/13/2016	\$1,500.00	\$500.00	\$500.00	\$500.00	\$0.00	\$1,500.00	Symphony Outreach
Sunriver Anglers	Y	4	4/13/2016	\$1,000.00	\$167.00	\$166.00	\$167.00	\$0.00	\$500.00	Youth Education
Sisters Park & Recreation District	Y	4	4/13/2016	\$1,000.00	\$334.00	\$333.00	\$333.00	\$0.00	\$1,000.00	Senior Programs
Bend 2030	Y	4	4/13/2016	\$5,000.00	\$833.00	\$833.00	\$834.00	\$0.00	\$2,500.00	Bend Livability Project
Women's Civic Improvement League	Y	4	4/13/2016	\$2,000.00	\$500.00	\$500.00	\$500.00	\$0.00	\$1,500.00	KPOV Signal & Reach Expansion
Leadership Bend	Y	4	4/13/2016	\$2,500.00	\$833.00	\$833.00	\$834.00	\$0.00	\$2,500.00	Central Oregon Impact Summit
Cloverdale Rural Fire Protection District5	Y	4	4/13/2016	\$1,881.68	\$667.00	\$666.00	\$667.00	\$0.00	\$2,000.00	Hose Replacement
Citizens4Community	Y	4	4/13/2016	\$2,000.00	\$334.00	\$333.00	\$333.00	\$0.00	\$1,000.00	Sisters Country Civility Project
Stage Right Productions	Y	4	4/13/2016	\$1,500.00	\$333.00	\$334.00	\$333.00	\$0.00	\$1,000.00	24/Seven Theatre Project
Pet Evacuation Team	N	4	4/13/2016	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Prepare for Disaster
Bend Trap Club	W/D	4	4/13/2016	\$1,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Youth Shooting Project
Bend Trap Club	W/D	4	4/13/2016	\$15,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Paving Project
<b>Total Committed Year to Date</b>					<b>\$15,217.00</b>	<b>\$13,215.00</b>	<b>\$15,718.00</b>	<b>\$17,500.00</b>	<b>\$61,650.00</b>	
<b>Balance Remaining</b>					<b>-\$217.00</b>	<b>\$1,785.00</b>	<b>-\$718.00</b>	<b>-\$2,500.00</b>	<b>-\$1,650.00</b>	

**Deschutes County Discretionary Grant Program  
Status as of 05/4/2016**

Commissioner Unger		Commissioner Baney		Commissioner DeBone		Fundraising Activities	
2015-16 Allocation	\$ 15,000.00	2015-16 Allocation	\$15,000.00	2015-16 Allocation	15,000.00	2015-16 Allocation	\$15,000.00
Q1	-3,650.00	Q1	-3,150.00	Q1	-4,150.00	Q1	-1,500.00
Q2	-733.00	Q2	-734.00	Q2	-733.00	Q2	-7,100.00
Q3	-5,166.00	Q3	-3,666.00	Q3	-5,168.00	Q3	-1,500.00
Q4	-5,668.00	Q4	-5,665.00	Q4	-5,667.00	Q4	-7,400.00
Total Spent	-15,217.00	Total Spent	-13,215.00	Total Spent	-15,718.00	Total Spent	-17,500.00
Remaining Balance	-\$217.00	Remaining Balance	\$1,785.00	Remaining Balance	-\$718.00	Remaining Balance	-\$2,500.00



To: Board of Commissioners

From: Judith Ure, Management Analyst

Date: May 4, 2016

Subject: Economic Development Loan Program

The Board of Commissioners has recently indicated a desire to review and possibly update the Deschutes County Economic Development Loan Program. The program was created by resolution in 2010 (see accompanying document) and that document does not address some issues that have arisen as the program has evolved over time, including:

Family Wage Job: Since 2013, loan agreements have defined “family wage” as “a position with a starting salary that is equal to or greater than the average pay of all covered employment and wages for Deschutes County as reported in the Oregon Labor Market Information System (OLMIS)” – currently approximately \$36,000 per year.

Multiple Loans: At least two loans have been approved for companies that had received and fulfilled the conditions of an earlier loan.

Benefits: Loans for jobs that pay less than a family wage have sometimes been approved, particularly when the associated benefit package was generous.

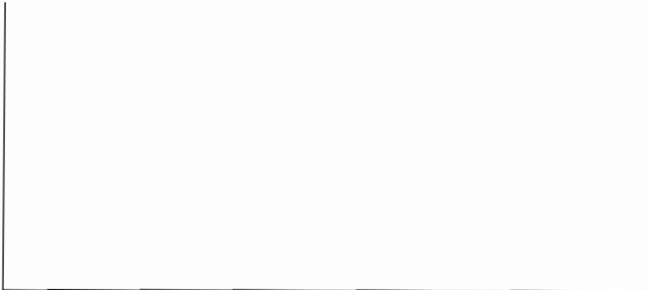
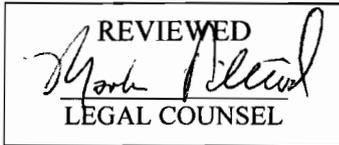
Loan Basis: Loans are considered based on an amount of \$2,000 per job created. The Board has occasionally approved loans based on \$1,000 per job, particularly when the pay is lower than family wage as defined above.

Loan Limits: Loans are generally limited to \$50,000. EDCO recently raised the question of possibly increasing that limit when circumstances warrant it.

Geographic Distribution: EDCO has expanded economic development efforts in La Pine and Sisters. The majority of loans have been made within the cities of Bend and Redmond with one loan made in Sisters and none in La Pine to date.

Leveraging: Loan recipients are not currently required to demonstrate that economic development funds will be used to leverage other funds.

These topics and any others related to the County’s Economic Development Loan Program that the Board wishes to consider are scheduled for discussion during the May 11, 2016 work session. Please let me know if you have questions or would like to receive additional information in advance of that meeting.



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

A Resolution Establishing Fund 105 as the Economic Development Fund \* RESOLUTION NO. 2010-038

WHEREAS, Deschutes County faces historically high levels of unemployment and economic distress; and

WHEREAS, business recruitment and retention, and in particular job creation, are high-level priorities for the Deschutes County Board of Commissioners ("Board"); and

WHEREAS, Deschutes County budgets certain monies in Fund 105, which has historically been known as the "Business Loan Fund;" and

WHEREAS, the Board wishes to repurpose those funds in Fund 105 and use them for the above-stated priority of job creation;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY HEREBY RESOLVES AS FOLLOWS:

- 1. Fund 105 shall henceforth be known as the Economic Development Fund.
2. Monies currently in Fund 105 and other monies that may be transferred to Fund 105 at the sole discretion of the Deschutes County Budget Committee and the Board shall be used only for the purposes described in Exhibit A, attached hereto and incorporated herein.

DATED this 18th day of May, 2010.

DENNIS R. LUKE, Chair (with signature)

ALAN UNGER, Vice Chair (with signature)

TAMMY BANEY, Commissioner (with signature)

ATTEST: Bonnie Baker, Recording Secretary

## EXHIBIT A

Fund 105, to be known as the Economic Development Fund, shall be used for the exclusive purpose of job-creating business recruitment, retention and expansion, using the following criteria and procedures. Fund disbursements may take the form of low-interest loans, forgivable loans or grants, however, all disbursements shall be tied directly to the creation or retention of jobs in Deschutes County. Fund 105 shall not be used for investment purposes or to cover the start-up costs of a new business venture.

### Criteria

1. For purposes of this resolution, “relocation” means the move of an existing business from outside of Deschutes County into Deschutes County.
2. Business “retention” means the keeping of a business in Deschutes County that has verifiable, bona fide plans to move outside of Deschutes County and to take jobs that are currently provided by that business in Deschutes County to one or more areas outside of the County.
3. Business “expansion” means the verifiable, bona fide plans of an existing business in Deschutes County to expand its operation in such a way that the result is the creation of regular, full-time jobs that did not exist prior to the expansion.
4. For purposes of Fund 105, relocation or retention expenses include a business’ costs of moving equipment, furnishings and personal business property to or within Deschutes County, but shall not include the costs of moving the personal household goods of any employee or potential employee to or within Deschutes County. Relocation expenses may also include: 1. short-term rent relief in a business’ new location; and 2. the costs associated with the recruitment of new staff, including, but not limited to, advertising or travel allowances.
5. For purposes of Fund 105, expansion expenses include a business’ costs of building or leasing new space necessary to provide for newly created jobs, the lease or purchase of new equipment or personal business property necessary to accommodate newly created jobs, and/or the costs associated with recruitment or training of new staff.
6. The Board of Commissioners may, in its sole discretion, approve other uses of Fund 105 if they are consistent with the uses listed above.

### Procedure

1. Deschutes County contracts with Economic Development for Central Oregon (EDCO) for economic development strategic planning, counsel and support. EDCO is engaged directly in the recruitment of new traded-sector businesses to the County.

2. All requests for disbursements from the Economic Development fund shall be made by Deschutes County pursuant to a written request to the County by EDCO. All such requests shall conform to the criteria above.
3. EDCO shall determine whether a disbursement from Fund 105 will be structured as a low-interest loan, a forgivable loan or a grant. In all cases, disbursements from the fund shall be tied directly to the creation of jobs. For forgivable loans, all agreements between EDCO/County and the recipient business shall include a “clawback” provision requiring the repayment of some or the entire loan for the failure to create an agreed-upon number of jobs by an agreed-upon date.
4. A forgivable loan shall generally not exceed an amount equivalent to \$2,000 per newly created job. Deschutes County reserves the right to waive this limit in its sole discretion after considering EDCO’s recommendation.
5. EDCO shall be responsible for tracking the number of jobs created pursuant to a loan, forgivable loan or grant and for reporting to Deschutes County not less than semi-annually on the performance of loan and grant recipients.
6. Interest rates on low-interest loans shall be determined by Deschutes County in consultation with EDCO. Loan administration and collection shall be the responsibility of Deschutes County, which reserves the right to subcontract such responsibility to a third party.

**Deschutes County  
Board of County Commissioners  
Discretionary Grant Program**

**Note:** In mid-April, Stephanie Alvstad of J Bar J Youth Services contacted each of the Commissioners requesting a waiver for site plan review fees required to add a multi-purpose room to the boys' ranch building for cold-weather activities. As the Board does not waive building/land use fees, Ms. Alvstad was encouraged to pursue a discretionary grant to offset the cost as an alternative.

**Board Meeting Date:** May 11, 2016

**Organization:** J Bar J Youth Services

**Project Name:** Ranch Addition

**Project Period:** May 23, 2016 – August 31, 2016

**Amount of Request:** \$2,285

**Previous Grants:**

7/1/1999	\$ 2,000.00	Michelob Classic sponsorship
7/1/2000	\$ 2,000.00	
7/18/2001	\$ 1,000.00	Oregon High Desert Classic
6/14/2002	\$ 350.00	Table for fundraiser
9/28/2004	\$ 2,000.00	Homeless program
12/19/2006	\$ 2,900.00	Installation of Electricity and Water to add 70 horse stalls

Approved: \_\_\_\_\_

Declined: \_\_\_\_\_



Deschutes County Board of Commissioners  
PO Box 6005, Bend, OR 97701-6005  
1300 NW Wall Street, Suite 200, Bend, OR  
Telephone: 541-388-6571 Fax: 541-385-3202  
Website: [www.deschutes.org](http://www.deschutes.org)

### DESCHUTES COUNTY DISCRETIONARY GRANT PROGRAM APPLICATION

Today's Date:	5/3/16	Project Name:	J Bar J Boy's Ranch Addition
Project Beginning Date:	5/23/16	Project End Date:	8/31/16
Amount Requested:	\$2285	Date Funds Needed:	5/23/16
Name of Applicant Organization:	J Bar J Youth Services		
Address:	62895 Hamby Rd		
City & Zip Code:	Bend OR 97701	Tax ID #:	93-0677650
Contact Name(s):	Stephanie Alivstad	Telephone #:	541 389 1409
Fax #:	541 389 9348	Email Address:	salivstad@jbarj.org

**On a separate sheet(s), please briefly answer the following questions:**

1. Describe the applicant organization, including its purpose, leadership structure, and activities.
2. Describe the proposed project or activity.
3. Provide a timeline for completing the proposed project or activity.
4. Explain how the proposed project or activity will positively impact the community.
5. Identify the specific communities or groups that will benefit.
6. Describe how grant funds will be used and include the source and amounts of matching funds or in-kind contributions, if any. Itemize anticipated expenditures\*.
7. If the grant will support an ongoing activity, explain how it will be funded in the future.

**Attach:**

Proof of the applicant organization's non-profit status.

\* Applicant may be contacted during the review process and asked to provide a complete line item budget.

1. The mission of J Bar J Youth Services is to provide innovative options for at-risk children, youth and their families toward self-sufficiency and personal responsibility. J Bar J facilitates positive change for at-risk youth with six distinct programs: the J Bar J Boys Ranch, Academy at Sisters, Cascade Youth and Family Center, Big Brothers Big Sisters of Central Oregon, the Learning Center, and Safe Families for Children of Central Oregon. J Bar J Youth Services is governed by a volunteer Board of Directors of currently 8 community professionals. Some significant activities over the last 2 years:

- a. In 2014, we partnered with a coalition of churches to establish Safe Families for Children of Central Oregon, an affiliate of a national program that provides support and mentoring for families. The target audience for this program is families that are temporarily not able to care for their children; they can place them with a host family voluntarily for a limited period of time. The goal is to reduce the demand for child welfare services and to preserve and empower families.
  - b. The J Bar J Boys Ranch increased their capacity to serve more youth in the fall of 2015. We received a new state contract and license to lease the Deschutes County Juvenile Pod 300 for 12 boys. This is a highly respected contracted program for Oregon Youth Authority placements. The additional beds will increase access to our programs.
  - c. Cascade Youth & Family Center established a social venture called Tag It Forward-a mobile coffee van to provide employment training and experience for homeless youth. We also added the Independent Living Program, serving current and former foster youth on their journey towards independence.
- 

2. Our request is for \$2,285 to cover the cost of site plan review. J Bar J Boy's Ranch is adding a multi-purpose room for the adolescent boys at the ranch. Our boys currently have a dining room, but no living room, or multi-purpose room to do some indoor activities when the weather gets cold. We have a concrete slab at the front of the boys ranch building and plan to turn that into the multipurpose room. We have a contractor who has donated some time, an architect that has donated some time (\$4,000 so far), and we had a small budget (\$45,000) to add the room. However, we later discovered through the architect that we would need to increase the budget by 25% for accessibility issues (state and local rules), thus we had to add approximately \$15,000 to our budget. We are trying to secure donations beyond the architect's donation (and some labor to be donated by the contractor (\$2,000), to be able to complete the project.

3. The site plan is ready to be turned in to the Deschutes County planning department for review. We hope to turn it in this month by May 23. The review process takes 8-10 weeks so it should be completed by July 31<sup>st</sup>. Once the site plan review is approved we can start the work on the addition of the room in August, completing it by September, ready for the cold months so the boys have additional living space.

4. The Deschutes County Discretionary funding for this project will allow J Bar J Youth Services to continue providing services to hundreds of local youth through our 6 programs listed above.

5. The specific group that will primarily be affected will be the boys at the J Bar J Boys ranch. Approximately 1/3 of the youth at the ranch are local. The additional space will allow for better separation of youth and increased room for indoor activities, creating a more stable living environment. With less conflict, we anticipate positive impacts for the surrounding neighborhood and community – fewer referrals to law enforcement and fewer youth running away from the program.

6. Grant funding will be used to pay the Deschutes County Site Plan review fee of \$2,285 for our addition of a multipurpose room. Donations thus far include the architect donation of \$4,000, and the contractor labor donation of \$2,000. The rest will be paid for by donations from our fundraiser the Oregon High Desert Horse Show.

7. This is a one-time request. It is not an ongoing activity.

Thank you for your consideration!



## Deschutes County Health Services

### GRANT APPLICATION REQUEST

Official Grant Title:	Central Oregon Diabetes Prevention Program
Source of Grant Funds:	Regional Health Improvement Resource from the Central Oregon Health Council
Funding Amount (include amount per year if multiple years):	\$499,997 for three years
Required Matching Funds (if applicable):	na
Application Due Date and Submission Method:	No due date, but will be submitted on May 11, 2016 via e-mail
FTE Required and Cost of FTE:	1.0 FTE for three years
Staff Responsible:	Sarah Worthington, Health Educator II
Grant Administrator (if awarded):	Tom Kuhn

Please answer the following questions:

1. Briefly summarize what work the grant is intended to accomplish:

The goal of the Central Oregon Diabetes Prevention Program (DPP) is to reduce the risk of developing diabetes and cardiovascular disease in high-risk individuals in Central Oregon through a coordinated intensive lifestyle intervention (ILS) that leads to weight loss and increased physical activity. This project will be focused on regional coordination and implementation of DPP, working in conjunction with partners who will be providing and supporting this service.

2. What priorities in the Health Services Strategic Plan would this grant activity support? Provide data to describe a documented health need that would be addressed and that is consistent with the Strategic Plan.

Implementing a DPP is a goal in the 2015-16 DCHS Strategic Plan, and Diabetes is a priority in the Central Oregon Regional Health Improvement Plan and implementing a DPP is an identified strategy to address the Diabetes Prevention Goal to decrease the proportion of adults and children at risk for developing type 2 diabetes.

3. Would this support core program activities and, if so, which one(s)? Are additional funds needed to support these activities?

This project expands chronic disease prevention activities. It will be complimentary to work that has been occurring with Healthy Communities and Living Well with Chronic Disease self-management programs. Minimal funding would be needed to support activities.

4. Does this funding add new program activities? If so, what are the activities? Is it appropriate to add these new activities at this time?

This funding would allow DCHS to coordinate DPP programming in Central Oregon, with the intent to increase participation by partner agencies and create a plan for sustainability. We

are currently conducting a one-year pilot DPP cohort. This funding will allow this program to be provided across the Central Oregon region.

5. Is there a science base to support delivering the activities and services listed? Please describe that science base.

Yes. The National DPP was developed by the Centers for Disease Control (CDC) as a randomized clinical trial to compare the relative effectiveness of an intensive lifestyle intervention (ILS) in delaying the onset of diabetes in individuals at risk for the disease. The initial trial of over 3000 individuals found that, compared with placebo, participation in the DPP ILS reduced the incidence of diabetes by 58%. Those individuals who participated in the original trial of DPP continued to have a lower incidence rate of diabetes in a 10-year follow-up study, demonstrating the lasting effects of this intervention in preventing or delaying diabetes onset.

6. How long would the funding be available? If the funding is for less than three years, what is the plan to transition the work, staffing and expenses after the funding ends?

We are applying for three years of funding. It is a goal of the program to identify a plan for sustainability by the end of the funding period.

7. What is the application deadline? Do you anticipate any problems meeting this deadline?

No due date, but will be submitted on May 11, 2016 via e-mail.

8. Do you have the staffing to write a competitive proposal? If not, how will you contract for these services?

Yes, the proposal has been written.

9. Are there any matching requirements?

No

10. What other partner organizations could potentially be applying? What is the plan to work with them?

There are no other agencies applying for funding to implement DPP. All agencies in Central Oregon who will be implementing DPP are partnering with us on this proposal, including La Pine Community Health Center, Crook County Health Department, St. Charles Health System, and Mosaic Medical Madras.

11. What are the potential political issues that could arise as a result of this application, funding, and/or activity?

None that are anticipated. DPP is becoming a widely accepted intervention and is an identified strategy in the Central Oregon Regional Health Improvement Plan.

12. What is the fiscal impact to the department if we are awarded this grant? Please attach fiscal impact analysis form completed with Business Manager approval.

We have budgeted 10% of the total project for indirect costs, equaling \$45,454. The budget has been reviewed by Business program staff.

13. Will a contract be required if we are awarded this grant? If yes, is there sufficient time to complete the contract process (estimated timeline: 4-6 weeks) prior to starting the work?

Yes, there will be a contract needed with Central Oregon Health Council. It is unknown at this time when the funding will be awarded.

*Jane Smilie*

05/10/16

Department Director Signature

Date

Director to Attend Board Meeting? (check one)     Yes     No (Tom Kuhn will attend)

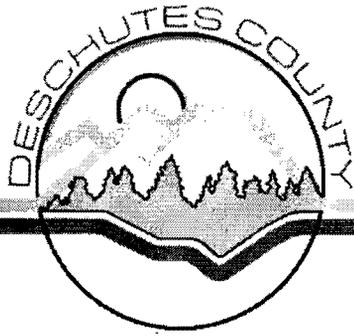
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**Contract Specialist Review:**

Board Meeting Date:    May 11, 2016

Time:    1:30PM

Grant Application Number: \_\_\_\_\_



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

To: Deschutes County Board of County Commissioners

From: Anthony Raguine, Senior Planner

Date: May 5, 2016

Re: Appeal of Caldera Springs Destination Resort Expansion, 247-15-000464-CU

Before the Board of County Commissioners (Board) is an appeal filed by Central Oregon Landwatch (Landwatch) in response to the Deschutes County Hearings Officer's (HO) approval of the above-referenced land use application.

#### BACKGROUND

Pine Forest Development received HO approval (Attachment 1) to expand the existing Caldera Springs Destination Resort by adding 614 acres of land which will include 395 single-family dwellings, up to 95 overnight lodging units, recreation facilities and resort core amenities. Pine Forest also received approval to modify the Caldera Springs Conceptual Master Plan and ratio of single-family residences to overnight lodging units from 2:1 to 2.5:1.

#### LANDWATCH APPEAL

Landwatch appeals the HO decision for the following reasons (Attachment 2):

1. Landwatch argues the appeal fee of \$5,395 is unreasonable, unsupportable, and constitutes a constitutional violation. Additionally, Landwatch requests the County waive the appeal fee.
2. The Pine Forest proposal should be reviewed as a separate destination resort, rather than as an expansion of the existing Caldera Springs Destination Resort.
3. Pine Forest should not be allowed to rely upon the existing 150 overnight units within the original Caldera Springs for the expansion approval. Additionally, Landwatch argues that Caldera only has 38 overnight units rather than 150 units.
4. Pine Forest has not established that there is adequate domestic water supply or wastewater treatment capacity.
5. The HO inappropriately approved uses and resort amenities that would be subject to future refinement by Pine Forest, rather than requiring Pine Forest to provide detailed plans that should be reviewed now.
6. The HO inappropriately approved open space areas that would be subject to future refinement by Pine Forest, rather than requiring Pine Forest to provide detailed plans that should be reviewed now.

Because Landwatch argues the primary issues are of state law, Landwatch requests the Board not hear the appeal. Should the Board decide to hear the appeal, Landwatch argues it should not be burdened with the extra cost of a *de novo* review<sup>1</sup>.

### **150-DAY LAND USE CLOCK**

The HO decision was issued on day 141 of the 150-day land use clock. The Landwatch appeal was submitted on day 153. The applicant is willing to toll the clock to July 30, 2016 if the Board decides to hear the appeal on the record.

### **BOARD OPTIONS**

Attachment 3 contains two versions of Order No. 2016-022. In determining whether to hear an appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notice of appeal; and
3. Recommendations of staff.<sup>2</sup>

Reason to hear:

- The Board may want to take testimony and make interpretative issues relating to the application. The Land Use Board of Appeals (LUBA) will be obligated to defer to the Board's interpretation if they are at least plausible. The Board may want to reinforce or refute some or all of the Hearing Officer's findings/interpretations prior to LUBA review.

Reason not to hear:

- The Hearings Officer's decision is reasoned, well written and could be supported as the record exists today on appeal.

If the Board decides that the Hearings Officer's decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application becomes final upon the mailing of the Board's decision to decline review.

### **STAFF RECOMMENDATION**

Staff believes the HO decision is reasoned, well written and is supported by the evidence in the record. For this reason, staff recommends the Board not hear the appeal. Should the Board agree to hear the appeal, staff notes there has been significant public interest in this project.

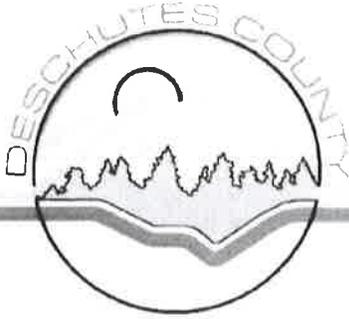
Attachments:

1. Hearings Officer's decision
2. Landwatch appeal
3. Order No. 2016-022

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<sup>1</sup> Staff notes that the appeal fees are the same regardless of the format of the appeal hearing – on the record, limited *de novo* or full *de novo*.

<sup>2</sup> DCC 22.32.035(B) and (D)



# Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

## APPEAL APPLICATION

FEE: \$5395

Paid under  
Protest

EVERY NOTICE OF APPEAL SHALL INCLUDE: (See the attached)

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): CENTRAL OREGON LANDWATCH Phone: (541) 429-8453

c/o Paul Dewey, Attorney  
Mailing Address: 1539 NW VICKSBURG AVE. City/State/Zip: BEND, OR 97703

Land Use Application Being Appealed: HEARINGS OFFICER DECISION ON 247-15-000464-CU

Property Description: Township 20 Range 11 Section \_\_\_\_\_ Tax Lot 103

Appellant's Signature: Paul Dewey 4/22/16

**EXCEPT AS PROVIDED IN SECTION 22.32.024, APPELLANT SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DIVISION UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANT SHALL SUBMIT THE TRANSCRIPT TO THE PLANNING DIVISION NO LATER THAN THE CLOSE OF THE DAY FIVE (5) DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, FOR ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.**

(over)



50 SW Bond St., Ste. 4 | Bend, OR 97702

Phone: (541) 647-2930

[www.centraloregonlandwatch.org](http://www.centraloregonlandwatch.org)

**APPEAL BY CENTRAL OREGON LANDWATCH OF THE APRIL 15, 2016  
DECISION OF THE DESCHUTES COUNTY HEARINGS OFFICER  
IN FILE NO. 247-15-000464-CU (PINE FOREST DEVELOPMENT, LLC)**

Central Oregon LandWatch appeals the above decision of the Deschutes County Hearings Officer to the Board of County Commissioners and requests review on the following bases:

1. As an initial matter, Central Oregon LandWatch appeals the amount of the appeal fee as unreasonable and unsupportable for the processing of an appeal of this kind and respectfully requests a waiver or substantial reduction in the appeal fee of \$5,395. Such an appeal fee is obviously difficult for LandWatch or any other non-profit entity or individual to afford, and the County has shown in various situations (such as the Shepherd application for a private park) that it is willing to completely waive fees for applicants.

We further believe that this high appeal fee constitutes a constitutional violation under the due process clause, where it effectively works as a bar limiting parties from being able to have their cases heard by the courts, as is currently being heard by the Oregon Court of Appeals in the Hood River case.

Appeal fees can and should be high for applicants. Applicants are voluntarily requesting a public agency for a permit to, such as, build a destination resort. If the application is denied at first, an appeal to obtain a permit is still a voluntary request for a special benefit. Non-applicant appellants, however, do not want to construct anything, but are asking for purely quasi-judicial and judicial review. The appeal fee for a non-applicant appellant should not be any of the cost of processing a destination resort application. Moreover, as we are required by statute to appeal to the County Board to obtain access to judicial courts, our appeal is not voluntary.

The U.S. Supreme Court in *National Cable Television Assn. v. United States*, 415 U.S. 336 (1974), observed:

“A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit him to practice law or medicine or construct a house or run a broadcast station. The public agency performing those services normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society.”

The Oregon statute about reasonable and average cost of appeals is permissive. Counties do not have to charge fees. The burden does not come, that is, from ORS 215.422 which provides: “The governing body *may* prescribe....The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal.” (Emphasis added.)



The County's appeal fees are an involuntary pecuniary burden because Oregon law states that we must exhaust all local remedies before going to LUBA and thus to the Court of Appeals. The Oregon statute, ORS 197.825(2)(a), mandates appeals to county boards of commissioners for resolution of land use matters as a prerequisite to access to Oregon courts:

“The jurisdiction of the board:

(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review.”

To paraphrase an editor protesting an east coast transportation board fee:

“To mandate the filing of appeals to county boards of commissioners with one hand and permit the imposition of exorbitant fees with the other is characteristic of the worst kind of monopoly. To point to the county board as a forum for relief while denying access to that forum through excessive charges is the height of hypocrisy.”

In the case of Oregon's land use system and Deschutes County's appeal fees policy in particular, it is simply not appropriate to create such a requirement to appeal to the Board and then make it so difficult to do so.

Further, if the County Board elects to hear this appeal, the entire financial burden should not be placed on one party. There is obviously substantial interest from a broader community in such a significant development as a destination resort.

In this particular case, given that the primary issues are of state law, we believe it is most appropriate for the County Board not to hear the appeal. LandWatch would then be entitled to a refund of the appeal fee, minus 20% according to county rules. We object to that rule. There is no justification for the County to charge over \$1000 for merely considering whether to hear an appeal.

Finally, LandWatch is not requesting *de novo* review and should not be burdened with the extra cost should the County elect to do *de novo* review.

2. This is a proposal for an extensive rural residential subdivision in a forest zone, cast in the guise of an “annexation” or “expansion” to an existing destination resort, the Caldera Springs Destination Resort, next to Sunriver. The existing Caldera Resort consists of 390 acres and was approved in 2005 for 350 single-family residential units and around 150 overnight units. The proposed expansion or annexation property of Pine Forest Development is on 614 acres and is to have 395 single-family residences and 65-96 additional overnight lodging units.

This application by Pine Forest Development, LLC should be for a destination resort, particularly where the so-called annexation or expansion is nearly twice the size of the original Caldera Destination Resort it seeks to attach itself to.

There is no provision in state destination resort law to allow such an expansion or annexation. What is being proposed here is an impermissible rural residential subdivision in the County's forest use



zone. Rural residential developments that do not meet the approval criteria for destination resorts in ORS 197.435-197.467 are not permitted in forest zones.

Where destination resort law provides an exception to what kind of development is normally allowed on resource lands, any ability to annex future rural subdivisions to existing destination resorts needs to be “allowed” explicitly by statute. Destination resorts are a non-farm and non-forest use allowed on resource lands and as such they should be construed narrowly. There is no suggestion in state law that “expansions” or “annexations” are allowed after a destination resort is developed, notwithstanding DCC 18.113.025 which does not trump state statutes.

The piecemeal development approach pursued by Pine Forest Development, whereby subdivisions can be indefinitely added to destination resorts, is not consistent with the statutory, rule and code assumptions that the effects of a destination resort need to be considered upfront as a whole. An example is the impact on wildlife habitat where there was no attempt to provide a comprehensive wildlife management plan for the effects of the now-proposed 1,000+ acre resort. The same applies to the required wildfire management plan.

The Hearings Officer states that the expansion wildlife plan “refines the initial CMP.” That is twice wrong. There has been no application to amend the original CMP other than to add the expansion. The wildlife report also addresses only the expansion and does not address whatever wildlife plan, if any, was done for Caldera and does not address the cumulative effects of the 1,000 acre resort.

The Hearings Officer also erred in finding that this expansion application satisfied the destination resort standards of DCC 18.113.060 and .18.113.070 including, but not limited to, the overnight lodging and investment requirements, where he relied on what has been provided in the Caldera Resort. By pursuing this expansion or annexation, Pine Forest Development seeks to avoid the statutory requirements of at least a \$7 million investment (perhaps \$11 million in 2016 dollars) in developed recreational facilities, or visitor-oriented accommodations, or to construct 150 separate rental overnight lodging units for a destination resort. The Hearings Officer impermissibly counted what Caldera has allegedly paid out and he approved only “a maximum of 95 additional overnights” instead of the required 150. Using those costs and units of Caldera does not make the expansion be in compliance with state law.

It is also not consistent with the County’s three-step approval process, with the Conceptual Master Plan (“CMP”) first step, the Final Master Plan (“FMP”) second step, and the site plan third step. It is further not appropriate to consider this expansion or annexation as a modification of the Caldera CMP. Where that CMP has been virtually fully implemented with the FMP and developed site plans, the resort is essentially completed. Amendments to a CMP should be obviously done before the resort is built.

No principle of deferential review is applicable where a local government interprets state law or interprets its local legislation in a manner contrary to state statutes.

Even if an expansion or annexation to an existing destination resort were allowed, it has not been established that the proposed annexation is to be situated and managed in a manner that it will be integral to the Resort. Caldera was designed for lodging to be built around a central core and this



new development is being built away from it. No integration of the wildlife and wildfire plans with the existing resort is done either.

3. Approval of this annexation or expansion is also not appropriate where it relies on the existing Caldera visitor-oriented overnight lodging which does not constitute adequate numbers of lodging. Though the existing Caldera Resort is to have 150 separate rentable units, there are effectively only around 38 overnight rental units as reflected by the Resort's own website accommodations page which advertises: "All Caldera Rentals: 38 Vacation Rentals in All Caldera Rentals."

The Hearings Officer erred in stating that LandWatch failed to provide evidence on the resort's website relevant to overnight lodging. LandWatch submitted evidence from the Applicant's website that out of 47,815 opportunities to rent a single room in 2014 and out of 478,150 opportunities to rent such rooms since 2005, apparently not one "room" has ever been rented. In no way, shape or form have the supposed 150 separate rentable units actually existed or operated as such.

The Hearings Officer euphemistically observed:

"With the addition of the separate entrance for each bedroom [3-5 per "cabin"] and at least the colorable claim to allowing each room to be rented individually, Caldera Springs appears to have finessed DCC 18.113.060 in a way that minimally satisfies the 150 separate rentable unit standard."

Even if the County is willing to have its Code requirements "finessed," those requirements are based on state law, including ORS 197.445(4)(b) and (9)(a), and the County is not granted deference in allowing state statutes to be finessed.

4. It has not been established that there is adequate domestic water and waste water capacity for the expansion or that any needed expansions of those facilities are feasible, under DCC 18.113.070(K) and (L).

5. The Hearings Officer's decision inappropriately allowed the Applicant to defer providing details on its plans to a stage where the public is not guaranteed a right to comment upon those details. The decision refers to uses and amenities of the resort being subject to refinement during the life of the resort. Any such refinements which are currently to be addressed in the context of a conditional use permit, if considered in the future, must be with the same right of comment as provided in a conditional use permit.

The Hearings Officer's decision also inappropriately decides that open space requirements under DCC 18.113.060 and .070 can be deferred to the future. The Hearings Officer states, "Some open space areas are evident on the Conceptual Master Plan, but the applicant has proposed that most detailed descriptions of open space will be provided at the time of actual development." It is inappropriate to defer such required elements of the destination resort. The public has a right to see what information is required for a destination resort and to be able to testify on it.



## DECISION OF THE DESCHUTES COUNTY HEARINGS OFFICER

**FILE NUMBER:** 247-15-000464-CU

**APPLICANT:** Steve Runner  
Pine Forest Development, LLC  
Sunriver Resort Limited Partnership  
P.O. Box 3589  
Sunriver, OR 97707

**REQUEST:** Conditional use permit application to expand the Caldera Springs Destination Resort ("Resort") to include the subject property. The annexed property will include a maximum of 395 single-family residences, a maximum of 95 additional overnight lodging units, recreation facilities and additional resort core amenities. As part of this application, the applicant seeks to modify the Caldera Springs Conceptual Master Plan and ratio of single-family residences to overnight lodging units from 2:1 to 2.5:1.

**STAFF CONTACT:** Anthony Raguine, Senior Planner

**HEARING DATES:** October 27, November 24 and December 15, 2015

**RECORD CLOSED:** December 29, 2015

### **I. STANDARDS AND APPLICABLE CRITERIA:**

Title 18 of the Deschutes County Code ("DCC")  
Chapter 18.40, Forest Use Zone – F2  
Chapter 18.80, Airport Safety Combining Zone – AS  
Chapter 18.84, Landscape Management Combining Zone – LM  
Chapter 18.88, Wildlife Area Combining Zone – WA  
Chapter 18.108, Urban Unincorporated Community Zone – Sunriver  
Chapter 18.113, Destination Resorts – Destination Resort  
Chapter 18.128, Conditional Use Permits

Title 22, the Deschutes County Land Use Procedures Ordinance

Title 23, The Deschutes County Comprehensive Plan  
Chapter 23.84, Destination Resorts  
Chapter 23.76, Energy

Oregon Revised Statute (ORS) Chapter 197.435 to 197.467

### **II. FINDINGS OF FACT:**

**A. Location:** The subject property has an assigned address of 17800 Vandevent Road, Bend, and is identified as tax lot 103 on Assessor map 20-11.

**B. Zoning and Plan Designation:** The subject property is zoned Forest Use Zone (“F2”). It is within the Airport Safety Combining Zone (“AS”) associated with the Sunriver Airport; the Landscape Management Combining Zone (“LM”) associated with Highway 97, Vandever Road and South Century Drive; and the Wildlife Area Combining Zone (“WA”) associated with deer migration range. The subject property is also mapped within the Destination Resort (“DR”) Combining Zone for Deschutes County.

**C. Site Description:** The irregularly shaped 614-acre property is undeveloped with a generally level topography. Vegetation on-site consists of a dense cover of lodgepole and ponderosa pine trees. According to the applicant, the 60- to 80-year-old trees are of various sizes arranged in small groups and dense thickets, with about 25 percent of the groups consisting purely of lodgepole pine. Understory vegetation is bitterbrush, bunchgrasses, and typical high desert vegetation. Several dirt roads and the power line right-of-way cross the site.

The site is approximately 250 feet west of Highway 97 at its closest point in the southeastern corner. The property has frontage on South Century Drive along its southwestern property line, and frontage on Vandever Road along its southern property line.

**D. Proposal:** The applicant is requesting conditional use permit approval to expand the Resort and include the subject property. The annexed property will include a maximum of 395 single-family residences, a maximum of 95 additional overnight lodging units, recreation facilities and additional resort core amenities. As part of this application, the applicant seeks to modify the Caldera Springs Conceptual Master Plan and ratio of single-family residences to overnight lodging units from 2:1 to 2.5:1. Additionally, the applicant proposes a new access to the Resort from Vandever Road.

The proposal includes two options detailed in the applicant’s Exhibit A and A-1. Option 1 includes two areas of visitor-oriented accommodations (“VOA”)/cluster housing, one in the eastern portion of the annexation property and one at the south end of the property. Option 2 also includes two areas of VOA/cluster housing, one at the north end of the annexation property and one at the south end of the property.

The application includes a possible phasing plan, detailed on Exhibit A-2 and A-3, for each Option discussed above. Each plan includes five to nine phases and an anticipated 40 to 90 lots per phase. The exhibits indicate development of a phase every one to four years as the real estate market dictates.

**E. Surrounding Land Uses and Zoning:** The site is bounded to the north by the Sunriver Business Park on land zoned Urban Unincorporated Community Zone Sunriver – Business Park District (“SUBP”), and by multi-family residential uses on land zoned Urban Unincorporated Community Zone Sunriver – Multiple Family Residential District (“SURM”). To the east is the Burlington Northern Railroad. Beyond the railroad tracks are vast tracks of undeveloped US Forest Service lands that are zoned Forest Use (“F1”), and Highway 97. To the south, across Vandever Road are two undeveloped, privately owned, properties zoned F2, and a residential subdivision zoned Rural Residential (“RR10”). Along much of the property’s western boundary is the Caldera Springs Destination Resort. As noted above, the property’s southwestern boundary is formed by South Century Drive. Across South Century Drive are residential uses on lands zoned F2, including the Crosswater development. To the northwest are residential

uses in the Sunriver Resort on lands zoned Unincorporated Community Zone Sunriver – Single Family Residential District (“SURS”) and SURM.

**F. Land Use History:** The County approvals associated with the existing Resort are summarized below.

Land Use Approval	Description
CU-05-07	Conceptual Master Plan (“CMP”)
M-05-01	Final Master Plan (“FMP”)
TP-05-961	Tentative Plan for up to 320 single-family residential homesites, various future development tracts, rights-of-way, and easements for infrastructure
SP-05-53	Site Plan for the Resort’s first phase including 150 separate rentable units for visitor lodging; eating establishments for at least 100 persons; meeting rooms for at least 100 persons, nine-hole short golf course; three practice golf holes; practice putting green; lake; and clubhouse which will incorporate the eating establishments and meeting rooms
SP-06-14	Site Plan for the Resort amenities including fitness/pool center, pool, basketball court, play area, tennis courts, lake expansion, relocated parking area, lawn sports area, and pavilion
FPA-06-12	Final Plat approval for TP-05-961
SP-06-52/V-06-16/MA-06-23	Site Plan for overnight lodging units (OLUs) within Tracts 2 and 3; Minor Variance to reduce the parking area setback from 250 feet to 225 feet
SP-06-55	Site Plan for a pump station associated with the Resort water feature
SP-06-61	Site Plan for OLUs in Tract 1, roadway and driveway areas, and pedestrian bike paths within Tracts 1, 2 and 3 of the core Resort area; OLUs provided as lock-off units; A total of 160 OLUs will be provided within Tracts 1, 2 and 3; This Site Plan approval is intended to amend and supplement SP-05-53
MC-07-2	Modification of the Dimensional Standards approved under the CMP and FMP, to include dimensional standards for the Overnight Lodging Cottage Lots

TP-07-988	Tentative Plan to divide Tracts 1, 2 and 3 into 45 lots, and to allow a Zero Lot Subdivision; Tract 1 includes 22 lots, Tract 2 includes 12 lots, and Tract 3 includes 11 lots; This division will allow the construction of the overnight lodging cottages approved under SP-06-52 and SP-06-61
TU-07-3	Temporary use permit to construct a model cottage in Tract 1
SP-07-25	Site plan approval for the OLU's approved under SP-06-52 and SP-06-61 to address the lot configurations approved under TP-07-988
MP-08-88	Minor Partition to divide Tract FA into three parcels; Parcel 1 includes a portion of the golf course; Parcel 2 includes the pavilion, fitness center, lakes and a portion of the parking lot and open spaces; Parcel 3 includes the lakehouse facility and a portion of the parking lot in the core area of the Resort
MP-08-89	Minor Partition to divide Tract A in the Phase 1 subdivision into two parcels; Parcel 1 includes a portion of the golf course; Parcel 2 includes the open spaces
DR-13-23	Declaratory Ruling to determine if the site plan approval under SP-07-25, authorizing OLU's, roads and bike paths, has been initiated
MC-13-4	Modification of the CMP and FMP to change the required availability of OLU's from 45 weeks to 38 weeks
MC-13-5	Modification of SP-07-25 to change the required availability of OLU's from 45 weeks to 38 weeks

The existing Caldera Springs Destination Resort is approximately 390 acres in size and includes 160 overnight lodging units, 320 single family residential lots, and recreation facilities including a pool, clubhouse, golf course and trails.

**G. Public Agency Comments:**

Deschutes County Building Division. The Deschutes County Building Safety Division's code required Access, Egress, Setbacks, Fire & Life Safety, Fire Fighting Water Supplies, etc. will be specifically addressed during the plan review process for any proposed structures and occupancies. 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 Road Department. I have reviewed the materials for the above application and have the following comments:

1. Vandever Road is classified as a County collector with an ADT of 2240. Existing width is 27.5 feet so when the development uses Vandever for access, it will have to be widened to 15 feet from centerline along the frontage of the property.
2. The Traffic Impact Analysis did not discuss any required improvements to the intersection of the new access with Vandever Road. I am thinking that most of the traffic will be using the Highway 97/South Century Interchange to access this development but I am curious as to what amount of traffic is projected to use the access off of Vandever Road. Would this intersection be analyzed when the phasing of the resort required its connection?

Planning Division Senior Transportation Planner. The following comments on the revised TIA were submitted on October 10, 2015:

1. The new approach apron to Vandever must be paved to reduce the amount of gravel and debris being tracked onto Vandever from the site.
2. The correct citation to Deschutes County's traffic study requirements is DCC 18.116.310; the traffic requirements were shifted there from DCC 17.16.115 in 2014.

The following comments regarding safety concerns raised by the public were submitted on October 26, 2015:

1. While there may be longer delays for Crosswater residents to enter onto South Century Drive, the traffic study indicates the South Century Drive intersection that provides access to Crosswater on the west leg and Caldera Springs on the east leg meets the Deschutes County mobility standard. In other words, a minor potential degradation in traffic operations is insufficient to require major improvements. Additionally, there is adequate capacity on South Century Drive itself; therefore no center turn lanes nor acceleration lanes nor additional travel lanes are required.
2. Currently there is no programmed construction project from ODOT to introduce turn restrictions at 97/Vandever. If ODOT did program a construction project to make Vandever/97 a right-in, right-out only (RIRO) intersection, the traffic impacts would be analyzed at that time. The County Transportation System Plan ("TSP") on page 148 does anticipate a future closure of Vandever Road from US 97. If ODOT requests the complete closure of Vandever at 97, a public hearing is required before the Board of County Commissioners and people could then state their case. I would assume ODOT would provide some high-level analysis of the resulting traffic effects on South Century if Vandever were closed given traffic going to or coming from the north would likely divert to the South Century/US 97 interchange. The County's 2012 TSP at Table 5.3.T1 (County Road and Highway Projects) does list a future roundabout at Spring River/South Century Drive as a medium priority (construction planned in 6-10 years or 2018-2022 assuming adequate funding). The TSP also has a roundabout at Huntington/South Century as a low priority (construction planned for 11-20 years or 2023-2032, assuming adequate funding).

3. The intersection of South Century Drive/Caldera Springs-Crosswater entrances meets the Deschutes County mobility standards based on the accepted TIA; therefore a roundabout at the South Century Drive/Caldera Springs-Crosswater entrance is not warranted.
4. DCC 18.116.310(G) sets the requirements for what a TIA must consider. Admittedly, the requirements through 18.116.310 are oriented toward motor vehicles. However, South Century Drive is a County collector and has adequate shoulders. The County in Deschutes County Code 17.48 (Design and Construction Specifications) and Table A requires paved shoulders ranging in width from 3' to 5'. The shoulders on South Century comply. An increase in traffic from Caldera Springs will not change the dimensions of those shoulders. The most recent (2011) figures for South Century Drive indicates the average daily traffic (ADT) between Spring River Road and Huntington road ranges from 2,863 to 3,848 ADT. The County TSP on pages 80-81 discusses level of service (LOS) standards as they relate to volumes for road segments. The County standard for a two-lane rural road is LOS D, which means 5,701-9,600 ADT. Therefore, based on the combination of shoulder width, current traffic volumes, and future traffic volumes from the resort, South Century Drive will continue to meet performance standards and provide sufficient shoulders for cyclists to ride.
5. The Bend-La Pine School District locates bus stops. Buses come with beacons and stop paddles and motorists are required to yield to school buses. Schools typically end and deliver their students before the p.m. peak hour traffic begins. Additionally, traffic exiting the two resorts is controlled by stop signs and traffic entering the two resorts must slow to turn into the entrances.
6. The TIA indicates even with development traffic, the intersection of South Century/and the entrances to Crosswater and Caldera Springs will meet the County's mobility standard. Additionally, even with the increased traffic there will still be sufficient gaps in northbound and southbound traffic on South Century Drive for pedestrians, bicyclists, and golf carts to cross the roadway.
7. Large events require approval either from the County via an Outdoor Mass Gathering permit or permits from the County's Risk Management Unit. In either case, the event must address traffic via a management plan, which typically includes the use of state-certified flaggers to direct traffic. If there were a large event, the traffic from the Caldera Springs expansion would be practically indiscernible from the volumes related to the event(s).
8. Staff refers to the Oct. 15, 2015, Technical Memo from Kittelson & Associates which concentrates on the site's access to Vandevent Road and the Vandevent Road/97 intersection.

Oregon Department of Fish and Wildlife ("ODFW"). ODFW submitted the following comments via email on October 12, 2015:

ODFW has reviewed the Wildlife Habitat Evaluation Procedure and Mitigation Plan. The mitigation plan includes modifications to the resort, including an east-west wildlife travel corridor along the southern boundary of the property. The modifications are in agreement with ODFW recommendations to maintain wildlife movement through the

area. ODFW further recommends that open space be maintained to the extent possible throughout the development to promote wildlife passage.

The mitigation plan also states that “vegetation would be managed within the corridor to maintain native plant species that will continue to provide both cover and forage for wildlife moving through the area.” ODFW recommends that as much native vegetation as possible be established throughout the project site and that nonnative invasive plants be controlled.

Oregon Department of Transportation (“ODOT”). ODOT requested the original TIA be revised to reflect the new access point to Vandever Rd.

#### Additional Comments

ODOT is satisfied that the project will not adversely affect the operation of the US 97 intersection at Vandever with the proposed mitigation. The proposed mitigation is to limit the Vandever access to construction traffic only or to restrict outbound left-turn movements until such time as the Vandever connection to US 97 is closed or restricted. Restricting outbound left-turns would be less effective and ODOT would request the opportunity to review the turn-restriction design prior to it being permitted.

*In response to staff's question regarding the potential for mitigation in the form of a median on Highway 97, as identified on page 15 of the amended TIA, ODOT provided the following response*

ODOT is open to discussions to close or restrict access to the US 97/Vandever intersection, but the timing of that improvement is uncertain.

La Pine Rural Fire Protection District. Thank you for the opportunity to comment on the conditional use permit application 247-15-000464-CU to expand the Caldera Springs resort. The developer has been in contact with the fire district from the very initial planning phases and has worked to bring this property within the fire district. The property now has fire protection from La Pine Rural Fire Protection District and additional summer forestry patrol from the Oregon Department of Forestry. The developer to date has shown adequate planning for access (roads), water supply (fire hydrants), suitable firewise building and fire resistive landscaping and other issues pertaining new developments and the fire codes as well as an excellent performance history with the existing property development. The district thus supports this new development and has no issues with the conditional use permit and the requested modification to the developments master plan per single family and overnight ratios from 2:1 to 2.5:1.

The following agencies did not respond or had no comments. Deschutes County Assessor, Deschutes County Environmental Soils Division, Watermaster – District 11, Bend-La Pine School District, Oregon Department of Environmental Quality, Oregon Department of Forestry, Oregon Department of Aviation – Project and Planning Division, Deschutes National Forest, Sunriver Utilities, Deschutes County Forester, State Fire Marshal, and U.S. Fish and Wildlife Service.

- H. Public Comments:** As of the date of the staff report, a number of emails and letters, and a petition, were received indicating opposition to the project. Staff identified the following general opposition issues:

1. Greater difficulty merging onto South Century Drive by residents of the Crosswater development<sup>1</sup>
2. If ODOT limits access from Highway 97 onto Vandevent Road, traffic onto South Century Drive will increase exacerbating congestion caused by the proposal
3. Consider roundabout at the entrance to Crosswater/Caldera Springs on South Century Drive
4. Safety concern for cyclists along South Century Drive due to increased traffic from the proposal
5. Carrying capacity of utilities and services
6. This annexation should be viewed as a standalone destination resort
7. Increase in rentable units with this proposal creates too much competition for other owners who rent dwelling units in the area
8. Increased traffic creates concern for students because bus stops are located at the Crosswater and Caldera Springs entrances
9. Increased traffic creates concern for pedestrians, bicycles, and golf carts moving between Crosswater and Caldera Springs, and along South Century Drive
10. Increased traffic exacerbates congestion issue during special events that draw large crowds to Crosswater
11. Increased traffic exacerbates congestion and safety issue at the Vandevent Road/Highway 97 intersection
12. Impacts to livability within the Powder Village Complex due to location of secondary access road along the northern boundary of the project site

#### Additional Comments

#### *Comments submitted since October 22, 2015 public hearing*

13. Concern regarding deer and elk casualties due to vehicular strikes
14. Concern regarding dedication of land near Harper Bridge for public river access
15. Access to existing Caldera Springs from South Century Drive is inadequate to handle increase in traffic from expansion
16. The proposal should be rejected for the same reasons the Governor's Natural Resource Office rejected a proposal to create a new destination resort on the subject property

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<sup>1</sup> The sole access into Crosswater is directly opposite the existing Resort access.

17. Concern regarding the cost to replace the Sunriver Sewage Treatment Plant due to increased use
18. Concern regarding increasing nitrite concentrations due to unsewered lots
19. Appropriateness of clustered communities between Bend and La Pine
20. Expansion will provide positive impact to tourism for the region

**I. Notice:** The applicant submitted a Land Use Sign Affidavit indicating the land use action sign was posted on the property on September 3, 2015. A notice of the applications was mailed on September 11, 2015. Comments from the public and from public agencies are detailed above. Notice of the public hearing was published in *The Bulletin* on October 4, 2015, and mailed to parties of record on October 5, 2015.

**J. Lot of Record:** The applicant made the following argument on compliance with the County's lot of record requirement:

Prior to 2006 the subject property was owned by the United States Government, acting by and through the United States Department of Agriculture aka, the US Forest Service. Pursuant to the Bend Pine Nursery Land Conveyance Act of 2000 (P.L.106-526: 114 Stat. 2512), Congress authorized the sale of a number of isolated USFS parcels. The subject property was one such isolated parcel (Tract C Administrative Sale; DES No. 178, Parcel A). The property was conveyed to Pine Forest Development, LLC on November 14, 2006 pursuant to a quitclaim deed, a copy of which is attached. The deed was recorded on November 21, 2006 (2006-77006), in the real property records of Deschutes County.

The subject property is 617.27 acres, more or less, in size, exceeding the 5,000 square foot minimum. As a federally owned parcel, it was not subject to any state or county subdivision requirements. The subject lot of record was created by the deed referenced above and was recorded in the real property records of Deschutes County. Only one legal description was provided, consequently, the subject property contains only one legal lot of record.

Staff noted that a Hearings Officer and the Board of County Commissioners made a finding that the subject property is a legal lot of record for the rezone approval of the property.<sup>2</sup>

COLW argued that the subject property is not a lot of record for two reasons. First, that because the parcel was federally owned and transferred to the applicant, it did not meet the County subdivision or partition rules. COLW argued that this position is supported by a prior Hearings Officer decision in *Thompson*. Second, even though a prior zone change approved by the BOCC found the parcel to be a lot of record, that decision is not determinative.

The Hearings Officer agrees with the applicant. As for the BOCC's prior recognition of the lot, no party argues that the BOCC somehow got that decision wrong in 2006 when

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<sup>2</sup> Reference land use file number ZC-06-3.

the property was rezoned. Of course, the time to appeal that decision is long past. Even if *Thompson* militated for a different outcome, which it does not as explained below, the Hearings Officer considers that prior decision to be the BOCC's interpretation as to the application of the County's lot of record criteria to the subject property, and absent any colorable argument that the BOCC erred in that decision, the Hearings Officer will be adhere to it. As for the application of *Thompson*, I agree with the applicant that the facts in that case were significantly different than those at issue here. First, while *Thompson* sought to recognize a lot that had been transferred from the federal government, the applicant's primary argument was that the federal process that led to the transfer preempted all other local regulation. Here, the applicant does not so argue, and the transfer appears to be a simple and straight forward quit claim deed conveyance which fits at least one of the County's lot of record criteria. Second, the applicant in *Thompson* sought to have a substandard size lot recognized for the F-1 zone – in order to have the lot qualify for a lot of record forest dwelling under ORS 215.700. Again, that is not the case with this application as there is a single lot of approximately 617 acres, and the applicant is relying on the existing DR designation as the basis for the proposal.

For these reasons, the Hearings Officer finds that the subject property is a legal lot of record under DCC 18.04.030(A)(3).

**K. PROCEDURAL HISTORY:** A public hearing was held on October 27, 2015. The Hearings Officer provided the statements required by ORS 197.763. There were no *ex parte* contacts to report, and no party challenged the Hearings Officer's fitness to conduct the hearing.

Staff provided a PowerPoint outlining the proposal. Several transportation issues were discussed including an explanation of the traffic counts near Vandeventer Road and reasons why the prior counts and seasonal factors were still current enough to provide reliable evidence.

The applicant's attorney, Steve Hultberg, provided a short history of the existing resort and outlined the proposed expansion. He explained that the proposal was not a standalone resort, but an expansion of the existing resort. The proposal would encompass about 395 single family residences which is approximately 43% of what would otherwise be permitted. A maximum of 95 new overnight units were also proposed. He noted that the wildlife plan for the expansion had received a favorable review from the Oregon Department of Fish and Wildlife. However, more work was needed on the proposal's wildfire contingency plan. Sewer and water would rely on existing systems, although the applicant acknowledged that service expansion might be needed for the new portion of the resort and, that if so, the resort would pay for its proportionate share of that cost.

Wendy Wente, the applicant's wildlife biologist, explained a 125 acre set aside built into the proposal. The east – west wildlife corridor would be preserved, she said, primarily to benefit mule deer. With the open plan of the development and preservation of existing native plants, she concluded that the proposal met the "no net loss" of habitat standard required by the DCC.

Matt Kittelson added some transportation information addressing the interchange at Hwy 97 and S. Century drive, which would serve the new development. Even with the additional trips, he concluded that the intersection would operate at

County required service levels. He acknowledged that the Vandever/Hwy 97 intersection is planned to be closed sometime in the future and the County's Transportation System Plan includes that closure. However, ODOT is the deciding party on when the closure might occur, and no date has yet been set for the possible closure.

Several individuals from the Sunriver Owners Association ("SROA") testified as neutral parties. They raised concerns about the capacity of the current water system to adequately supply water to the expanded resort. Similarly, they voiced concern about the capacity of the sewer system. Increased traffic impacts on roads maintained by SROA were also of concern. There was also significant comment on the potential impact on nearby public recreational facilities. In particular, SROA members asked for more analysis and action on the Harper Bridge boat access to the Deschutes River.

Mark Murray speaking for the Sunriver Service District asked whether notice of the proposal had been provided to the Deschutes County Sheriff, La Pine Fire District, and Sunriver Police. He was also concerned about the seasonal adjustment for the traffic counts taken by the applicant. Similar concerns about the traffic counts were raised by Wade Watson, who noted that during the month of April when the counts were taken, many seasonal residents were gone, and the golf course was still closed.

Several individuals raised concerns about the resident mule deer and their ability to migrate and move safely across Hwy 97.

Carol Macbeth, representing Central Oregon Land Watch ("COLW"), provided written comments in opposition to the proposal and summarized some of them at the hearing. She argued that state law does not permit "expansion" of destination resorts on resource designated lands. She said the expansion cannot meet the requirements of Statewide Planning Goal 8 for destination resorts. She stated that any new development will need an exception to Goal 8. As for the overnight accommodations required under state law for destination resorts, she stated that only 38 overnight rentals appear on the resort's website when 152 are required. As for wildlife habitat, she argued that new interpretations of the requirements for destination resorts would require 365 acres of habitat mitigation associated with the migration corridor. She also noted that the Vandever/Hwy 97 intersection has had 30 accidents in the past 10 years.

Pam Burley argued that the overnight lodging units were insufficient in number and the additional proposal would not be able to hit the required ratio of overnight rental to private residential units. She also noted that the analysis on water quantity was insufficient due to current demands and the golf course.

At the end of the hearing the parties agreed to a continued hearing. The Hearings Officer set the continued hearing for November 24, 2015 at 6:30 p.m. The record was left open during this period. On November 24, 2015, severe snowy weather prevented the public from attending the hearing, and the applicant agreed to another continuance to December 15, 2015.

At the December 15, 2015 hearing, the Hearings Officer again provided the statements required by ORS 197.763. There were no *ex parte* contacts to report, and again no party challenged the Hearings Officer's fitness to conduct the hearing.

Staff presented an amended Staff Report that accommodated additional evidence submitted after the October 27, 2015 hearing. The applicant provided an overview of additional information submitted into the record. The information included the following:

- Evidence related to the question of whether the subject property constitutes a "lot of record."
- Information showing that vegetated berms would be constructed on the subject property along S. Century Drive.
- Applicant's amended wildlife/wildfire plans which attempted to coordinate the two.
- A refined TIA with the requested seasonal adjustment. Included a memo from Peter Russell confirming the adjustment still allowed the development to meet the County's level of service standards.

This information was all presented in a written submission dated November 10, 2015.

Carol Macbeth provided a written comment dated December 15, 2015 and provided opposition testimony on behalf of COLW. She discussed the following issues at the hearing:

- Reiterated argument that "expansions" of existing destination resorts are not allowed under Goal 8.
- She questioned whether the proposal could meet the minimum investment threshold for destination resorts under state law.
- The existing resort is not meeting the overnight lodging requirements – only 38 houses and 131 unique rooms. The expansion would perpetuate that failure.
- The wildfire risk is too high, and there is not an evacuation plan or route provided.
- DCC 18.113.120 requires that the mitigation for incursion into the mule deer migration habitat include a conservation easement to protect the previously identified Goal 5 resource.
- She continued to argue that the subject property does not qualify as a lot of record.

Ron Buris again raised the concern about recreational access at Harper Bridge. He argued that the prior destination resort approval included a condition requiring improvements at the boat access and that condition still had not been met.

Staff noted that SROA had submitted an e-mail and attached document into the record just prior to the hearing.

At the end of the hearing the Hearings Officer considered requests to leave the record open.

The Hearings Officer set an open record schedule as follows: 1) argument and evidence from any party could be submitted until December 22, 2015 at 5:00 p.m. – limited to a response to COLW's December 15, 2015 submission, and SROA's December 15, 2015 email and attached argument, 2) the applicant's final argument was due December 29, 2015 by 5:00 p.m.

On December 22, 2015, the applicant submitted a letter and exhibits as rebuttal testimony to the December 15, 2015 submissions by COLW and SROA. In that letter the applicant requests that the Hearings Officer exclude from the record SROA's exhibits or attachments to their December 15, 2015 submission because it was emailed during the hearing and the attachments were hand delivered on December 16, 2015. The applicant argues that these documents should be rejected because the record was closed on December 15, 2015.

The Hearings Officer finds that SROA's December 15, 2015 email and subsequent hand delivery of attachments on December 16, 2015 was sufficient to include those items in the record. There is no prejudice to any party by retaining them in the record. All parties were on notice during the hearing that SROA was submitting documents into the record. The parties were on notice and had time to respond to those documents by December 22, 2015 as provided by the Hearings Officer's instructions.

On December 22, 2015, COLW also submitted a letter that purports to comply with the Hearings Officer's instructions for the open record period. On December 23, 2015, the applicant objected to the submission on the basis that the letter reiterated prior arguments and statements made during the December 15, 2015 hearing. Upon reviewing the contents of COLW's December 22, 2015 letter, the Hearings Officer agrees with the applicant that it should not be included in the record. Based on the Hearings Officer's instructions at the December 15, 2015 hearing, rebuttal testimony would be allowed directed at COLW's December 15, 2015 letter and SROA's December 15, 2015 submission. As such, COLW would not need to respond to its own December 15, 2015 letter – thereby leaving only the SROA letter as a valid document to respond to. The December 22, 2015 COLW letter does not respond to SROA's arguments. COLW reiterates prior arguments and augments rather than providing rebuttal testimony. As such, the December 22, 2015 letter does not comply with the Hearings Officer's instructions, is not part of the record, and will not be considered in this decision.

The applicant submitted a final argument on December 29, 2015 in compliance with the deadline set by the Hearings Officer. On the same day, the applicant submitted a precautionary response to COLW's December 22, 2015 letter. Since the Hearings Officer will not consider COLW's December 22, 2015 letter, it will not be necessary to include in the record or review the applicant's December 29, 2015 response.

### III. CONCLUSIONS OF LAW:

#### Section 18.113.080. Procedure for Modification of a Conceptual Master Plan.

Any substantial change, as determined by the Planning Director, proposed to an approved CMP shall be reviewed in the same manner as the original CMP. An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in DCC 18.113.080, means an alteration in the type, scale, location, phasing or other characteristic of the proposed development such that findings of fact on which the original approval was based would be materially affected.

**FINDING:** Staff found, and the Hearings Officer agrees, the proposed annexation is a substantial change which should be reviewed in the same manner as the original CMP. For this reason, all criteria which apply to destination resorts apply to the subject property and the applicant's proposal.

#### **Title 18, Deschutes County Zoning Code**

##### **A. Chapter 18.40. Forest Use Zone**

The following uses and their accessory uses may be allowed in the Forest Use Zone, subject to applicable provisions of the Comprehensive Plan, DCC 18.40.040 and other applicable sections of DCC Title 18:

- ...
- D. Destination Resorts where mapped in a DR zone and subject only to the provisions of DCC 18.113 and other applicable provisions of DCC Title 18 and the Comprehensive Plan not contained in DCC 18.40.**

**FINDING:** The applicant has applied for a conditional use permit to expand the existing Caldera Springs Destination Resort. The subject property is mapped for destination resorts on the Deschutes County destination resort map. Significantly, none of the participating parties argue that the subject property is not covered by the DR zone. The uses allowed with the DR Zone are listed under DCC 18.113 and are not regulated by the conditional use criteria set out in the F2 Zone provisions. Likewise, the setbacks and other development standards for development within a destination resort are not regulated under DCC 18.40, but are regulated under DCC 18.113. The applicable provisions of Title 18 and the Comprehensive Plan are addressed below.

##### **B. Chapter 18.80. Airport Safety Combining Zone – AS**

1. 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.**

**FINDING:** The northern half of the annexation property lies within the AS Combining Zone associated with the Sunriver Airport. The applicable provisions of DCC 18.80 are addressed below.

- 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:** The subject property is located outside of the Sunriver Airport noise impact boundaries. This criterion does not apply.

- 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 applicant does not propose any industrial uses. Commercial and recreational uses are included in the project. The property is located over 3,000 feet from the Sunriver Airport runway, taxiway, and approach surfaces. The applicant agrees that lighting for the project will comply with County lighting ordinances and, therefore, will be shielded and directed in conformance with standards under DCC 18.80.044(8). A condition of approval for commercial and recreational uses will ensure compliance with this criterion.

- 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:** The subject property is over 3,000 feet from the Sunriver Airport approach surfaces. Moreover, the applicant indicates that no glare producing materials will be

used on structures where glare could impede a pilot's vision. No evidence has been provided that undermines this statement. This criterion is met with a condition of approval.

- 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:** No industrial operations are proposed. 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:** No new or expanded radio, radiotelephone, television transmission facilities or electrical transmission lines are proposed. This criterion does not apply.

- 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 the Runway Protection Zone, Approach Surface, or the Airport Direct Impact Area. However, the northern half of the annexation property is within the Airport Secondary Impact Area<sup>3</sup> associated with the Sunriver Airport. Table 1 of DCC 18.80 permits all the proposed uses included in the Resort expansion. This criterion is met.

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<sup>3</sup> DCC 18.80 022(l) provides the following definition:  
*“Airport Secondary Impact Area. The area between 5,000 and 10,000 feet from an airport runway. (Redmond, Bend and Sunriver)”*

2. 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:** Destination resorts are permitted conditionally in the underlying F2 Zone and are, therefore, permitted conditionally in the AS Combining Zone.

3. Section 18.80.072. Water Impoundments.

**Any use or activity that would result in the establishment or expansion of a water impoundment shall comply with the requirements of DCC 18.80.072. (ORS 836.623(2); OAR 660-013-0080(1)(f))**

...

**C. Process.**

**5. Exemptions. The requirements of DCC 18.80.072 shall not apply to:**

...

**c. Lands owned or managed by Sunriver Resort, Crosswater and their affiliates.**

**FINDING:** The subject property is owned and managed by Pine Forest Development, LLC, an affiliate of Sunriver Resort Limited Partnership. This section does not apply.

4. Section 18.80.076. Water Impoundment Notification.

**A. Deschutes County shall provide notice to the Oregon Department of Aviation when it, or its designee, receives an application for a comprehensive plan amendment, zone change or permit as defined in ORS 215.402 or 227.160 that, if approved, would result in a water impoundment larger than one-quarter acre within 10,000 feet of the Redmond, Bend, Sunriver or Sisters Airports.**

**B. A final determination regarding a new water impoundment described in ORS 836.623 shall be made by local governments as provided in ORS 836.623.**

**FINDING:** The record shows that notice of the application was mailed to the Oregon Department of Aviation. No comments were received in response to the notice. This criterion is met.

**C. Chapter 18.84, Landscape Management Combining Zone – LM**

1. Section 18.84.020. Application of Provisions.

**The provisions of DCC 18.84 shall apply to all areas within one fourth mile of roads identified as landscape management corridors in the Comprehensive Plan and the County Zoning Map. The provisions of DCC 18.84 shall also apply to all areas within the boundaries of a State scenic waterway or Federal wild and scenic river corridor and all areas within 660 feet of rivers and streams otherwise identified as landscape management**

corridors in the comprehensive plan and the County Zoning Map. The distance specified above shall be measured horizontally from the centerline of designated landscape management roadways or from the nearest ordinary high water mark of a designated landscape management river or stream. The limitations in DCC 18.84.020 shall not unduly restrict accepted agricultural practices.

**FINDING:** No areas of the property are within the boundaries of a State scenic waterway or Federal wild and scenic river corridor. A small portion of the northwest corner and a portion of the southwest corner of the property are located within the LM Combining Zone associated with South Century Drive. A portion of the southeast corner of the property is within the LM Combining Zone associated with Highway 97. And finally, a strip of land along the southern edge of the property is within the LM Combining Zone associated with Vandever Road. These areas are subject to the provisions of DCC 18.84.

Staff recommended, and the Hearings Officer agrees, that the conditions of approval detailed below apply only to those portions of the property subject to the LM Combining Zone.

2. Section 18.84.040. Uses Permitted Conditionally.

**Uses permitted conditionally in the underlying zone with which the LM Zone is combined shall be permitted as conditional uses in the LM Zone, subject to the provisions in DCC 18.84.**

**FINDING:** Destination resorts are permitted conditionally in the underlying F2 Zone, and are, therefore, permitted conditionally in the LM Combining Zone.

3. Section 18.84.050. Use Limitations.

- A. **Any new structure or substantial alteration of a structure requiring a building permit, or an agricultural structure, within an LM Zone shall obtain site plan approval in accordance with DCC 18.84 prior to construction. As used in DCC 18.84 substantial alteration consists of an alteration which exceeds 25 percent in the size or 25 percent of the assessed value of the structure.**
- B. **Structures which are not visible from the designated roadway, river or stream and which are assured of remaining not visible because of vegetation, topography or existing development are exempt from the provisions of DCC 18.84.080 (Design Review Standards) and DCC 18.84.090 (Setbacks). An applicant for site plan review in the LM Zone shall conform with the provisions of DCC 18.84, or may submit evidence that the proposed structure will not be visible from the designated road, river or stream. Structures not visible from the designated road, river or stream must meet setback standards of the underlying zone.**

**FINDING:** The applicant's Burden of Proof Exhibit A and A-1, shows the proposed resort structures will be set back at least 200 feet from South Century Drive, at least 300 feet from Vandever Road, and at least 1,100 feet from Highway 97. All structures which

may be visible from South Century Drive will be buffered through a mix of berms, setbacks and natural vegetation. Additional evidence submitted during the hearings process confirmed that the development will not be visible from S. Century Drive. However, no berms are proposed along Vandevort Road, and therefore, the design review standards are discussed below. The intervening railroad berm between the resort and Hwy 97 appears reasonably likely to screen the resort from that direction.

4. Section 18.84.080. Design review standards.

**The following standards will be used to evaluate the proposed site plan:**

- A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land.**

**FINDING:** The record shows that open spaces on the subject property will incorporate natural forest lands. For the purposes of this criterion, staff found, and the Hearings Officer agrees, the removal of vegetation in accordance with any wildfire management plan is allowed as removal of hazardous vegetation. A condition of approval will ensure compliance with this criterion.

- B. It is recommended that new structures and additions to existing structures be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.**

**FINDING:** All structures which may be visible from South Century Drive, Vandevort Road, and Highway 97 will be buffered through a mix of berms, setbacks and natural vegetation. Pursuant to applicable design guidelines, all structures will be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site. All development will be consistent with existing development in Caldera Springs and will match the overall aesthetic of the resort project. These standards have been incorporated into the resort's Design Guidelines and administered by the project's Architectural Review committee. A condition of approval will ensure compliance with this criterion.

- C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape. DCC 18.84.080 shall not apply to attached additions to structures lawfully in existence on April 8, 1992, unless substantial improvement to the roof of the existing structure occurs.**

**FINDING:** The record shows that existing development at Caldera Springs does not use reflective materials or rooftops, and new development within the annexation property will follow the same design guidelines as apply to Caldera Springs. Large areas, including

roofs will not be finished with white, bright or reflective materials. The existing resort's Design Guidelines will apply to the subject property and will be administered by the resort's Architectural Review committee. A condition of approval will ensure compliance with this criterion.

- D. Subject to applicable rimrock setback requirements or rimrock setback exception standards in DCC 18.084.090(E), all structures shall be sited to take advantage of existing vegetation, trees and topographic features in order to reduce visual impact as seen from the designated road, river or stream. When more than one nonagricultural structure is to exist and no vegetation, trees or topographic features exist which can reduce visual impact of the subject structure, such structure shall be clustered in a manner which reduces their visual impact as seen from the designated road, river, or stream.**

**FINDING:** Staff concluded that no rimrock, as defined in DCC 18.04.030, exists on-site. Staff noted that the proposed annexation layout shown in Exhibits A and A-1 establishes setbacks of at least 200 feet from South Century Drive, at least 300 feet from Vandever Road, and at least 1,100 feet from Highway 97.

Except as necessary to accomplish the goals of any wildfire management plan, staff recommended, and the Hearings Officer agrees, that a condition of approval requiring the retention of existing vegetation, trees and topographic features that will reduce visual impact as seen from the above-referenced LM roads.

- E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing the road, river or stream. Within the LM Zone along a state scenic waterway or federal wild and scenic river, the height of a structure shall include chimneys, antennas, flag poles or other projections from the roof of the structure. DCC 18.84.080 shall not apply to agricultural structures located at least 50 feet from a rimrock.**

**FINDING:** A condition of approval will ensure that structures will not exceed 30 feet in height as measured from the natural grade facing Vandever Road. No portion of the property is within a state scenic waterway or federal wild and scenic river.

- F. New residential or commercial driveway access to designated landscape management roads shall be consolidated wherever possible.**

**FINDING:** The applicant proposes to utilize the access from the existing Resort onto South Century Drive to the west. In addition, the applicant proposes a single new access onto Vandever Road to the south. This criterion is met.

- G. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from the designated road, river or stream.**

**FINDING:** The applicant indicates that all lighting will comply with the Deschutes County Outdoor Lighting Ordinance. A condition of approval will ensure compliance with this criterion.

- H. **The Planning Director or Hearings Body may require the establishment of introduced landscape material to screen the development, assure compatibility with existing vegetation, reduce glare, direct automobile and pedestrian circulation or enhance the overall appearance of the development while not interfering with the views of oncoming traffic at access points, or views of mountains, forests and other open and scenic areas as seen from the designated landscape management road, river or stream. Use of native species shall be encouraged. (Formerly section 18.84.080 (C))**

**FINDING:** The burden of proof shows that landscaped berms may be installed in select areas along South Century Drive and Vandever Road. Staff's site visit revealed that even if no landscaped berms were constructed, the retention of existing vegetation and tree cover within the proposed setbacks along South Century Drive and Vandever Road would comply with this criterion. Staff recommended, and the Hearings Officer agrees, that a condition of approval should require the retention of existing vegetation, trees and topographic features which will reduce visual impact as seen from the above-referenced LM roads, except in those locations where the applicant installs landscaped berms.

- I. **No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.,) are permitted.**

**FINDING:** The applicant states that no proposed signs or other forms of outdoor advertising will be visible from a designated landscape management road. However, property protection signs (No Trespassing, No Hunting, etc.,) may be visible, as permitted. A condition of approval is warranted to ensure compliance.

- J. **A conservation easement as defined in DCC 18.04.280 "Conservation Easement" and specified in DCC 18.116.220 shall be required as a condition of approval for all landscape management site plans involving property adjacent to the Deschutes River, Crooked River, Fall River, Little Deschutes River, Spring River, Squaw Creek and Tumalo Creek. Conservation easements required as a condition of landscape management site plans shall not require public access.**

**FINDING:** As noted previously, the subject property is not adjacent to any LM designated waterway. This criterion does not apply.

5. Section 18.84.090. Setbacks.

- A. **Except as provided in DCC 18.84.090, minimum setbacks shall be those established in the underlying zone with which the LM Zone is combined.**

**FINDING:** As noted under DCC 18.113.060(G)(1), setbacks required by the underlying F2 Zone do not apply to a destination resort.

**B. Road Setbacks.** All new structures or additions to existing structures on lots fronting a designated landscape management road shall be set back at least 100 feet from the edge of the designated road unless the Planning Director or Hearings Body finds that:

1. A location closer to the designated road would more effectively screen the building from the road; or protect a distant vista; or
2. The depth of the lot makes a 100 foot setback not feasible; or
3. Buildings on both lots abutting the subject lot have front yard setbacks of less than 100 feet and the adjacent buildings are within 100 feet of the lot line of the subject property, and the depth of the front yard is not less than the average depth of the front yards of the abutting lots.

If the above findings are made, the Planning Director or Hearings Body may approve a less restrictive front yard setback which will be appropriate to carry out the purpose of the zone.

**FINDING:** The proposed resort layout, shown in Exhibits A and A-1, establishes setbacks of at least 200 feet from South Century Drive, at least 300 feet from Vandever Road, and at least 1,100 feet from Highway 97. This criterion is met.

**D. Chapter 18.88, Wildlife Area Combining Zone – WA**

1. Section 18.88.020. Application of Provisions.

The provisions of DCC 18.88 shall apply to all areas identified in the Comprehensive Plan as a winter deer range, significant elk habitat, antelope range or deer migration corridor. Unincorporated communities are exempt from the provisions of DCC 18.88.

**FINDING:** The WA Combining Zone overlays the western approximately 80 percent of the property.

2. Section 18.88.040. Uses Permitted Conditionally.

**A. Except as provided in DCC 18.88.040(B), in a zone with which the WA Zone is combined, the conditional uses permitted shall be those permitted conditionally by the underlying zone subject to the provisions of the Comprehensive Plan, DCC 18.128 and other applicable sections of this title.**

**FINDING:** The proposal is conditionally allowed in the underlying F2 Zone and is, therefore, conditionally allowed in the WA Zone. The F2 Zone standards are addressed above and the conditional use criteria are addressed under DCC 18.128 below.

- D. **Subject to DCC 18.113, destination resorts are allowed as a conditional use in that portion of the WA zone designated as the Bend/La Pine Deer Migration Corridor as long as the property is not in an area designated as “Deer Migration Priority Area” on the 1999 ODFW map submitted to the South County Regional Problem Solving Group.**

**FINDING:** The subject property is within the Bend/La Pine deer migration corridor, but is not within a migration priority area. Staff found, and the Hearings Officer agrees, the proposed destination resort is conditionally allowed.

3. Section 18.88.060. Siting Standards.

- A. **Setbacks shall be those described in the underlying zone with which the WA Zone is combined.**

**FINDING:** As noted under DCC 18.113.060(G)(1), setbacks required by the underlying F2 Zone do not apply to a destination resort.

- B. **The footprint, including decks and porches, for new dwellings shall be located entirely within 300 feet of public roads, private roads or recorded easements for vehicular access existing as of August 5, 1992 unless it can be found that:**
  - 1. **Habitat values (i.e., browse, forage, cover, access to water) and migration corridors are afforded equal or greater protection through a different development pattern; or,**
  - 2. **The siting within 300 feet of such roads or easements for vehicular access would force the dwelling to be located on irrigated land, in which case, the dwelling shall be located to provide the least possible impact on wildlife habitat considering browse, forage, cover, access to water and migration corridors, and minimizing length of new access roads and driveways; or,**
  - 3. **The dwelling is set back no more than 50 feet from the edge of a driveway that existed as of August 5, 1992.**

**FINDING:** Exhibit A of the supplemental application materials illustrates roads existing as of 1992. The applicant states that numerous other roads exist which are not initially apparent from aerial photographs. Rather than attempting to identify every road within the subject property that existed as of 1992, the applicant addresses the exception provided in subsection 1 above relating to habitat values.

The applicant states that strict conformance to this approval criterion would allow residential development within the proposed Wildlife Mitigation Tract, disrupting the north-south migration corridor, and also allow residential development along Vandeventer Road, disrupting the proposed east-west migration corridor. This would result in segmented and disconnected habitat areas. Additionally, the applicant argues that this criterion only applies to new dwellings and that other resort facilities could be located within the WA Zone beyond the 300-foot restriction and outside of the WA Zone within the proposed Wildlife Mitigation Tract. The applicant concludes that the proposed preservation of the Wildlife Mitigation Tract and the migration corridor along Vandeventer

Road provides equal, or better, protection of habitat values. This is echoed by Dr. Wendy Wente in her technical memorandum included as Supplemental Exhibit B. Per an email dated November 24, 2015, ODFW has no additional comments.

The applicant submitted additional evidence on November 10, 2015. Exhibit A of that document shows that future footprints of residential dwellings and associated decks and porches can be located within 300 feet of public or private roads. The Hearings Officer cannot find contrary argument in the record. This criterion is met.

4. Section 18.88.070. Fence Standards.

**The following fencing provisions shall apply as a condition of approval for any new fences constructed as a part of development of a property in conjunction with a conditional use permit or site plan review.**

**A. New fences in the Wildlife Area Combining Zone shall be designed to permit wildlife passage. The following standards and guidelines shall apply unless an alternative fence design which provides equivalent wildlife passage is approved by the County after consultation with the Oregon Department of Fish and Wildlife:**

1. The distance between the ground and the bottom strand or board of the fence shall be at least 15 inches.
2. The height of the fence shall not exceed 48 inches above ground level.
3. Smooth wire and wooden fences that allow passage of wildlife are preferred. Woven wire fences are discouraged.

**B. Exemptions:**

1. Fences encompassing less than 10,000 square feet which surround or are adjacent to residences or structures are exempt from the above fencing standards.
2. Corrals used for working livestock.

**FINDING:** The applicant indicates that no fences are proposed as part of this development. A condition of approval will ensure compliance with this criterion.

**E. Chapter 18.113. Destination Resorts Zone – DR**

1. Section 18.113.025. Application to Existing Resorts.

**Expansion proposals of existing developments approved as destination resorts shall meet the following criteria:**

- A. Meet all criteria of DCC 18.113 without consideration of any existing development; or**
- B. Meet all criteria of DCC 18.113 for the entire development (including the existing approved destination resort development and the proposed expansion area), except that as to the area covered by the existing destination resort, compliance with setbacks and lot sizes shall not be required.**

**If the applicant chooses to support its proposal with any part of the existing development, applicant shall demonstrate that the proposed expansion will be situated and managed in a manner that it will be integral to the remainder of the resort.**

**FINDING:** The applicant has elected to treat the proposal as an expansion of the existing resort and meet the criteria under DCC 18.113 for the entire development. The applicant proposes to meet all the open space, recreation facilities, overnight lodging and other standards based on calculations for the entire resort. The applicant indicates that in terms of open space and density, the subject property meets the applicable standards both in conjunction with the existing Caldera Springs Destination Resort and as a standalone destination resort. Staff found this to be an acceptable method for showing compliance with DCC 18.113.

In their December 15, 2105 letter, COLW argues that annexation expansions of destination resorts are not allowed for several reasons:

- The underlying zone is subject to OAR 660-006 and will not allow such an expansion
- The expansion is not authorized by Goal 8.
- Based on the above, the proposal amounts to a rural residential subdivision which is not allowed on forest land.
- The applicant's interpretation places DCC 18.113.025 in conflict with DCC 18.40.030.
- The applicant's interpretation conflicts with the County's Comprehensive Plan policy 2.3.5.

The applicant counters in their December 22, 2015 and December 29, 2015 letters that the BOCC has already interpreted DCC 18.113.025 to allow expansions of existing destination resorts in the Eagle Crest expansion allowed through CU-99-85/Eagle Crest III. The applicant further argues that destination resorts are allowed on forest zones through OAR 660-006-025(3)(n). Had the subject property been available at the time Caldera Springs was initially approved, the expansion area could have been approved along with it consistent with all the applicable provisions of DCC 18.113. The applicant asserts that in 2006 the expansion area could have been allowed as a phase II of Caldera Springs.

The Hearings Officer agrees with the applicant for several reasons. First, although it is unclear whether arguments similar to those made by COLW here were also made in the Eagle Crest III process, that final decision (in the record as Exhibit 3 of the applicant's December 22, 2105 letter) shows that the BOCC did interpret DCC 18.113.025 to allow expansions of existing destination resorts. As such, the Hearings Officer owes some deference to that prior interpretation.

Second, in order for DCC 18.113.025 to be applicable in Eagle Crest III, that section would have had to have been reviewed and acknowledged at some prior date by the Department of Land Conservation and Development and determined to be compliant with state statute and Goal 8. COLW presents no evidence to the contrary. COLW's argument that a similar interpretation in this case is not insulated by that acknowledgment process is incorrect. In fact, COLW's argument likely constitutes an impermissible collateral attack on DCC 18.113.025 for those same reasons.

Third, the manner in which the BOCC has interpreted DCC 18.113.025 does not on its face allow an applicant to side step any of the other requirements of the County provisions that apply to destination resorts. The applicant correctly argues that a separate standalone destination resort could be allowed on the subject property, in part because the subject property is covered by the DR zone. If an expansion of an existing and adjacent resort is subject to the very same rules there is no logical reason why such an expansion would necessarily not be compliant with the applicable state statutes and Goal 8.

For this same reason, the Hearings Officer rejects COLW's argument that in order to qualify as an "expansion" the initial Caldera Springs Conceptual Master Plan ("CMP") must have identified the expansion area. The applicant is correct to point out that there is no such requirement in the code. Similarly, there is no evidence to support COLW's argument that those participating in the initial Caldera Springs review would have objected if they had known the resort might expand in the future. The record seems to indicate that the subject property was designated DR at that time – qualifying it for a resort. In any case, those individuals interested in the currently proposed expansion have been notified and have had an opportunity to comment. The Hearings Officer can find no error here. This criterion is met.

2. Section 18.113.030. Uses in Destination Resorts.

**The following uses are allowed, provided they are part of, and are intended to serve persons at, the destination resort pursuant to DCC 18.113.030 and are approved in a final master plan:**

- A. Visitor oriented accommodations designed to provide for the needs of visitors to the resort:**
- 1. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;**
  - 2. Convention and conference facilities and meeting rooms;**
  - 3. Retreat centers;**
  - 4. Restaurants, lounges and similar eating and drinking establishments; and**
  - 5. Other similar visitor oriented accommodations consistent with the purposes of DCC 18.113 and Goal 8.**

**FINDING:** Staff found, and the Hearings Officer agrees, that the uses sought in the applicant's proposal fall within the list of uses allowed under this section. The applicant indicates that the expansion will include between 65 and 96 additional overnight lodging units. Assuming full build-out of Caldera Springs and the annexation property of 715 total residential units, a minimum of 286 OLU's, at the proposed 2.5:1 ratio, will be required for the entire resort. At the present time, the developer anticipates that a maximum of 96 OLU's will be located on the annexation property with the balance to be constructed on the remaining lots within Caldera Springs on which no OLU's have yet been constructed. The OLU's are anticipated to match the Caldera Cabin model used in Caldera Springs, with each cabin including a range of between three and five lodging units per cabin. The annexation property is also anticipated to include two separate resort cores, each with additional resort amenities available for owners and guests.

Additional pool, food and beverage, and other resort amenities will be included as the project progresses.

- B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort;**
- 1. Golf courses and clubhouses;**
  - 2. Indoor and outdoor swimming pools;**
  - 3. Indoor and outdoor tennis courts;**
  - 4. Physical fitness facilities;**
  - 5. Equestrian facilities;**
  - 6. Wildlife observation shelters;**
  - 7. Walkways, bike paths, jogging paths, equestrian trails;**
  - 8. Other similar recreational facilities consistent with the purposes of DCC 18.113 and Goal 8.**

**FINDING:** Similar to the existing Resort, the applicant states that recreational amenities will be subject to refinement throughout the life of the Resort based on market demand, and the needs and desires of residents and guests. Likely additional recreational amenities for the annexation property will include multi-purpose pedestrian and bicycle path network; various man-made lakes and meandering stream water features; pool facility; and additional resort core areas. Staff notes that the existing Resort includes a nine-hole short golf course, pool and fitness center, tennis and pickle ball courts, and kids playground.

- C. Residential accommodations:**
- 1. Single family dwellings;**
  - 2. Duplexes, triplexes, fourplexes and multi family dwellings;**
  - 3. Condominiums;**
  - 4. Townhouses;**
  - 5. Living quarters for employees;**
  - 6. Time share projects.**

**FINDING:** According to the burden of proof, the annexation property will include a range of between 325 and 395 residential units and may include a mix of the types of accommodations listed above. The specific housing product type will largely depend on market demand as the project matures. The applicant states that at all times, the Resort will demonstrate compliance with the 2.5:1 required residential and overnight lodging ratio. The proposed residential accommodations will conform to this criterion.

- D. Commercial services and specialty shops designed to provide for the visitors to the resort:**
- 1. Specialty shops, including but not limited to delis, clothing stores, bookstores, gift shops and specialty food shops;**
  - 2. Barber shops/beauty salons;**
  - 3. Automobile service stations limited to fuel sales, incidental parts sales and minor repairs;**
  - 4. Craft and art studios and galleries;**
  - 5. Real estate offices;**
  - 6. Convenience stores;**
  - 7. Other similar commercial services which provide for the needs of resort visitors and are consistent with the purposes of DCC 18.113 and Goal 8.**

**FINDING:** The existing resort core in Caldera Springs features a clubhouse that includes food and beverage retail areas, as well as recreational spaces, including a fitness center, locker rooms, indoor and outdoor pools, and child-oriented game areas reminiscent of a "family room." The additional resort core areas are anticipated to include complimentary uses to meet guest and owner demands as the resort develops. Complimentary uses can include food, beverage, and pool facilities, pedestrian and bike paths, and man-made lakes and meandering streams.

- E. Uses permitted in open space areas generally include only those uses that, except as specified herein, do not alter the existing or natural landscape of the proposed open space areas. No improvements, development or other alteration of the natural or existing landscape shall be allowed in open space areas, except as necessary for development of golf course fairways and greens, hiking and bike trails, lakes and ponds and primitive picnic facilities including park benches and picnic tables. Where farming activities would be consistent with identified preexisting open space uses, irrigation equipment and associated pumping facilities shall be allowed.**

**FINDING:** Staff found that the annexation property will include approximately 256 acres of dedicated open space throughout the project. The open space areas will largely be devoted to passive uses, including bicycle and hiking trails, along with small picnic and park areas. Lakes and ponds are planned for open space areas, although the precise locations, size and design have not been finalized at this time. In addition to dedicated open space, the annexation property includes a 125-acre Wildlife Mitigation Tract which is in addition to the dedicated open space. The Wildlife Mitigation Tract is described below in more detail. The Wildlife Mitigation Tract and the dedicated open space areas will be subject to two separate management plans. In general terms, the Wildlife Mitigation Tract is intended as a set aside and will not include any resort-related improvements. This criterion is met.

- F. Facilities necessary for public safety and utility service within the destination resort.**

**FINDING:** The applicant does not propose any new public safety facilities. Police protection will be provided by the Deschutes County Sheriff's Department. Emergency medical service will be provided from St. Charles in Bend and the medical clinic at Sunriver. The applicant's Exhibit S is Board Order No. 2014-042, accepting the subject property into the La Pine Rural Fire Protection District (LPRFPD). LPRFPD commented as follows:

*"The property now has fire protection from La Pine Rural Fire Protection District and additional summer forestry patrol from the Oregon Department of Forestry. The developer to date has shown adequate planning for access (roads), water supply (fire hydrants), suitable firewise building and fire resistive landscaping and other issues pertaining new developments and the fire codes as well as an excellent performance history with the existing property development. The district thus supports this new development and has no issues with the conditional use permit and the requested modification to the developments master plan per single family and overnight ratios from 2:1 to 2.5:1."*

No new utility facilities are included in the application materials. The applicant's Exhibit K includes intent to serve letters from Cascade Natural Gas for natural gas; Midstate Electric Cooperative, Inc. for electricity; Bend Broadband for telephone and cable services; CenturyLink for telephone service; and Wilderness Garbage & Recycling for solid waste service. The applicant indicates that the existing Sunriver Water LLC domestic water distribution system will be extended to serve the annexation property. Exhibit G is a copy of a Water Service Agreement. The applicant also indicates that the Sunriver Wastewater Treatment Plant has the capacity to adequately serve the annexation property. Exhibit H is a copy of a Sewer Service Agreement.

These uses are allowed under this section. Staff recommends, and the Hearings Officer agrees, that a condition of approval requiring the applicant to provide signed agreements for water and sewer service prior to Final Master Plan approval is warranted.

**G. Other similar uses permitted in the underlying zone consistent with the purposes of DCC 18.113.030.**

**FINDING:** At the present time, the applicant does not propose any additional uses on the annexation property or Caldera Springs in general. The applicant indicates that amenities will be subject to refinement throughout the life of the resort, market demand, and the needs and desires of residents and guests, and will be subject to further county review.

**H. Accessory Uses in Destination Resorts:**

1. **The following accessory uses shall be permitted provided they are ancillary to the destination resort and consistent with the purposes of DCC 18.113 and Goal 8:**
  - a. **Transportation related facilities excluding airports;**
  - b. **Emergency medical facilities;**
  - c. **Storage structures and areas;**
  - d. **Kennels as a service for resort visitors only;**
  - e. **Recycling and garbage collection facilities;**
  - f. **Other similar accessory uses consistent with the purposes of DCC 18.113 and Goal 8.**

**FINDING:** The applicant does not propose to include any of the accessory uses listed in DCC 18.113.030(H). The applicant indicates that amenities will be subject to refinement throughout the life of the resort, market demand, and the needs and desires of residents and guests. Any additional accessory uses will be subject to further county review.

3. Section 18.113.050. Requirements for conditional use permit and conceptual master plan applications.

**The CMP provides the framework for development of the destination resort and is intended to ensure that the destination resort meets the requirements of DCC 18.113. The CMP application shall include the following information:**

**A. Illustrations and graphics to scale, identifying:**

1. **The location and total number of acres to be developed as a planned destination resort;**

**FINDING:** The applicant's Exhibits A, A-1 and B depict the location and acreage of the property.

**2. The subject area and all land uses adjacent to the subject area;**

**FINDING:** The applicant's Exhibit B illustrates the subject area and adjacent land uses.

**3. The topographic character of the site;**

**FINDING:** The application materials do not include a topographic map. However, the applicant's Stormwater Disposal and Erosion Control Master Plan, submitted as Exhibit L, states that the property is generally flat, with natural ground slopes ranging from zero to six percent, with limited areas up to 12 percent.

COLW argues that this section is not met because no topographic map has been included in the materials. The Hearings Officer finds that this section does not expressly call for a map. A description of the property or other maps and information describing the "topographic character" are sufficient to satisfy this section. Those materials exist in the record.

**4. Types and general location of proposed development uses, including residential and commercial uses;**

**FINDING:** The applicant's Exhibits A and A-1 depict the general location of residential and resort core uses, and the Wildlife Mitigation Tract. The applicant's November 10, 2015 submission contains similar information.

**5. Major geographic features;**

**FINDING:** No major geographic features exist on-site.

**6. Proposed methods of access to the development, identifying the main vehicular circulation system within the resort and an indication of whether streets will be public or private;**

**FINDING:** The applicant's Exhibits A and A-1 show the general location of internal streets and the three proposed access points. The burden of proof indicates that all internal streets will be privately owned and maintained by the homeowner's association.

**7. Major pedestrian, equestrian and bicycle trail systems;**

**FINDING:** The applicant's Exhibit R, Vehicular and Pedestrian Access Plan and Roadway Standards, describes a ten-foot-wide multi-use path network, similar to that used within the existing Resort. No map or illustration of the multi-use path network within the annexation property was included in the application materials.

COLW argues that no map with the multi-use path network is in the record. The applicant counters that the CMP contains all of this information.

The Hearings Officer finds that the CMP is sufficient to determine the major pedestrian and bicycle trail systems. The applicant submitted additional information in Exhibit 8 of their December 22, 2015 submission that shows the location of trails.

**8. Important natural features of the site, including habitat of threatened or endangered species, streams, rivers, wetlands and riparian vegetation within 200 feet of streams, rivers and wetlands.**

**FINDING:** As noted above, the expansion property is generally flat with no significant topographic features on-site. Additionally, the subject property contains no habitat of threatened or endangered species, and no natural streams, rivers, wetlands, or riparian vegetation.

**9. All uses proposed within landscape management corridors identified by the comprehensive plan or zoning ordinance.**

**FINDING:** The subject property is covered by the LM Combining Zones associated with South Century Drive, Vandevent Road and Highway 97. Based on staff's review of the county's Geographic Information System ("GIS") map, uses within the above-referenced LM corridors will include residences, roadways, open space and the Wildlife Mitigation Tract. The Hearings Officer finds that staff's review is sufficient to satisfy this criterion.

**10. The location and number of acres reserved as open space, buffer area, or common area. Areas designated as "open space," "buffer area," or "common area" should be clearly illustrated and labeled as such;**

**FINDING:** The applicant's Exhibits A and A-1 depict the general locations of residential uses, resort amenities, visitor-oriented accommodations, and the Wildlife Mitigation Tract. Staff concluded that all other areas are dedicated open space.

COLW argues that no map of open space, buffer areas and common areas exists in the record. The applicant counters that the CMP provides all the required information.

The Hearings Officer finds that this criterion does not require a single map to illustrate each area. The CMP is sufficient. In addition, the applicant's November 10, 2015 submission contains multiple maps and information to clarify the location of the areas covered by this section. This criterion is met.

**11. All proposed recreational amenities;**

**FINDING:** The applicant's Exhibits A and A-1 illustrates the general location of proposed resort amenities.

**12. Proposed overall density.**

**FINDING:** The applicant's Land Use Summary at the top of Exhibits A and A-1 detail the proposed density of residential lots and visitor-oriented accommodations. This same summary is presented in tabular form in the burden of proof.

**B. Further information as follows:**

**1. A description of the natural characteristics of the site and surrounding areas, including a description of resources and**

**the effect of the destination resort on the resources; methods employed to mitigate adverse impacts on resources; analysis of how the overall values of the natural features of the site will be preserved, enhanced or utilized in the design concept for the destination resort; and a proposed resource protection plan to ensure that important natural features will be protected and maintained. Factors to be addressed include:**

**a. Compatibility of soil composition for proposed development(s) and potential erosion hazard;**

**FINDING:** The applicant's Stormwater Disposal and Erosion Control Master Plan, submitted as Exhibit L, details the applicant's plan to manage erosion and stormwater. The applicant's burden of proof states that the soils on-site include loose sands and silt at the surface and highly compressible diatomaceous silt at depth. The staff accepted this information and there is no contrary evidence to conclude that the soil conditions on the property are incompatible with the proposed uses. This criterion is met.

**b. Geology, including areas of potential instability;**

**FINDING:** The burden of proof does not identify any areas of potential instability.

**c. Slope and general topography;**

**FINDING:** As noted previously, the annexation property is generally flat with slopes ranging from zero to six percent, with limited areas of up to 12 percent.

**d. Areas subject to flooding;**

**FINDING:** The burden of proof states that the groundwater table fluctuates on the annexation property. Shallow groundwater may be encountered due to deep excavation associated with sewer trenching and lake construction/lining. The applicant states that it will minimize construction impacts from shallow groundwater by dewatering; summer and fall construction to coincide with the naturally lowered groundwater table; and potential use of trenchless technologies to avoid open trench construction.

Staff found that the subject property is not within a mapped flood plain or wetland. No natural streams, rivers or other waterways exist on-site. This criterion is met.

**e. Other hazards or development constraints;**

**FINDING:** The burden of proof does not identify any other hazards or development constraints. The record does not contain any relevant contrary evidence.

**f. Vegetation;**

**FINDING:** The burden of proof states that much of the subject acreage was logged in the 1940s. Consequently, tree coverage is now predominantly lodgepole and ponderosa pine. Logging debris and slash are evident throughout the site. The annexation property is scarred by a number of logging roads, recreational vehicle trails and a large transmission line corridor. Small diameter lodgepole pine thickets are evident

throughout. Open meadows of golden fescues and native grasses are interspersed throughout the annexation property. Some bitterbrush and native shrubs are also present. The Wildlife Habitat Evaluation submitted as Exhibit C describes the property in greater detail.

**g. Water areas, including streams, lakes, ponds and wetlands;**

**FINDING:** No natural water areas exist on-site. The applicant notes that there are high water table areas that can be subject to ponding during rainy periods.

**h. Important natural features;**

**FINDING:** The predominant natural feature on-site is the ponderosa and lodgepole pine forest. No other significant natural features exist on-site.

**i. Landscape management corridors;**

**FINDING:** Applicable LM corridors are addressed in the burden of proof and in this decision above.

**j. Wildlife.**

**FINDING:** The applicant's Exhibits C and C-1 detail wildlife and habitat on-site.

- 2. A traffic study which addresses (1) impacts on affected County, city and state road systems and (2) transportation improvements necessary to mitigate any such impacts. The study shall be submitted to the affected road authority (either the County Department of Public Works or the Oregon Department of Transportation, or both) at the same time as the conceptual master plan and shall be prepared by a licensed traffic engineer to the minimum standards of the road authorities.**

**FINDING:** The applicant's TIA was submitted as Exhibit D. In addition, a revised TIA was submitted on October 19, 2015.

At the public hearings and in written submissions participants raised concerns about the initial TIA. One concern was that the vehicle counts used had not been appropriately seasonally adjusted. The applicant submitted a refined analysis dated November 17, 2015 which confirms that all of the surrounding roads will have sufficient capacity to meet the County's level of service standards if the proposal is approved. This information is supported by a November 20, 2015 memo from Senior Transportation Planner, Peter Russell.

A second concern was with the potential closure of Vandever Road at Hwy 97. Again, Peter Russell addressed these concerns in a December 17, 2015 memo. His memo relies in part on ODOT's statement of when and how Vandever Road/Hwy 97 intersection might be changed in the future dated November 20, 2015. The memo explains why it is appropriate for the TIA to assume that the intersection will remain open for the purposes of considering the impact of the resort. The primary reason is that

ODOT is responsible to that intersection and must step through a process prior to any changes. That will trigger public hearings before the BOCC. Until that time, it is appropriate to rely on the Vandever Road/Hwy 97 intersection as it is.

The Hearings Officer finds the TIA and the applicant's information sufficient to satisfy this criterion. There is no credible contrary evidence in the record.

3. **A description of how the proposed destination resort will satisfy the standards and criteria of DCC 18.113.060 and 18.113.070;**

**FINDING:** The applicant' burden of proof specifically addresses DCC 18.113.060 and 18.113.070.

4. **Design guidelines and development standards defining visual and aesthetic parameters for:**
  - a. **Building character;**
  - b. **Landscape character;**
  - c. **Preservation of existing topography and vegetation;**
  - d. **Siting of buildings; and**
  - e. **Proposed standards for minimum lot area, width, frontage, lot coverage, setbacks and building heights.**

**FINDING:** The applicant's Design Guidelines and Development Standards are submitted as Exhibit E-2. The Open Space Management Plan submitted as Exhibit F details the proposed uses, management and preservation of open space areas. The applicant proposes the same Dimensional Standards that were approved with the existing Resort. The specific Dimensional Standards are detailed below.

5. **An open space management plan which includes:**
  - a. **An explanation of how the open space management plan meets the minimum standards of DCC 18.113 for each phase of the development;**
  - b. **An inventory of the important natural features identified in the open space areas and any other open space and natural values present in the open space;**
  - c. **A set of management prescriptions that will operate to maintain and conserve in perpetuity any identified important natural features and other natural or open space values present in the open space;**
  - d. **Deed restrictions that will assure that the open space areas are maintained as open space in perpetuity.**

**FINDING:** The applicant's Exhibit F is the proposed Open Space Management Plan. It defines open space and typical uses for designated open space. Some open space areas are evident on the conceptual master plan, but the applicant has proposed that most detailed descriptions of open space will be provided at the time of actual development. The open space plan also describes management practices for the various types and uses of open space. A number of management prescriptions are listed to preserve and enhance open space into perpetuity. As the resort matures, open space will be managed by the homeowner's association. The submitted Open Space

Management Plan describes the types and uses of improvements allowed in open spaces, pursuant to Chapter 18.113.

The CCRs stipulate the preservation of common areas in perpetuity. The applicant states that open space alternatives have been identified in conceptual master plan alternatives, with final open space use and location to be defined in subsequent land use actions. The applicant states that open space use and location will conform to the requirements and definition of stipulated open space. This criterion is met.

**6. An explanation of public use of facilities and amenities on the site.**

**FINDING:** The annexation property will utilize the existing amenities at Caldera Springs and, as described above, will include additional resort core areas which will be available for owners and guests. A paved trail system will also be integrated with the existing pathway system at Caldera Springs.

**7. A description of the proposed method of providing all utility systems, including the location and sizing of the utility systems;**

**FINDING:** The revised staff report provides additional findings that support the Hearings Officer's conclusions below.

*Domestic Water*

The applicant proposes to provide domestic water via extension of Sunriver Water LLC ("SWLLC"), from Caldera Springs. Exhibit I is the water supply plan for the annexation property. The applicant states that this plan demonstrates that the existing SWLLC water supply system has adequate capacity to meet the needs of the annexation property. Existing storage facilities are available to serve all residents of the applicant's existing and proposed projects, and to assure fire protection. No additional capacity improvements are required to serve the project. The applicant indicates that it will be solely responsible for the costs associated with extending water service to the annexation property and for the installation of on-site water supply infrastructure.

The burden of proof states that SWLLC has water rights to accommodate the residential development, irrigation, and fire protection for the annexation property. Prior to final plat approval, the applicant states that SWLLC will obtain approval to expand its service territory through a request to the Oregon Public Utility Commission.

SROA raised concerns about the impact of the expanded resort on the existing water system that serves Sunriver and Caldera Springs. In SROA's December 15, 2105 submittal, they detail some reasons for their concern that the existing system is not robust enough to serve the expanded resort. Part of this information comes from a 2014 Public Utility Commission docet. That information does not explicitly state that the water system is not large enough to supply the needed domestic water for the expansion. SROA also submitted analysis by Fodor & Associates questioning the capacity of the existing system and the applicant's reliance on it.

The applicant provided responsive evidence in their November 10, 2015 submission which contains November 10, 2015 analysis by Parametrix. The applicant gives a frank assessment of the current system and notes that several improvements to the water system are already needed for pumps and storage. The applicant's evidence shows that sufficient water and rights exist to serve expanded resort, but the system will need upgrades.

The Hearings Officer finds that the evidence in the record is sufficient to show compliance with this criterion as it applies to domestic water (including water for fire protection). Although there is competing expert testimony, none of the evidence demands a conclusion that water cannot be made available for the applicant's proposal.

SROA's concern is understandable. However, the supposition that this criterion requires a demonstration that a water system must currently have adequate capacity is incorrect. The criterion only requires proof of a method and sizing. That has been done here – with the concession that the applicant will be responsible for the cost of some of the upgrades to the system. Importantly, and as SROA correctly notes, any request for a system expansion must be undertaken through a public PUC process which will give current SROA members a chance to participate and comment on the cost to ratepayers.

#### *Wastewater Treatment Facilities*

The applicant's Exhibit J is a wastewater treatment review, which summarizes the results of the flow and load projections, and wastewater treatment capacity evaluation of the annexation proposal. The review indicates that the existing wastewater treatment plant has capacity to serve Sunriver's existing connections plus the addition of the annexation property.

SROA made comments on the existing sewer system very similar to those they made about domestic water. The applicant responded in the same submissions and memos noted above. Again, there is a disagreement about existing capacity. However, the applicant has provided sufficient evidence that the existing sewer system has sufficient capacity. The applicant concedes that future upgrades will be needed. However, again the expanded resort will be required to pay a proportionate share of those costs when the improvements are made. This evidence is sufficient to satisfy the criterion.

#### *Electricity*

The applicant's Exhibit K includes a "will-serve" letter from MidState Electric.

#### *Natural Gas*

The applicant's Exhibit K includes a "will-serve" letter from Cascade Natural Gas.

#### *Telephone*

The applicant's Exhibit K includes a "will-serve" letter from Century Link.

- 8. A description of the proposed order and schedule for phasing, if any, of all development including an explanation of when facilities will be provided and how they will be**

**secured if not completed prior to closure of sale of individual lots or units;**

**FINDING:** The applicant states that development of the annexation property will be constructed in phases to comply with market demand. Typical phase boundaries are denoted on the conceptual master plan and submitted as Exhibits A and A-1. The applicant has noted, however, that the phased boundaries and sequence are subject to change with market demand.

The applicant's December 29, 2015 states that the CMP depicts the phased development of the resort. See findings for DCC 18.113.060(E).

- 9. An explanation of how the destination resort has been sited or designed to avoid or minimize adverse effects or conflicts on adjacent lands. The application shall identify the surrounding uses and potential conflicts between the destination resort and adjacent uses within 660 feet of the boundaries of the parcel or parcels upon which the resort is to be developed. The application shall explain how any proposed buffer area will avoid or minimize adverse effects or conflicts;**

**FINDING:** Staff found that land to the north of the annexation property within 660 feet is comprised of the Sunriver Business Park, the Burlington Northern main line and vacant forest property owned by the USFS. The Burlington Northern main line provides a significant barrier between the annexation property and the USFS lands. The back of Business Park improvements, including storage and parking, abut the subject property to the north. The existing Midstate Electric Cooperative substation is also sited at the north property line. The applicant indicates that berms and/or setbacks will screen and buffer the annexation property from the electrical substation and the back door operations of the Sunriver Business Park. Staff concluded that given the narrow width in this area, very little development is anticipated. It is anticipated that less than 15 to 20 homes will be within 660 feet of the business park.

Property to the west of the subject property is comprised of the existing Caldera Springs resort. The annexation property will be fully integrated with Caldera Springs. For this reason, Staff concluded that there is no need to create any additional buffers between the phases. As depicted on the site plan, significant buffers and dedicated open spaces will be maintained between the two phases of Caldera Springs.

The Crosswater development and Vandever Ranch are located west of the annexation property, across South Century Drive. A significant berm was constructed to buffer Crosswater from the noise and visual impacts of South Century Drive. The existing berm will also buffer Crosswater from the annexation proposal. A similar berm was constructed by the applicant on the easterly side of South Century Drive in connection with the initial development of Caldera Springs. In addition, the southwest corner of the property includes a small strip of undevelopable land along South Century Drive. The combination of berms and the existing South Century Drive establishes an effective buffer between the annexation property, and the Crosswater development and Vandever Ranch.

South of Vandever Road there is a combination of undeveloped forest land and a rural subdivision platted as Vandever Acres. The existing residential development is more than 660 feet from the property line. The annexation property will include a setback of approximately 150 feet from Vandever Road. This setback will provide significant buffering from any future development south of Vandever Road. In addition, the setback will provide an east-west migration corridor for mule deer and other wildlife species.

Property to the east of the annexation property includes the Burlington Northern main line and Highway 97. The 125-acre Wildlife Mitigation Tract will provide a significant buffer between the annexation property and these adjacent uses.

The Hearings Officer agrees with Staff's conclusions that the proposed design of the resort will minimize adverse impacts on surrounding lands.

**10. A description of the proposed method for providing emergency medical facilities and services and public safety facilities and services including fire and police protection;**

**FINDING:** Police protection will be provided by the Deschutes County Sheriff's Department. Fire protection will be provided by La Pine Rural Fire Protection District. Emergency medical service will be provided from St. Charles in Bend and the medical clinic at Sunriver. The applicant states that Sunriver medical and public safety services may be the first responder in an emergency, given the close proximity of the subject property to the Sunriver Resort, and the first responder agreements that are in place between the various medical and public safety providers in the county.

**11. A study prepared by a hydrologist, engineering geologist or similar professional certified in the State of Oregon describing:**

- a. An estimate of water demands for the destination resort at maximum buildout, including a breakdown of estimated demand by category of consumption, including but not limited to residential, commercial, golf courses and irrigated common areas;
- b. Availability of water for estimated demands at the destination resort, including (1) identification of the proposed source; (2) identification of all available information on ground and surface waters relevant to the determination of adequacy of water supply for the destination resort; (3) identification of the area that may be measurably impacted by the water used by the destination resort (water impact area) and an analysis supporting the delineation of the impact area; and (4) a statistically valid sampling of domestic and other wells within the impact area;
- c. A water conservation plan including an analysis of available measures which are commonly used to reduce water consumption. This shall include a justification of the chosen water conservation plan. The water conservation plan shall include a wastewater disposal plan utilizing beneficial use of reclaimed water to the maximum extent practicable.

**For the purposes of DCC 18.113.050, beneficial uses shall include, but are not limited to:**

- i. Irrigation of golf courses and greenways;**
- ii. Establishment of artificial wetlands for wildlife habitation.**

**FINDING:** The applicant retained Parametrix to prepare a water supply system master plan, evaluate and report on the availability of water, estimate demands of the resort, develop a water conservation plan and evaluate any water impact area. Parametrix concludes that at final project build-out, the water system for the resort will serve approximately 414 equivalent dwelling units, 25 acres of parks, meadow and landscaping, nine acres of water features and approximately 34 acres of irrigation water. Total domestic water consumption is estimated at 278 gallons per minute (“gpm”), while irrigation water is anticipated at 191 gpm.

As noted above, the findings above conclude the existing Sunriver Water LLC water supply is adequate to serve the annexation property together with the remainder of SRWLLC’s service area. The applicant indicates that water mains will be extended to and through the annexation property to provide an efficient looped network with ample capacity and reliability.

In addition, the applicant provided an analysis by Parametrix, in a December 21, 2015 memo, showing that Sunriver Water LLC has sufficient water rights to serve the project without new water rights being obtained. These criteria are met.

- 12. An erosion control plan for all disturbed land, as required by ORS 468. This plan shall include storm and melt water erosion control to be implemented during all phases of construction and permanent facilities or practices for the continuing treatment of these waters. This plan shall also explain how the water shall be used for beneficial use or why it cannot be used as such;**

**FINDING:** The applicant’s Exhibit L is an erosion control plan that addresses soil conditions, natural topography, and anticipated stormwater runoff. The plan concludes that the relatively permeable surface soils will facilitate surface infiltration of stormwater. The plan states that erosion control plans and measures will give consideration as required to ORS 468. Further, it states that plans will be prepared and reviewed during all phases of construction, including practices for continual treatment of stormwater.

COLW argued that the applicant had not explained how stormwater might be used for beneficial use. In their December 29, 2105 submission the applicant provided additional explanation of the stormwater system and how proposed swales will be used to allow natural infiltration of stormwater back into the water table. The CMP shows these systems.

The Hearings Officer finds that directing stormwater to natural and constructed swales for the purpose of treating and disposing of stormwater is sufficient to show a beneficial use for the purposes of this criterion.

- 13. A description of proposed sewage disposal methods;**

**FINDING:** The applicant's Exhibit I, Sewage Collection and Water Systems Master Plan, describes the proposed sewer extension to serve the annexation property. The findings regarding the sewer system discussed above are included here by reference.

**14. Wildfire prevention, control and evacuation plans;**

**FINDING:** Exhibit M is the applicant's Wildfire Management Plan.

**15. A description of interim development including temporary structures related to sales and development;**

**FINDING:** No temporary structures are proposed.

**16. Plans for owners' associations and related transition of responsibilities and transfer of property;**

**FINDING:** The Caldera Springs Owners Association has been in existence since 2006. The applicant states that the annexation property will be annexed fully into the Covenants, Conditions and Restrictions for Caldera Springs. Exhibits E and E-1 are copies of the current Declaration of Covenants, Conditions and Restrictions.

**17. A description of the methods of ensuring that all facilities and common areas within each phase will be established and will be maintained in perpetuity;**

**FINDING:** A plan to ensure the transfer and maintenance of common areas is set forth in the CCRs submitted as Exhibit E and E-1, and the Open Space Management Plan submitted as Exhibit F. The applicant states that with the recording of each plat, a supplemental declaration will be recorded annexing the property contained in each plat and designating certain areas as residential lots, living units, common areas and other land use designations as provided in the Declaration. In the Declaration and each supplemental declaration, all streets will be designated "common area" as defined in the Declaration. Additional designated "common areas" may include open space lots and trails. This criterion is met.

**18. A survey of housing availability for employees based upon income level and commuting distance;**

**FINDING:** The anticipated employee needs and a survey of housing availability for employees were submitted as a part of the Economic Impact and Feasibility Analysis (Exhibit O). The analysis indicates that both rental and for-sale housing will be available for employees given the current housing inventory. The analysis goes on to state that these rental and for-sale units represent a wide range of price points. The analysis concludes that the local area currently contains small to large surpluses of rental and for-sale units in line with the estimated budgets of these new households.

**19. An economic impact and feasibility analysis of the proposed development prepared by a qualified professional economist(s) or financial analyst(s) shall be provided which includes:**

- a. **An analysis which addresses the economic viability of the proposed development;**
- b. **Fiscal impacts of the project including changes in employment, increased tax revenue, demands for new or increased levels of public services, housing for employees and the effects of loss of resource lands during the life of the project.**

**FINDING:** The applicant's Exhibit O is an economic impact and feasibility analysis prepared by Peterson Economics. The analysis addresses the economic viability of the development, along with anticipated fiscal impacts.

**20. A solid waste management plan;**

**FINDING:** Exhibit K includes a "will-serve" email from Wilderness Garbage and Recycling.

21. **A description of the mechanism to be used to ensure that the destination resort provides an adequate supply of overnight lodging units to maintain compliance with the 150-unit minimum and 2 and one-half to 1 ratio set forth in DCC 18.113.060(D)(2). The mechanism shall meet the requirements of DCC 18.113.060(L);**

**FINDING:** As is the case with Caldera Springs, all overnight lodging units associated with the annexation property will be subject to the Caldera Cabins CCRs. The burden of proof states that these CCRs impose the obligation to maintain the units as qualified overnight lodging units. In addition, ongoing conditions of approval and county code requirements regarding reporting will apply to the annexation property and, in particular, the lots designated for overnight lodging.

22. **If the proposed destination resort is in a SMIA combining zone, DCC 18.56 shall be addressed;**

**FINDING:** The subject property is not located within a SMIA Combining Zone.

23. **If the proposed destination resort is in an LM combining zone, DCC 18.84 shall be addressed;**

**FINDING:** The burden of proof addresses DCC 18.84.

24. **A survey of historic and cultural resources inventoried on an acknowledged Goal 5 inventory;**

**FINDING:** County Comprehensive Plan Chapter 23.40.060 includes the County's "Goal 5 Inventory" of Historic Resources that are protected by the County's Historic Preservation Code. No site, building, or structure on this land is included in the list. The State requires local jurisdictions to preserve and protect all structures and sites listed on the National Register of Historic Places within their jurisdictions. There are no National Register-listed structures on this land.

25. Other information as may reasonably be required by the Planning Director to address the effect of the proposed development as related to the requirements of DCC Title 18.

**FINDING:** In response to requests by staff and the public, the applicant submitted additional information as described throughout this decision.

4. Section 18.113.060. Standards for Destination Resorts.

**The following standards shall govern consideration of destination resorts:**

- A. The destination resort shall, in the first phase, provide for and include as part of the CMP the following minimum requirements:**
1. **At least 150 separate rentable units for visitor oriented overnight lodging as follows:**
    - a. **The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.**
    - b. **The resort may elect to phase in the remaining 100 overnight lodging units as follows:**
      - i. **At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 5 years of the closure of sale of individual lots or units, and;**
      - ii. **The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within 10 years of the closure of sale of individual lots or units.**
      - iii. **If the developer of a resort guarantees a portion of the overnight lodging units required under subsection 18.113.060(A)(1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.**
      - iv. **The 2:1 accommodation ratio<sup>4</sup> required by DCC 18.113.060(D)(2) must be maintained at all times.**
    - c. **If a resort does not chose to phase the overnight lodging units as described in 18.113.060(A)(1)(b), then the required 150 units of overnight lodging must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.**

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<sup>4</sup> This reference to a 2:1 ratio is a clerical error. Pursuant to Ordinance 2013-008, the county amended the ratio of residential units to OLUs from 2:1 to 2.5:1, consistent with legislative changes made to ORS 197.445(4)(b)(E) and OAR 660-015-000(8). The Planning Division's Work Plan includes correcting this error to reference a 2.5:1 ratio as part of its housekeeping amendments.

**FINDING:** As noted above, the applicant has elected to measure compliance with the county's destination resort standards by considering the annexation property together with the existing Caldera Springs Destination Resort. As of the submittal date of the subject application, the applicant states it has constructed a total of 152 OLU's. The applicant anticipates construction of all 160 overnight lodging units required by the original Caldera Springs CMP within the next calendar year. As a part of the current request, the applicant is modifying the 2:1 ratio approved in the original CMP to reflect the current county standard of 2.5:1. As a consequence, with 160 overnight lodging units either constructed or financially assured, and the ratio modified to 2.5:1, in addition to the 320 single-family lots permitted in Caldera Springs, the applicant is entitled to 80 additional residential units prior to the need to develop any further OLU's. Upon completion of the 80 additional residences, the applicant will be required to provide additional OLU's. At this point in time, the applicant has not determined whether OLU's will be constructed prior to the sale of additional residential lots, whether additional OLU's will be bonded, or whether a combination of the two may be appropriate. The applicant indicates the required ratio will be maintained at all times. As discussed above, a portion of the OLU's necessary to support full build out of residential units on the annexation property will likely occur on existing overnight lodging-designated lots in Caldera Springs that are currently undeveloped.

COLW strongly disputes that the current method that Caldera Springs uses to make the "rentable units" available is compliant with DCC 18.113.060. They argue that in reality the existing stock of rentable units is really just 38 luxury homes. COLW acknowledges that if each bedroom of those 38 homes is viewed as a "unit" then perhaps minimum compliance could be had. They dispute that Caldera Springs actually rents these homes by the unit. Indeed, COLW attaches the 2014 Caldera Springs rental record which proves the point that at least in that year each of the "cabins" was rented in total, and there was not even one instance in which a single bedroom was rented separately from the rest of the home. COLW argues that at best these rooms should be categorized as "dormitory rooms" which do not qualify as overnight rentable units under either ORS 197.435(5)(b) or DCC 18.113.060.

The applicant provided a refined description of how Caldera Springs views the same 38 "cabins." There is no dispute that the units are contained within what otherwise appears to be a single family residence. The distinction is that each bedroom has a separate entrance and a separate bathroom. The applicant states that each of the rooms is separately rentable based on the reservation system. Again, the 2014 rental report shows the homes broken down by bedroom – even if all bedrooms in each home that year were always rented together by one guest. This circumstance is preferred by most guests, the applicant argues.

For the purposes of this decision, the Hearings Officer concludes that the applicant's system for making "rentable units" available for overnight accommodation complies with DCC 18.113.060 and the definitions in 18.04.030. There is no evidence which would cause the Hearings Officer to doubt the veracity of the applicant's statements (see also the letter from Caldera Springs at Exhibit 5 of the applicant's December 22, 2015 letter) or the information about the Caldera Springs website as presented by COLW. Caldera Springs has interpreted the state definition of "[o]vernight lodging" in a way that turns a large single family residence into a "cabin", and a five bedroom five bath house into five "rentable units." With the addition of the separate entrance for each bedroom and at least the colorable claim to allowing each room to be rented individually, Caldera Springs

appears to have finessed DCC 18.113.060 in a way that minimally satisfies the 150 separate rentable unit standard.

Although COLW clearly condemns the method that Caldera Springs uses for renting out the homes, there is no evidence that the Hearings Officer has been pointed to in the record that shows that the 38 houses at issue are really simply used as full or part time residences – which is the heart of the standards set in the destination resort statute. And, while additional evidence (such as a deliberate system of actively discouraging the separate rental of individual bedrooms, or a pricing scheme that accomplished the same result) may have swayed the Hearings Officer to find noncompliance, that evidence does not appear to be in the record. I did not visit the website to search for such evidence since it is outside the record. There also is little help in the legislative findings for ORS 197.435 which might require a conclusion that Caldera Springs's current rental system is forbidden. Consequently, the Hearings Officer finds that the application meets this criterion.

For all the same reasons stated above, I also find that Caldera Springs's rental system does not transform the rooms or homes into a "dormitory."

**2. Visitor oriented eating establishments for at least 100 persons and meeting rooms which provide seating for at least 100 persons.**

**FINDING:** In connection with the initial development of Caldera Springs, the applicant constructed the Lakehouse and Zeppa Bistro which, together, provide visitor eating establishments and meeting rooms for at least 100 persons. In addition, the applicant anticipates additional resort core recreation and visitor oriented facilities in connection with later phases of development on the annexation property. This criterion is met.

**3. The aggregate cost of developing the overnight lodging facilities, developed recreational facilities, and the eating establishments and meeting rooms shall be at least \$7,000,000 (in 1993 dollars).**

**FINDING:** The record indicates that the aggregate amount of \$7,000,000 equates to \$11,560,318.34 in 2015 dollars using a standard Consumer Price Index (CPI) calculator. In connection with the development of Caldera Springs, the applicant spent \$50,000,000 in connection with the cost of developing the overnight lodging facilities, developed recreational facilities, and the eating establishments and meeting rooms. In connection with later phases of development, the applicant will construct additional overnight lodging facilities, developed recreational facilities and other resort amenities. The costs associated with future development, in conjunction with the capital improvements already made exceed the \$11,560,318.34 required by this standard. This criterion is met.

**4. At least \$ 2,333,333 of the \$7,000,000 (in 1993 dollars) total minimum investment required by DCC 18.113.060(A)(3) shall be spent on developed recreational facilities.**

**FINDING:** In 2015 dollars, the aggregate amount of \$2,333,333 equates to \$3,853,438.90, using a standard CPI calculator. Staff found that to date, the applicant

has spent over \$11,000,000 in connection with the cost of developing recreational facilities. As mentioned elsewhere, in connection with later phases of development, the applicant will construct additional developed recreational facilities and other resort amenities. Staff concluded that the costs associated with future development, in conjunction with the capital improvements already made far exceed the \$3,853,438.90 required by this standard.

COLW argues that the record is not specific and certain enough about the types of recreational facilities to be built to satisfy this standard. COLW's argument does not acknowledge investments already made for recreational facilities in Caldera Springs.

The applicant points to the BOCC decision in Eagle Crest III where prior expenditures and construction of recreational facilities was deemed sufficient to satisfy this standard. The applicant also states that of the approximately \$50,000,000.00 already spent on Caldera Springs, \$11,000,000.00 has been spent on recreational facilities. This amount is not disputed in the record.

The Hearings Officer agrees with the applicant's reading of Eagle Crest III. Prior expenditures that meet the minimum threshold may be used to satisfy this criterion. There is no contrary evidence in the record that would undermine the applicant's assertion that \$11,000,000.00 has already been spent on recreational facilities. Given that those facilities are built, they are specific and certain enough to satisfy this standard.

This section may also be the best place to address the comments made at the hearings and in written testimony about Harpers Bridge and the state of the boat ramp. Although safe reliable access to the Deschutes River is definitely a public good, there is nothing in the criteria governing destination resorts that would necessarily require this applicant to provide improvements to the existing river access. The Hearings Officer cannot take action on those comments because they are not relevant to any applicable approval standards.

- 5. The facilities and accommodations required by DCC 18.113.060(A)(2) through (4) must be constructed or financially assured pursuant to DCC 18.113.110 prior to closure of sales, rental or lease of any residential dwellings or lots or as allowed by DCC 18.113.060(A)(1).**

**FINDING:** Because the facilities meeting the threshold amounts described above have been constructed, there is no need to financially assure any additional facilities. As discussed above, at the point in time at which the applicant will be required to provide additional OLU's, the applicant will elect whether to financially assure those units or construct them prior to sale of single-family units.

- B. All destination resorts shall have a minimum of 160 contiguous acres of land. Acreage split by public roads or rivers or streams shall count toward the acreage limit, provided that the CMP demonstrates that the isolated acreage will be operated or managed in a manner that will be integral to the remainder of the resort.**

**FINDING:** Together, the original resort and the annexation property will encompass approximately 1,009 contiguous acres of land. This standard is met.

- C. **All destination resorts shall have direct access onto a state or County arterial or collector roadway, as designated by the Comprehensive Plan.**

**FINDING:** The existing Resort has access onto South Century Drive, a designated county arterial road. This criterion will be met.

- D. **A destination resort shall, cumulatively and for each phase, meet the following minimum requirements:**

- 1. **The resort shall have a minimum of 50 percent of the total acreage of the development dedicated to permanent open space, excluding yards, streets and parking areas. Portions of individual residential lots and landscape area requirements for developed recreational facilities, visitor oriented accommodations or multi family or commercial uses established by DCC 18.124.070 shall not be considered open space;**

**FINDING:** The applicant's Exhibit A and A-1 indicate that the Resort, as a whole, will encompass approximately 884 acres of land. Approximately 463 acres, or 52 percent, of the Resort will be retained as permanent open space. The applicant's burden of proof states that this calculation does not include the 125-acre Wildlife Mitigation Tract. If this Tract were included in the calculations, the Resort would encompass approximately 1,009 acres with 588 acres, or 58 percent, retained as permanent open space. This criterion will be met.

- 2. **Individually owned residential units that do not meet the definition of overnight lodging in DCC 18.04.030 shall not exceed two and one-half such units for each unit of visitor oriented overnight lodging. Individually owned units shall be considered visitor oriented lodging if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through one or more central reservation and check in service(s) operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.**

- a. **The ratio applies to destination resorts which were previously approved under a different standard.**

**FINDING:** As explained above, the original resort was approved with a 2:1 ratio. Under this application, the applicant proposes to modify the ratio to 2.5:1, in conformance with this standard. Staff recommends a condition of approval requiring the Resort, at all times, to comply with the 2.5:1 ratio. A condition of approval is warranted requiring all OLU's to be available for overnight rental use by the general public for at least 38 weeks per calendar year through one or more central reservation and check-in services, operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.

- E. **Phasing. A destination resort authorized pursuant to DCC 18.113.060 may be developed in phases. If a proposed resort is to**

be developed in phases, each phase shall be as described in the CMP. Each individual phase shall meet the following requirements:

1. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of DCC 18.113 and Goal 8.
2. The first phase and each subsequent phase of the destination resort shall cumulatively meet the minimum requirements of DCC 18.113.060 and DCC 18.113.070.
3. Each phase may include two or more distinct noncontiguous areas within the destination resort.

**FINDING:** The applicant proposes to develop the resort in phases. Exhibits A-2 and A-3 generally depict the phasing of the project, although there is no specific timeline for the development of any particular phase, as development will largely depend on market demand. The applicant indicates that the first phase is likely to include only housing, with subsequent phases to include overnight lodging, additional recreational amenities and resort core features. The minimum required meeting rooms, food and beverage service, overnight lodging, and recreational facilities have already been developed in connection with the initial build out of Caldera Springs. Although anticipated to be developed in phases, all subsequent phases will be fully integrated into the Caldera Springs community, resulting in the entire resort operating as a cohesive whole. As shown in the site plans, the resort will be connected via open space area, roads, and pedestrian and bike pathways. Existing resort amenities will be available to the annexation property. The record shows no intent to develop the property into more distinct, non-contiguous areas. This criterion is met.

- F. Destination resorts shall not exceed a density of one and one half dwelling units per acre including residential dwelling units and excluding visitor oriented overnight lodging.**

**FINDING:** The applicant calculates total acreage of Caldera Springs and the annexation property to be approximately 883 acres, not including the 125-acre Wildlife Mitigation Tract. At this size, the allowed density is 1,324 dwelling units. The total number of residential dwelling units, excluding visitor oriented overnight lodging, proposed by the applicant for both properties is 715 residential dwelling units, meeting this standard.

**G. Dimensional Standards:**

1. The minimum lot area, width, lot coverage, frontage and yard requirements and building heights otherwise applying to structures in underlying zones and the provisions of DCC 18.116 relating to solar access shall not apply within a destination resort. These standards shall be determined by the Planning Director or Hearings Body at the time of the CMP. In determining these standards, the Planning Director or Hearings Body shall find that the minimum specified in the CMP are adequate to satisfy the intent of the comprehensive plan relating to solar access, fire protection, vehicle access, visual management within landscape management corridors and to protect resources identified by LCDDC Goal 5 which are identified in the Comprehensive Plan. At a minimum, a 100-foot setback shall be maintained from all streams and rivers. Rimrock setbacks shall be as provided in DCC Title 18. No lot

**for a single family residence shall exceed an overall project average of 22,000 square feet in size.**

**FINDING:** No natural streams, rivers, or rimrock exist on-site. This criterion allows the Planning Director or Hearings Body to establish standards for the minimum lot area, width, lot coverage, frontage, yard requirements, building heights, and solar access at the time of the Conceptual Master Plan (CMP). The applicant proposes the same Dimensional Standards that were approved with the existing Resort. Those standards are as follows:

#### SINGLE FAMILY RESIDENTIAL

- A. Height Regulations. No building or structure should be hereinafter erected, enlarged, or structurally altered to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- B. Lot Requirements.
  - 1. Lot Area. Every lot shall have a minimum area of 6,000 square feet.
  - 2. Every lot should have a minimum average width at the building site of 60 feet, except that a corner lot shall be a minimum of 70 feet.
  - 3. Every lot shall have a minimum width at the street of 50 feet.
  - 4. The front yard shall be a minimum of 20 feet.
  - 5. The side yard shall be a minimum of ten feet.
  - 6. The rear yard setback for properties which do not have a common area adjoining the rear property line, shall be a minimum of 25 feet. The rear yard setback is zero for properties with a rear property line which adjoins a common area that is 50 feet or greater in depth. The rear yard setback for properties which adjoin common areas less than 50 feet in depth shall be calculated at six inches for every one foot less than 50 feet.
  - 7. Lot Coverage. The maximum lot coverage by buildings and structures, including decks and patios, shall be 40 percent of the lot area.

#### MULTI-FAMILY RESIDENTIAL

- A. Height Regulations. No building or structure shall be hereinafter erected, enlarged, or structurally altered to exceed 35 feet in height, except as allowed under DCC 18.120.040.
- B. Lot Requirements. The following lot requirements shall be observed.
  - 1. Lot Area. No lot area requirements apply, other than the overall density shall not exceed 12 dwelling units per acre.
  - 2. Lot Width. Every lot shall have a minimum average width at the building site of 50 feet.
  - 3. Frontage. Every lot shall have a minimum width at the street of 30 feet.
  - 4. Front Yard. The front yard shall be a minimum of ten feet.
  - 5. Side Yard. The side yard shall be a minimum of five feet.
  - 6. Rear Yard. The rear yard shall have a depth of not less than five feet. The rear yard shall be increased by one-half foot for each foot by which the building height exceeds 15 feet.
  - 7. Lot Coverage. The maximum lot coverage by buildings and structures, including decks and patios, shall be 45 percent of the total lot area.
  - 8. All lot dimensional requirements may be waived for an approved zero lot line project.

9. Setbacks for townhouses, condominiums, zero lot line dwellings, and apartments shall be determined at the time of site plan approval.

#### COMMERCIAL AND RECREATIONAL

- A. Height Regulations. No building or structure shall be hereinafter erected, enlarged or structurally altered to exceed 45 feet in height. Chimneys, spires, belfries, domes, monuments, clock towers, look-out towers, smokestacks, flag poles, radio antenna, and similar projections are not subject to building height limitations.
- B. Lot Area. No requirements.
- C. Lot Width. No requirements.
- D. Lot Depth. 100 feet
- E. Front Yard. The front yard shall be a minimum of ten feet.
- F. Side Yard. None, unless a side lot line adjoins a residential lot, and then the side yard setback shall be a minimum of ten feet. The side yard setback from residential lots shall be increased by one-half foot for each foot by which the building height exceeds 20 feet.
- G. Rear Yard. None, except for a rear lot line adjoining a residential lot, and then the rear yard setback shall be a minimum of ten feet. The required rear yard setback from residential lots shall be increased by one-half foot for each foot by which the building height exceeds 20 feet.
- H. Lot Coverage. No requirements.

#### PROPOSED OVERNIGHT LODGING COTTAGE LOTS:

- A. Height Regulations. No building or structure shall be hereinafter erected, enlarged or structurally altered to exceed 30 feet in height. Chimneys, spires, belfries, domes, monuments, clock towers, look-out towers, smokestacks, flag poles, radio antenna, and similar projections are not subject to building height limitations.
- B. Lot Area. No requirements.
- C. Lot Width. No requirements.
- D. Lot Depth. No requirements.
- E. Frontage: No minimum road frontage requirements. Each lot shall have access to required parking areas and driveways, and to a private resort road, via a perpetual easement recorded for the benefit of the subject lot.
- F. Front Yard. No requirements.
- G. Side Yard. None, except for a side lot line adjoining a single-family residential lot, and then the side yard shall be a minimum of ten feet. The required side yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet.
- H. Rear Yard. None, except for a rear lot line adjoining a single-family residential lot, and then the rear yard shall be a minimum of ten feet. The required rear yard shall be increased by one-half foot for each foot by which the building height exceeds 20 feet.
- I. Lot Coverage. No requirements.
- J. Location of parking/driveways. Parking areas and driveways associated with overnight lodging cottages may be clustered and located on adjacent lots and/or common areas, and may span lot lines.

## SOLAR ACCESS

- A. All structures within the destination resort shall be exempt from building setbacks for the protection of solar access, exempt from solar height restrictions, and exempt from solar access permits.

The standards associated with the LM Combining Zone are addressed above. Similar to the finding made by the Hearings Officer in the Caldera Springs approval, staff believes the setbacks identified above are sufficient to satisfy the intent of the comprehensive plan for LM corridors except for limitations on building height. As detailed above, staff recommends a condition of approval limiting building height to a maximum of 30 feet as measured from natural grade for all structures subject to the visible LM standards.

The approved Caldera Springs CMP is exempt from the County's solar access standards. The annexation property similarly requests an exemption from the County's solar standards. The applicant argues that historically, solar access and solar property right conditions have not been applied to destination resorts. The applicant points to Tetherow, which was exempted from requirements of meeting solar setback requirements, and to Pronghorn, where use of solar access similarly has been minimal. As is the case with Caldera Springs and the annexation property, the applicant states the design guidelines both encourage and require homes to be designed to emphasize preservation of natural features and vegetation, recreation enjoyment, view corridors and overall home design.

The applicant further argues that the state and county destination resort development standards make compliance with solar conditions difficult or impossible. The applicant points to the Deschutes County Destination Resort Ordinance which requires fifty percent open space for the entire land tract, significant buffer areas, a mitigation tract and a wildlife mitigation corridor. The applicant states that these "no-build" areas, together with the predominant north-south orientation of the underlying property limit the ability to fully incorporate solar standards. However, the applicant concludes that the open spaces, buffers and wildlife mitigation corridors will provide solar protection for homes on the perimeter of the proposed development and will provide solar access for many of the resort lots.

As is the case with the original development of Caldera Springs, most proposed development areas are oriented in a north to south configuration due to orientation of the property and natural topography. This north to south configuration results in primary solar access to the side of the proposed homes, minimizing opportunities to protect solar access. Given the overall protection of views, open space and natural corridors exceeding 50 percent of the site and the county's historical practices related to solar in other resort approvals, the applicant believes that independent solar standards should not apply to the individual lots.

### **2. Exterior setbacks.**

- a. **Except as otherwise specified herein, all development (including structures, site obscuring fences of over three feet in height and changes to the natural topography of the land) shall be setback from exterior property lines as follows:**

- i. Three hundred fifty feet for commercial development including all associated parking areas;
  - ii. Two hundred fifty feet for multi family development and visitor oriented accommodations (except for single family residences) including all associated parking areas;
  - iii. One hundred fifty feet for above grade development other than that listed in DCC 18.113.060(G)(2)(a)(i) and (ii);
  - iv. One hundred feet for roads;
  - v. Fifty feet for golf courses; and
  - vi. Fifty feet for jogging trails and bike paths where they abut private developed lots and no setback for where they abut public roads and public lands.
- b. Notwithstanding DCC 18.113.060(G)(2)(a)(iii), above grade development other than that listed in DCC 18.113.060(G)(2)(a)(i) and (ii) shall be set back 250 feet in circumstances where state highways coincide with exterior property lines.
  - c. The setbacks of DCC 18.113.060 shall not apply to entry roadways and signs.

**FINDING:** The record demonstrates that these setbacks can be met. Staff recommends that any berms proposed on-site should also be subject to criterion iii. The Hearings Officer agrees.

- H. **Floodplain requirements.** The floodplain zone (FP) requirements of DCC 18.96 shall apply to all developed portions of a destination resort in an FP Zone in addition to any applicable criteria of DCC 18.113. Except for floodplain areas which have been granted an exception to LCDC goals 3 and 4, floodplain zones shall not be considered part of a destination resort when determining compliance with the following standards;
  - 1. One hundred sixty acre minimum site;
  - 2. Density of development;
  - 3. Open space requirements.

A conservation easement as described in DCC Title 18 shall be conveyed to the County for all areas within a floodplain which are part of a destination resort.

**FINDING:** No lands zoned Flood Plain exist on-site. These criteria do not apply.

- I. **The Landscape Management Combining Zone (LM) requirements of DCC 18.84 shall apply to destination resorts where applicable.**

**FINDING:** The applicable LM criteria are addressed above.

- J. **Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland shall be a separate conditional use subject to all pertinent requirements of DCC Title 18.**

**FINDING:** No natural streams, rivers or wetlands exist on-site. A separate conditional use permit is not required.

- K. Time share units not included in the overnight lodging calculations shall be subject to approval under the conditional use criteria set forth in DCC 18.128. Time share units identified as part of the destination resort's overnight lodging units shall not be subject to the time share conditional use criteria of DCC 18.128.**

**FINDING:** No time share units are proposed as part of the annexation property. This criterion does not apply.

- L. The overnight lodging criteria shall be met, including the 150-unit minimum and the 2-1/2 to 1 ratio set forth in DCC 18.113.060(D)(2).**
- 1. Failure of the approved destination resort to comply with the requirements in DCC 18.113.060(L)(2) through (6) will result in the County declining to accept or process any further land use actions associated with any part of the resort and the County shall not issue any permits associated with any lots or site plans on any part of the resort until proof is provided to the County of compliance with those conditions.**

**FINDING:** As noted previously, the existing Resort includes 152 constructed OLU's. The applicant proposes to modify the destination resort approval such that the 2.5:1 ratio applies across the existing and proposed development. A condition of approval to ensure compliance is warranted.

- 2. Each resort shall compile, and maintain, in perpetuity, a registry of all overnight lodging units.**
  - a. The list shall identify each individually-owned unit that is counted as overnight lodging.**
  - b. At all times, at least one entity shall be responsible for maintaining the registry and fulfilling the reporting requirements of DCC 18.113.060(L)(2) through (6).**
  - c. Initially, the resort management shall be responsible for compiling and maintaining the registry.**
  - d. As a resort develops, the developer shall transfer responsibility for maintaining the registry to the homeowner association(s). The terms and timing of this transfer shall be specified in the Conditions, Covenants & Restrictions (CC&Rs).**
  - e. Resort management shall notify the County prior to assigning the registry to a homeowner association.**
  - f. Each resort shall maintain records documenting its rental program related to overnight lodging units at a convenient location in Deschutes County, with those records accessible to the County upon 72 hour notice from the County.**
  - g. As used in this section, "resort management" includes, but is not limited to, the applicant and the applicant's heirs, successors in interest, assignees other than a home owners association.**

**FINDING:** Staff notes that the existing Resort was modified under MC-13-5 to add the registry requirements, which did not exist under the previous destination resort criteria. A condition of approval to ensure compliance with the registry requirements is warranted.

3. **An annual report shall be submitted to the Planning Division by the resort management or home owners association(s) each February 1, documenting all of the following as of December 31 of the previous year:**
  - a. **The minimum of 150 permanent units of overnight lodging have been constructed or that the resort is not yet required to have constructed the 150 units;**
  - b. **The number of individually-owned residential platted lots and the number of overnight-lodging units;**
  - c. **The ratio between the individually-owned residential platted lots and the overnight lodging units;**
  - d. **The following information on each individually-owned residential unit counted as overnight lodging.**
    - i. **Who the owner or owners have been over the last year;**
    - ii. **How many nights out of the year the unit was available for rent;**
    - iii. **How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;**
    - iv. **Documentation showing that these units were available for rental as required.**
  - e. **This information shall be public record subject to ORS 192.502(17).**

**FINDING:** A condition of approval to ensure compliance is warranted.

4. **To facilitate rental to the general public of the overnight lodging units, each resort shall set up and maintain in perpetuity a telephone reservation system.**

**FINDING:** A condition of approval to ensure compliance is warranted.

5. **Any outside property managers renting required overnight lodging units shall be required to cooperate with the provisions of this code and to annually provide rental information on any required overnight lodging units they represent to the central office as described in DCC 18.113.060(L)(2) and (3).**

**FINDING:** A condition of approval to ensure compliance is warranted.

6. **Before approval of each final plat, all the following shall be provided:**
  - a. **Documentation demonstrating compliance with the 2-1/2 to 1 ratio as defined in DCC 18.113.060(D)(2);**

- b. Documentation on all individually-owned residential units counted as overnight lodging, including all of the following:
  - i. Designation on the plat of any individually-owned units that are going to be counted as overnight lodging;
  - ii. Deed restrictions requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
  - iii. An irrevocable provision in the resort Conditions, Covenants and Restrictions (“CC&Rs) requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
  - iv. A provision in the resort CC&R’s that all property owners within the resort recognize that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(iii) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County;
  - v. Inclusion of language in any rental contract between the owner of an individually-owned residential unit designated as an overnight lodging unit and any central reservation and check in service or real estate property manager requiring that such unit be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010, and that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(v) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County.

**FINDING:** Staff notes that the existing Resort was modified under MC-13-5 to remove the previous standard which required 45-week rental availability, and replace it with today’s standard of 38 weeks. A condition of approval to ensure compliance is warranted.

4. Section 18.113.070. Approval Criteria.

**In order to approve a destination resort, the Planning Director or Hearings Body shall find from substantial evidence in the record that:**

- A. The subject proposal is a destination resort as defined in DCC 18.040.030.**

**FINDING:** The existing Caldera Springs resort and proposed annexation includes and will include all of the components identified for a destination resort under DCC 18.04.030. This criterion will be met.

- B. All standards established by DCC 18.113.060 are or will be met.**

**FINDING:** As the findings above show, all standards established by DCC 18.113.060 will be met or can be met with the recommended conditions of approval.

- C. The economic analysis demonstrates that:**

- 1. The necessary financial resources are available for the applicant to undertake the development consistent with the minimum investment requirements established by DCC 18.113.**

**FINDING:** The Economic Feasibility Analysis, prepared by Peterson Economics and submitted as Exhibit O, demonstrates that the applicant has the necessary financial resources to meet the minimum development and investment standards of DCC 18.113.

- 2. Appropriate assurance has been submitted by lending institutions or other financial entities that the developer has or can reasonably obtain adequate financial support for the proposal once approved.**

**FINDING:** A Letter of Financial Commitment and Developer Resume, submitted as Exhibit P, demonstrate that the applicant has or reasonably can obtain adequate financial support for the project. Staff agrees and believes this criterion will be met.

- 3. The destination resort will provide a substantial financial contribution which positively benefits the local economy throughout the life of the entire project, considering changes in employment, demands for new or increased levels of public service, housing for employees and the effects of loss of resource land.**

**FINDING:** The feasibility analysis discusses the financial contributions that the resort will make to the local economy, including the contributions to the construction industry, employee base, payroll and benefits package, property tax, and transient room tax revenues for Deschutes County.

- 4. The natural amenities of the site considered together with the identified developed recreation facilities to be provided with the resort, will constitute a primary attraction to visitors, based on the economic feasibility analysis.**

**FINDING:** There are no outstanding natural amenities on the site that are likely to constitute a primary attraction to visitors. The feasibility analysis indicates that visitors will be attracted to the resort based upon the high-quality recreational facilities, scenic vistas, proximity to the Bend urban area, Mt. Bachelor, and the Deschutes River.

**D. Any negative impact on fish and wildlife resources will be completely mitigated so that there is no net loss or net degradation of the resource.**

**FINDING:** Staff provided the following analysis of the applicant's CMP with respect to this criterion:

The applicant's burden of proof Exhibit C is a Wildlife Habitat Evaluation Procedure and Mitigation Plan ("Wildlife Report") for the Caldera Springs Annexation Development. The Wildlife Report was prepared by Dr. Wendy Wente of Mason, Bruce and Girard, in consultation with ODFW. The applicant states that ODFW's recommendations were incorporated into the Wildlife Report. The Wildlife Report addresses two primary goals. First, it describes and evaluates the habitat and wildlife resources on the property and immediate vicinity. Second, through an extensive Habitat Evaluation Procedure ("HEP Analysis") it characterized the floral and faunal constituents of each habitat type, as well as topography, aspect, and other habitat elements. The HEP Analysis described the salient characteristics of each habitat type, such as vegetative components, structure, age class distribution, landscape position, topography, elevation, hydrologic regime, and management history of the property. The HEP Analysis results include the pre-development wildlife habitat conditions, anticipated post-development conditions, and proposed enhancements and mitigation measures intended to offset anticipated reductions of habitat quality due to the project. The HEP Analysis concludes that the applicant can mitigate all negative impacts on fish and wildlife resources. Proposed mitigation includes the following:

- Preservation of a 125-acre Wildlife Mitigation Tract located between the annexation property and the railroad
- Monitoring and eradication of weeds and non-native plants where possible
- Preservation of live and dead ponderosa pine trees where possible
- Retention of downed logs and snags where possible
- Prohibiting fire wood cutting or vegetation alteration beyond that prescribed as management for increased habitat value
- Retention of rock outcrops where possible
- Installation and maintenance of nest boxes
- Prohibiting new fences within the development
- Posting and enforcement of leash laws
- Prohibiting livestock on the property
- Prohibiting recreational off-road motor vehicle use in the open space areas
- Requiring a 100-foot setback for all lots adjacent to open space
- Initiating a program for proper garbage storage and disposal
- Initiating an educational program for residents focused on native wildlife populations using the subject property

Staff also recommended that the applicant respond to the guidance on how to assure the mitigation measures are successful identified in the recent Hearings Officer's

decision on *The Tree Farm*.<sup>5</sup> In the Board of County Commissioners (“Board”) approval<sup>6</sup> of *The Tree Farm*, the Board affirmed the Hearings Officer’s identification of required wildlife management plan components as follows:

- A. The wildlife plan must include an action plan that identifies specific roles and responsibilities for the developer and homeowners association (“HOA”), and describes how and when the developer will hand off responsibility to the HOA.
- B. What specific measures will be undertaken consistent with the wildfire plan to assure more aggressive fuel reduction measures, if any, will not interfere with wildlife use of the 125-acre Wildlife Mitigation Tract, and the east-west travel corridor along Vandever Road?

The Hearings Officer agrees with Staff’s analysis above and that the additional refinements identified in *The Tree Farm* should be addressed. That analysis appears below.

On November 10, 2015 the applicant submitted a Wildlife Habitat Evaluation Procedure and Mitigation Plan (“HEP”) that refines the initial CMP. In addition to the evaluation, the HEP contains an “Integration of Habitat Management with Wildfire Protection” plan, “Wildlife Habitat Conservation and Mitigation Measures,” including an action plan, and explanation of the mitigation site set aside, and an enforcement section.

In their December 15, 2015 submission, COLW does not comment on the HEP or make any arguments about its adequacy. Instead, COLW argues that the Court of Appeals decision in *Gould v. Deschutes County* requires that the only way to meet DCC 18.113.070(D) is through a 1:1 mitigation tract. COLW also provides some information and argument about the state of the deer migration range in the area and the health of mule deer populations in the vicinity of the subject property.

In their December 29, 2015 letter, the applicant counters that neither DCC 18.113.070 nor *Gould* mandates a 1:1 mitigation tract. The applicant’s November 10, 2015 submission states that the court in *Gould* allowed a HEP approach to complying with DCC 18.113.070(D). The applicant also argues generally that the design of the expansion area will leave much of the developed part of the resort open for some level of habitat use by mule deer even though those areas will be partially impacted.

The Hearings Officer concludes that the HEP and the mitigation plan are sufficient to satisfy DCC 18.113.070(D). First, the record is clear that Oregon Department of Fish and Wildlife reviewed and approved the HEP, and that the applicant incorporated all of ODFW’s recommendations. That evidence is not disputed by any party and constitutes substantial evidence that ODFW concluded that the HEP could completely mitigate negative impacts on fish and wildlife resources including habitat impacts. Second, COLW’s arguments do in any way address the HEP or offer reasons why it is deficient or in error. Without such argument it is very difficult for the Hearings Officer to understand why ODFW’s conclusions should not be deferred to. Third, the Hearings Officer agrees that *Gould* does not mandate a 1:1 mitigation tract, and certainly does not stand for the

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<sup>5</sup> *The Tree Farm*, land use file numbers 247-15-000242-CU, 243-TP, 244-CU, 245-TP, 246-CU, 247-TP, 248-CU, 249-TP, 250-CU, 251-TP

<sup>6</sup> Board Document Nos. 2015-638, 639, 640, 641 and 642.

proposition that an acre for acre replacement of habitat is the only way to meet the “no net loss” standard. Seeing no credible claims of insufficiency in the applicant’s HEP and mitigation plan, the Hearings Officer finds that it satisfies this criterion.

As for the questions Staff recommended from *The Tree Farm* decision, the Integration of Habitat Management with Wildfire Protection plan identified above contains multiple specific actions and treatments of vegetation and fuels in the developed area. Those actions and treatments also harmonize the wildfire plan, which is discussed below, with the actions necessary to implement the HEP mitigation plan. The plan is detailed and specific enough to adequately answer Question B above.

As for Question A, the November 10, 2015 HEP analysis contains a specific “Action Plan for Managing Wildlife Habitat” that contains 18 separate actions that must be taken to preserve habitat functions in the development. Separately, there are rules imposed on the treatment of the 125 acre mitigation tract to ensure its protection. The HEP includes an “Implementation, Monitoring, and Enforcement of the Wildlife Conservation Measures” section that states that the conservation measures: 1) will be enforced through the CC&Rs, 2) will be reviewed through an audit every 3-5 years, and 3) that the developer and/or the Caldera Springs Owners Association will be responsible for meeting the County Code and conditions of any approval.

The Hearings Officer concludes that the mitigation measures identified in the HEP are specific enough to be implemented in a way that the County and the public can evaluate, and will enforceable through the CC&Rs and County code enforcement in a rigorous enough way to provide certainty that they will be implemented and maintained over time.

This criterion is met.

- E. Important natural features, including but not limited to significant wetlands, riparian habitat, and landscape management corridors will be maintained. Riparian vegetation within 100 feet of streams, rivers and significant wetlands will be maintained. Alterations to important natural features, including placement of structures, is allowed so long as the overall values of the feature are maintained.**

**FINDING:** Neither natural springs nor surface waters exist. However, the applicant indicates that an elevated groundwater table may be visible during extremely wet weather conditions during spring months. The burden of proof states that no major geographic features exist on the subject property. No significant rocky outcrops, no particular vista points, and no steep visible hillsides exist. No significant wetlands were identified in the record. This criterion is met.

- F. The development will not force a significant change in accepted farm or forest practices or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

**FINDING:** Property to the north, west and south are developed, or partially developed, with residential and commercial uses. No forestry or agricultural uses are present on these properties. Consequently, staff found the proposal will not force a significant

change in accepted farm or forest practices or force a significant increase the cost of accepted farm or forest practices on these properties.

The applicant indicates the only property in the “surrounding lands” devoted to forest use is the USFS property east of the Burlington Northern Railroad main line and east of the 125-acre Wildlife Mitigation Tract. At the present time, the USFS property is not being used for timber production. The applicant argues that given the separation of the USFS property and the annexation property by the railroad and the Wildlife Mitigation Tract, there is no evidence to suggest that the development will have any impact on how the USFS manages the property, let alone force a significant change in or costs of forest practices. Staff notes that no comments were received from the USFS regarding concerns about impacts to forest practices on USFS lands. This criterion is met.

- G. Destination resort developments that significantly affect a transportation facility shall assure that the development is consistent with the identified function, capacity and level of service of the facility. This shall be accomplished by either:**
- 1. Limiting the development to be consistent with the planned function, capacity and level of service of the transportation facility;**
  - 2. Providing transportation facilities adequate to support the proposed development consistent with Oregon Administrative Rules chapter 660, Division 12; or**
  - 3. Altering land use densities, design requirements or using other methods to reduce demand for automobile travel and to meet travel needs through other modes.**

**A destination resort significantly affects a transportation facility if it would result in levels of travel or access that are inconsistent with the functional classification of a facility or would reduce the level of service of the facility below the minimum acceptable level identified in the relevant transportation system plan.**

- a. Where the option of providing transportation facilities is chosen, the applicant shall be required to improve impacted roads to the full standards of the affected authority as a condition of approval. Timing of such improvements shall be based upon the timing of the impacts created by the development as determined by the traffic study or the recommendations of the affected road authority.**
- b. Access within the project shall be adequate to serve the project in a safe and efficient manner for each phase of the project.**

**FINDING:** The applicant submitted a transportation impact analysis (“TIA”) prepared by Kittelson and Associates, and attached as Exhibit D. Although not required by the above standard, the applicant states the TIA was prepared to meet the above requirements, and the requirements of the Transportation Planning Rule and the requirements of ORS 197.460(4). Prior to development and study under the TIA, the applicant consulted with ODOT and Deschutes County, resulting in an agreed-upon scoping memorandum and analysis. The TIA concludes that all study intersections will continue to operate

within applicable performance standards through the 2030 horizon year with the addition of all trips associated with the resort proposal. Furthermore, the TIA concludes that no off-site mitigation measures are required to accommodate the construction of the resort as proposed and that it may be developed consistent with the identified function, capacity and level of service all affected facilities.

During the notice of application comment period, ODOT identified a discrepancy between the proposal and the TIA. The annexation includes new access onto Vandever Road. The TIA indicated that this access was for emergency use only. After the applicant was notified of this issue, Kittleson and Associates amended the TIA to analyze the proposed new access onto Vandever Road. Kittleson and Associates concluded that the impact of the amendment was minor with no change in findings and no adverse impact to Level of Service (LOS) for affected road facilities. The Deschutes County Senior Transportation Planner agreed with Kittleson's conclusions that the proposed annexation will not result in a significant negative impact to a transportation facility.

The applicant submitted a final TIA to respond to public and agency comments related to transportation impacts. The final TIA includes an updated seasonal factor for traffic volumes. With respect to concerns regarding crashes, the final TIA concludes that the Vandever/Highway 97 intersection can present difficult decision making for drivers. For this reason, traffic should be routed to the Century Drive interchange for northbound trips from the annexation property to limit left-turns at the Vandever/Highway 97 intersection.

The final TIA concludes that in the horizon years of 2030 and 2035, the Vandever/Highway 97 intersection will exceed ODOT's mobility standard. As a result, the final TIA proposes three mitigation options:

- 1) Restricting the Vandever Road access to construction traffic only;
- 2) Restricting left-out movements from the Vandever Road access; or
- 3) Installation of a raised median along Highway 97 to enforce right-in and right-out access.

ODOT states that it is satisfied that the project will not adversely affect the operation of the US 97 intersection at Vandever with the proposed mitigation. The proposed mitigation is to limit the Vandever access to construction traffic only or to restrict outbound left-turn movements until such time as the Vandever connection to US 97 is closed or restricted. Restricting outbound left-turns would be less effective and ODOT would request the opportunity to review the turn-restriction design prior to it being permitted. The county's Senior Transportation Planner, Peter Russell, states that he knows of no design that will successfully and consistently restrict a left-out movement from Vandever Road. For this reason, the county recommends the Vandever access be open to construction traffic only and then become a gated, emergency-only access until Vandever is disconnected from Highway 97 or the Spring River/Century Drive roundabout is constructed.

Regarding a raised median along Highway 97, ODOT states that it is open to discussions to close or restrict access to the US 97/Vandever intersection, but the timing of that improvement is uncertain. As this facility is solely under the jurisdiction of ODOT, the county provides no comments on this potential mitigation.

The final TIA also concludes that the Spring River/Century Drive intersection will exceed the county's Level of Service ("LOS") D standard in horizon years 2030 and 2035. The county's Transportation System Plan ("TSP") identifies the construction of a single-lane roundabout at this intersection at an expected cost of approximately \$900,000. Mr. Russell notes that System Development Charges ("SDC") likely to be assessed to the developer will be approximately \$1.69 million to \$1.84 million. Per staff's conversation with the Road Department, given the identification of the required improvement and the collection of SDCs, the county believes there is a reasonable expectation that the roundabout will be constructed at the time it is needed. This additional evidence in combination with Staff's analysis is sufficient to show compliance with these criteria.

The additional information provided by the applicant refining the TIA is also discussed in the findings for DCC 18.113.050(B)(2) above. Those findings are incorporated here by this reference. These criteria are met.

- H. The development will not create the potential for natural hazards identified in the County Comprehensive Plan. No structure will be located on slopes exceeding 25 percent. A wildfire management plan will be implemented to ensure that wildfire hazards are minimized to the greatest extent practical and allow for safe evacuation. With the exception of the slope restriction of DCC 18.113.070, which shall apply to destination resorts in forest zones, wildfire management of destination resorts in forest zones shall be subject to the requirements of DCC 18.40.070, where applicable, as to each individual structure and dwelling.**

**FINDING:** The Hearings Officer addresses this criterion below. Prior to that discussion, a short response to COLW's arguments regarding wildfire is appropriate here. COLW's December 15, 2015 submission contains a section stating that the wildland fire resort criteria have not been met. However, review of that section leaves the Hearings Officer with the conclusion that no violation of law or failure to address an applicable criterion has been cited by COLW. While the section does a fine job of identifying the existing wildfire threats, and the sometimes grave conditions that promote wildfire in the vicinity, there is no connection between those recitations and the applicable criterion above. Importantly, COLW does not challenge the specific provisions of the WMP, nor does COLW address the applicant's supplemental testimony and evidence in the November 10, 2015 submission. As such, the Hearings Officer concludes that the findings below both sufficiently address the applicable criterion and rebut COLW's allegation that the WMP is insufficient.

The applicant's Exhibit M is the Wildfire Management Plan ("WMP"), prepared by Jeff Pendleton, a retired USFS Wildland Fire Consultant. The WMP was prepared in consultation with Deschutes County Forester, Ed Keith, and Alison Green of Project Wildfire. The applicant states that all recommendations of the County Forester and Ms. Green were incorporated into the report. Pursuant to the WMP, the applicant concludes that all wildfire hazards have been minimized to the greatest extent practicable, and the three evacuation routes, with exits on the north, west and south sides of the project, allow for safe evacuation of the property in the event of wildfire. The proposal does not include development on slopes exceeding 25%.

The WMP includes a number of key components. First, it imposes obligations for wildfire management on the homeowners and the homeowners' association. Consequently, to the extent that an individual homeowner is not in compliance with a specified requirement, the association has the right to enforce the obligation. Second, the plan provides for ongoing treatment of the entire property in 5-year cycles to assure that every portion of the property is treated every five years. Third, the treatment requirements (e.g., thinning, spacing, ladder fuel reduction) are specified in the plan and proposed to be included as conditions of approval. Finally, all terms and conditions of the WMP are binding through the imposition of design standards for individual lots, and open space and Wildlife Mitigation Area standards through the CC&Rs. The proposed conditions of approval in the WMP include the following:

- Maintain the entire resort within the La Pine Rural Fire Protection District or any successor in interest to the fire protection district.
- Development of the annexation property shall be designed to maintain 1,000 gpm fire protection flow in addition to meeting the domestic needs of the resort. Fire hydrants shall be placed along all rights of ways within the resort at spacing approved by the LRFD Fire Chief.
- Prior to recordation of the final plat for each phase, the entire open space/meadow/lakes area of that phase shall be treated through a combination of thinning, removal of understory trees, pruning, removal of ladder fuels in order to achieve an expected average flame length of 4 feet or less during 90th percentile weather and fuel conditions. As a condition to recording the final plat, the applicant shall provide written certification from the Deschutes County Forester that the property phase has been so treated.
- Throughout the life of the project the applicant shall be required to comply with the identified treatment and identified rotation such that every area of the annexation property is retreated and maintained every 5 years. The CC&Rs for the property shall identify the homeowners' association as the party responsible for the on-going treatment of the open space/meadow/lakes area.
- Prior to recordation of the final plat for each phase of development, a proportional section of the wildlife area shall be treated through a combination of thinning, removal of understory trees, pruning, removal of ladder fuels (i) in order to achieve an expected average flame length of 4 feet or less during 90th percentile weather and fuel conditions and/or (ii) for 80% of the treated area, thin trees to an average of 20 feet' spacing, limbed to a height 6 feet. As a condition to recording the final plat, the applicant shall provide written certification from the Deschutes County Forester that the applicable portion of the property has been so treated.
- Throughout the life of the project the applicant shall be required to comply with the identified treatment and identified rotation set forth above on a rotating 5-year basis to ensure that the entire Wildlife Management Area is treated over a 15 year period. The CC&Rs for the property shall identify the homeowners' association as the party responsible for the on-going treatment.
- In order to reduce the risk of ignition from the operation of the rail right-of-way the applicant shall thin trees to 20 feet minimum spacing with removal of all mid-height ladder fuels. This treatment shall be repeated every 5 years during the life of the project.

- The CC&Rs for the project shall incorporate the following standards which shall be applicable to each lot and shall be enforceable the homeowners' association for the resort:

All owners are required to adhere to the following planning and design considerations:

- A. All structures shall include a 30' (or to the property line if less distance) defensible space "firebreak" surrounding them, consisting of the following:
  1. Dry grasses are to be kept mown to less than 4" from June 1 to October 1. Scattered bunchgrasses and other short or sporadic grasses are excepted.
  2. Trees overhanging structures to be essentially free of dead material.
  3. Roofs, gutters and decks shall be maintained essentially free of accumulations of pine needles and other debris from June 1 to October 1.
  4. No trees or vegetation is allowed within 10 feet of chimney or stove outlets.
  5. Flammable mulches (bark mulch, wood chips, pine needles, etc.) or dry grasses or ground cover is not permitted within 5 feet of structures, unless adjacent to areas of the structure with non-flammable siding.
  6. Bitterbrush and manzanita shall be removed entirely.
  7. On pines and other flammable trees, branches shall be removed up to a minimum of six (6) feet and a maximum of eight (8) feet or to three times the height of flammable vegetation (dry grass, brush) remaining within 3 feet of tree drip lines. On pines and other flammable trees shorter than twenty (20) feet, only the branches from the lower one-third (1/3) of the tree shall be removed. All trees shall be maintained substantially free of deadwood. Dead branches shall be removed to a minimum height of ten (10) feet.
- B. All chimneys shall be equipped with UL or I.B.C.U. approved spark arrestor. No outdoor fire pits or fireplaces will be allowed. Only lidded barbeque grills will be allowed for outdoor cooking.
- C. Decks constructed of wood and greater than 12" above the ground must be kept clear of dead vegetative materials and other highly combustible items underneath them.
- D. Vegetation on the lot shall be developed and maintained by the Owner in accordance with the requirements of other rules established by the Association for compliance with Firewise standards. Emphasis is on the use of fire resistive species within the building envelope. All grass and landscaped areas within the building envelope of each Lot must be irrigated.
- E. Outside storage of firewood is prohibited.

Firewise Home Construction Requirements:

- A. Driveways shall be constructed of asphalt or concrete pavers. All trees within 15 feet of the centerline of the driveway shall be limbed to provide at least 14 feet vertical clearance above the driveway surface.
- B. Only fire resistant approved roofing materials such as concrete shingles, slate, clay tile, or high relief "presidential" style asphalt composition shingles may be used. Non-reflective metal roofs may be approved by the Design Review Committee on a case by case basis.

- C. All chimneys are to have roof saddles, downdraft preventers, and spark arresters.
- D. Plastic or other low melting point skylights are prohibited.
- E. All window glass shall be double paned, and all windows having an area greater than 35 square feet shall be tempered glass.
- F. All exterior vent openings in structures and open spaces under combustible decks (if less than 12" clearance above the ground) must be shielded with non-combustible, corrosion resistive screening with ¼" maximum clear openings.

The WMP imposes clear standards on the development and identifies the party responsible for implementing the standard. The standards will be imposed as conditions of approval. Should a homeowner and the association both fail to comply with the conditions of approval, the County always retains its police powers to enforce the conditions of approval. Lastly, as with Caldera Springs, the applicant states that the annexation property will be recognized as a Firewise Community.

With respect to Firewise Community recognition, staff recommended, and the Hearings Officer agrees, that a condition of approval requiring the homeowners association to submit proof of Firewise recognition to the Planning Division annually from the date of first recognition is warranted. Additionally, this same requirement should be added to the CCRs for the homeowners association.

With respect to adequacy of the WMP, the Hearings Officer's decision in *The Tree Farm* identified a number of items that must be detailed in a wildfire plan for it to be adequate. The Board affirmed this methodology. Staff concluded, and the Hearings Officer agrees, that it is appropriate to apply the same standards to this application where appropriate.<sup>7</sup>:

- A. Identify the building envelope for each lot, the extent and nature of the defensible space around each structure, and fire fuel treatments on the building envelope and the rest of the lot

**FINDING:** Pages 7 and 8 of the WMP details a number of planning and design considerations, including specific measures that will be employed within a 30-foot defensible space area surrounding all proposed structures. In the November 10, 2015 submission, the applicant supplemented the WMP with additional explanation of Design Guidelines that will apply to fire protection treatments within 30 feet of all structures. Section 5.14 of those guidelines imposes restrictions on trees, tree types, grasses, overhanging branches, roofs, and general requirements for development to comply with the Firewise standards. This information, and in consideration that the building envelopes must be located within 300 feet of all roads, is specific enough to understand how the defensible space around future dwellings will reduce wildfire hazard.

- B. Identify the fuel treatment, if any, on open space and what impact it will have on that open space

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<sup>7</sup> For *The Tree Farm*, the Hearings Officer determined that the wildfire management plan for that project must identify fuel treatment on slopes adjacent to residential lots. Because there are no slopes greater than 25 percent on the subject property, this Hearings Officer did not include this component for analysis.

**FINDING:** Pages 5-7 of the WMP identify fuel treatment measures proposed within open spaces and the Wildlife Management Area, including thinning of trees to provide crown separation, removal of understory trees, pruning of trees to remove ladder fuels, and mastication (mowing) or removal of ground vegetation to reduce potential surface fire spread. The WMP notes that a scheduled rotation of maintenance treatments throughout the Resort's common areas is currently being practiced.

Within the Wildlife Management Area, the WMP states that fuel treatments should be designed to maintain a diversity of forest structure providing forage as well as hiding cover. The WMP identifies selective thinning of smaller trees encroaching into open areas to maintain a break in the aerial fuel profile. Treatment will include hand thinning and mechanical applications in a patch work rotation to provide desired forest diversity. The WMP identifies spot treatment of dead fuels, which will also break up the continuity of the fuel profile. Finally, the WPM suggests maintenance of the two track road access in the wildlife area, by pruning back vegetation, to provide firebreaks, control features, and suppression resource mobility.

The findings for Question A above are supportive of this criterion as well and are adopted here by reference. Together those findings and the information in the WMP reasonably address Question B.

- C. Identify whether and where decks and outbuildings would be permitted on each lot.

**FINDING:** Page 8 of the WMP states that decks constructed of wood and greater than 12" above the ground must be kept clear of dead vegetative materials and other highly combustible items underneath them. In addition, the November 10, 2015 submission states that any deck over 3' in height will be limited to an aggregate 150 square feet in size.

- D. What specific, identified NFPA standards apply to the proposed annexation, and what construction methods and building materials will be required for each structure to meet NFPA standards

**FINDING:** Pages 8 and 9 of the WMP include specific construction methods and building materials for structures. Staff questioned what specific NFPA standards, if any, are relevant to the methods and materials identified in the WMP.

Page 9 of the WMP addresses NFPA standards generally. The WMP states that the proposed annexation is more urban in nature than the NFPA suburban focused guidelines and, therefore, the NFPA guidelines are not directly applicable to the property. The WMP notes that NFPA standards are based on residential population densities of less than 1,000 persons per square mile, while the Caldera Springs development will have a density in excess of 1,500 persons per square mile. Additionally, the Resort will have a full fire hydrant system and two fire departments within three miles of the property. Nevertheless, the WMP states that the proposed annexation is largely in compliance with, and in some areas, exceeds the applicable elements of the NFPA 1141. The WMP goes on to state that in cases where the local standards are more restrictive than NFPA standards, the applicant will comply with the more restrictive standard.

The applicant's November 10, 2015 submission identifies NFPA standards 1141 and 1144 and explains how those sections will be met. There is no testimony or evidence in the record indicating that those sections cannot be met. In addition, the applicant notes that the building materials will be limited by the building code to those appropriate for fire hazard areas.

- E. Provide a detailed description of how and by whom the wildfire plan will be implemented, monitored, and enforced, with particular attention to the transition between the developer and the HOA

**FINDING:** Page 9 of the WMP discusses implementation and oversight. The owner/developer of the annexation property will be responsible for the design, infrastructure construction, and initial landscaping and treatment of forest vegetation. Individual homesite construction will go through review by the Caldera Spring Design Review Committee ("DRC") to ensure that Firewise Community principles are met. Further, the Caldera Springs Owners Association will be budgeted to undertake the following tasks:

- Annual review of forest condition and health by a certified arborist
- Corrective action of deficiencies noted in each annual inspection
- Annual maintenance program to address ladder fuel reductions
- Annual inspection and notices to home owners for removal of pine needles and other vegetative buildup on roofs, rain gutter, decks and around homes
- Maintenance of landscape and control of ladder fuels and forest health on private undeveloped lots
- Ongoing education and awareness of Firewise Community concerns through quarterly newsletters sent to each lot owner
- Annual Firewise Community awareness meeting with owners features a guest speaker

In the applicant's November 10, 2015 submission, responsibilities between the developer, owners association and the Architectural Review Committee are explained. The developer will act as the declarant under the CC&Rs until the development is turned over to the owners association. Under the CC&Rs, a transition committee must be formed for the turn over. Until that time, the developer and the ARC will be solely responsible for implementing the WMP. Thereafter, responsibility for implementation will reside with the owners association per the CC&Rs.

- F. Provide a specific, mapped evacuation plan for the entire Caldera Springs Resort, including directions for operation of any access gates

**FINDING:** Page 9 of the WMP addresses the evacuation plan and states that the two primary evacuation points will be the existing access drive onto South Century Drive to the west, and the proposed access drive onto Vandevent Road to the south. The annexation property will also connect to an existing secondary evacuation point to the north, which exits into the Sunriver Business Park. All access gates open, or will open, automatically for exiting traffic. Each gate has and will have a Knox Box with keys to override the closure system in the event of a power failure.

The applicant's November 10, 2015 submission suggests that the CMP shows evacuation routes in that there are only three routes of egress from the proposed resort. The applicant proposes to provide signage indicating evacuation routes within the developed area. The Hearings Officer concludes that the CMP is a sufficient map, but also that a condition requiring evacuation route signage is warranted.

- G. Provide a detailed description of when and how residents and guests will be informed of the wildfire plan requirements and the evacuation plan.

**FINDING:** Page 10 of the WMP indicates each lot owner will receive quarterly newsletters detailing Firewise concerns, and that the DRC will hold an annual Firewise awareness meeting with owners. The applicant states that each new homeowner will be provided with this information upon purchase. As noted above, the Design Guidelines for restrictions and treatments within 30 feet of each dwelling will apply at all times. A condition of approval will require evacuation route signage. The Hearings Officer concludes that these measures in combination will be sufficient to address this criterion.

- I. **Adequate public safety protection will be available through existing fire districts or will be provided onsite according to the specification of the state fire marshal. If the resort is located outside of an existing fire district the developer will provide for staffed structural fire protection services. Adequate public facilities to provide for necessary safety services such as police and fire will be provided on the site to serve the proposed development.**

**FINDING:** Fire protection will be provided by the La Pine Rural Fire Protection District, and police protection will be provided by the Deschutes County Sheriff. This criterion is met.

- J. **Streams and drainage. Unless otherwise agreed to in writing by the adjoining property owner(s), existing natural drainages on the site will not be changed in any manner which interferes with drainage patterns on adjoining property. All surface water drainage changes created by the development will be contained on site in a manner which meets all standards of the Oregon State Department of Environmental Quality (DEQ). The erosion control plan for the subject development will meet all standards of ORS 468.**

**FINDING:** There are no natural drainages on the annexation property. Topography of the site is generally level, with slopes predominantly between zero and six percent. The native sandy soils on-site along with the significant amount of open space will promote surface infiltration of most stormwater flow. The annexation property will be designed to direct excess stormwater flow to the existing detention basins within the existing Resort. For these reasons, the Stormwater Disposal and Erosion Control Master Plan, submitted as Exhibit L, concludes that post-development stormwater flow rates will not exceed pre-development flow rates, and that all stormwater flow will be contained with the Caldera Spring Destination Resort. This criterion is met.

- K. **Adequate water will be available for all proposed uses at the destination resort, based upon the water study and a proposed water conservation plan. Water use will not reduce the availability**

**of water in the water impact areas identified in the water study considering existing uses and potential development previously approved in the affected area. Water sources shall not include any perched water table. Water shall only be taken from the regional aquifer. Where a perched water table is pierced to access the regional aquifer, the well must be sealed off from the perched water table.**

**FINDING:** As discussed above, the existing Sunriver water distribution system will be extended to serve the annexation property. A condition of approval requiring the applicant to provide a signed agreement for water service prior to Final Master Plan approval is warranted. The findings addressing water supply under DCC 18.113 are relevant here and are adopted here by this reference.

- L. The wastewater disposal plan includes beneficial use to the maximum extent practicable. Approval of the CMP shall be conditioned on applicant's making application to DEQ for a Water Pollution Control Facility (WPCF) permit consistent with such an approved wastewater disposal plan. Approval shall also be conditioned upon applicant's compliance with applicable Oregon Administrative Rules regarding beneficial use of waste water, as determined by DEQ. Applicant shall receive approval of a WPCF permit consistent with this provision prior to applying for approval for its Final Master Plan under DCC 18.113.**

**FINDING:** The combined Sewage Collection and Water Systems Master Plan was submitted as Exhibit I. In addition, Exhibit J is a Wastewater Treatment Review, prepared by Vision Engineering. At the present time, the existing Sunriver Environmental treatment plan is covered by an active Water Pollution Control Facility ("WPCF") permit. The existing Sunriver wastewater treatment system is designed and operated to store treated sewage effluent during the winter months and irrigate at agronomic rates during the summer months. Treated effluent is stored in an existing reservoir at the northeast corner of the Sunriver resort during the winter months. The treated effluent has been utilized to irrigate the northerly golf course for many decades. That re-use of treated effluent will continue in the future. In addition, treated effluent is utilized for irrigation of agricultural lands adjacent to the existing storage facility. Staff found, and the Hearings Officer agrees, the wastewater disposal plan includes a beneficial use, meeting this criterion.

The following conditions of approval are warranted:

- A. The applicant shall provide a signed agreement for sewer service prior to Final Master Plan approval.
- B. The applicant shall receive approval of a WPCF permit that includes the annexation property Prior to Final Master Plan approval,

With the proposed conditions of approval, this criterion is met.

- M. The resort will mitigate any demands it creates on publicly owned recreational facilities on public lands in the surrounding area.**

**FINDING:** The primary recreational facilities are developed on-site and will include additional developed recreational facilities, including a pool, resort core areas and developed recreational paths. The applicant argues that while resort users can be expected to use public lands in the vicinity and private recreational facilities such as Mt. Bachelor, there are no publicly owned recreational facilities located on public lands in the surrounding area. The Hearings Officer cannot identify evidence in the record indicating that the annexation will create undue demand on publicly owned recreational facilities on public lands in the surrounding area. This criterion is met.

- N. Site improvements will be located and designed to avoid or minimize adverse effects of the resort on the surrounding land uses. Measures to accomplish this may include establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and appropriate fences, berms, landscaped areas and similar types of buffers; and setback of structures and other developments from adjacent land uses.**

**FINDING:** To the north is the Sunriver Business Park. To the east is the Burlington Northern Railroad, with undeveloped USFS lands east of the railroad. Vandever Road borders the southern edge of the annexation property, with Vandever Ranch, a residential subdivision, to the south across Vandever Road. South Century Drive borders the southwestern portion of the annexation property, with the Crosswater development to the west, across South Century Drive. With the exception of the northwestern secondary access road, all site improvements within the annexation property will observe a minimum setback of 150 feet. Within this setback, the applicant proposes to retain existing tree cover and vegetation. Along the eastern, southern and southwestern edges of the annexation property, the actual buffer from on-site improvement to adjacent lands will be greater due the proposed Wildlife Mitigation Tract to the east, Vandever Road to the south, and South Century Drive the west. To further mitigate adverse impacts from on-site development, the applicant has proposed to locate developed recreational facilities in the central portion of the annexation property. This criterion is met.

- O. The resort will be served by an on-site sewage system approved by DEQ and a water system approved by the Oregon State Health Division except where connection to an existing public sewer or water system is allowed by the County Comprehensive Plan, such service will be provided to the resort.**

**FINDING:** As discussed above, the applicant proposes to connect to existing public sewer and water systems.

- P. The destination resort will not alter the character of the surrounding area in a manner that substantially limits, impairs or prevents permitted or conditional uses of surrounding properties.**

**FINDING:** As discussed above, the proposed resort will not limit the types of forestry uses permitted on the USFS property to the east, including open space preservation, recreational trails, wildlife habitat, and low intensity forest maintenance activities. The proposal includes elements such as low intensity recreation, eating establishments, and residential uses that are similar and complementary to existing uses at the adjacent Crosswater development, Sunriver Business Park, existing Caldera Springs, and the

Sunriver Resort. There is no evidence to suggest that development of the annexation property will have any impact on the types of uses permitted both conditionally and as outright permitted uses on surrounding properties. This criterion is met.

- Q. Commercial, cultural, entertainment or accessory uses provided as part of the destination resort will be contained within the development and will not be oriented to public highways adjacent to the property. Commercial, cultural and entertainment uses allowed within the destination resort will be incidental to the resort itself. As such, these ancillary uses will be permitted only at a scale suited to serve visitors to the resort.**

**The commercial uses permitted in the destination resort will be limited in type, location, number, dimensions and scale (both individually and cumulatively) to that necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:**

- 1. Its primary purpose is to provide goods or services that are typically provided to overnight or other short term visitors to the resort, or the use is necessary for operation, maintenance or promotion of the destination resort; and**
- 2. The use is oriented to the resort and is located away from or screened from highways or other major through roadways.**

**FINDING:** The commercial, cultural, entertainment and accessory uses provided as part of the existing resort have been approved, are all internal to the resort, and satisfy this standard. The applicant states that future commercial, cultural, entertainment and accessory uses will be similarly located in the one or more resort core areas proposed for the annexation property. The proposed core resort areas are all located internal to the annexation property, and not oriented to any adjacent public roadways or highways. This criterion is met.

- R. A plan exists to ensure a transfer of common areas, facilities such as sewer, water, streets and responsibility for police and fire protection to owners' associations or similar groups if contemplated. If such transfer is not contemplated, the owner or responsible party shall be clearly designated. Adequate open space, facility maintenance and police and fire protection shall be ensured in perpetuity in a manner acceptable to the County.**

**FINDING:** The record shows that the CCRs for the property provide the mechanism for the eventual transfer of common areas, facilities such as sewer, water, streets to the homeowners' association. Fire and police protection will be provided by public agencies, so no transfer mechanism is required. This criterion is met.

- S. Temporary structures will not be allowed unless approved as part of the CMP. Temporary structures will not be allowed for more than 18 months and will be subject to all use and site plan standards of DCC Title 18.**

**FINDING:** The applicant states that no temporary structures are planned for the annexation property.

**T. The open space management plan is sufficient to protect in perpetuity identified open space values.**

**FINDING:** The Open Space Management Plan, submitted as Exhibit F, details open space elements including natural common areas, lakes, ponds and streams, and pocket parks and picnic areas. This plan indicates that the natural common areas, pocket parks and small picnic areas will be dedicated to the homeowners association, with the association responsible for operation and maintenance. The Open Space Management Plan states the draft CCRs, submitted as Exhibit D, reference the dedication of common areas and related restrictions or opportunities of use.

5. Section 18.113.120 – Conservation Easements.

**FINDING:** At both the public hearings and in written testimony COLW argued that the subject property is a tract of land that contains a Goal 5 resource site, and for that reason must be placed in a conservation easement under DCC 18.113.120. COLW states that 80% of the property lies in designated deer migration range which qualifies it for this code provision.

The applicant counters that the provision is not applicable because it was not implemented for Caldera Springs, and that the “resource” the County has elected to protect is not the entire deer migration range, but a smaller subset of those areas – “Deer Migration Priority Areas.” The applicant provides sections of Deschutes County Ordinance No. 2001-018 which state that destination resorts should be limited to areas outside the Deer Migration Priority Areas.

Staff provided additional research in a December 22, 2015 memo. The memo explains the distinction between the Bend/La Pine Deer Migration Corridor and Deer Migration Priority Areas. While true that 80% of the subject property is within the migration corridor, the County has elected to allow destination resorts in those areas, but not within Deer Migration Priority Areas.

The record is not in dispute about where the proposed development is to be located. The proposal is located outside any designated Deer Migration Priority Area. As the findings above demonstrate, the portion within the migration corridor are subject to both the destination resort standards and the County’s conditional use criteria for the WA combining zone.

A closer look at Ordinance No. 2001-018 (Exhibit 2 of applicant’s December 22, 2015 letter) shows that the County made a decision to refine the comprehensive plan with respect to Goal 5 resources. The findings in support of the ordinance state that the amendment “identify land within the corridor but outside the Deer Migration Priority Area as appropriate for destination resort development...” if those lands can otherwise meet DCC 18.113. (See Findings, Section 13). This indicates a Goal 5 decision to “limit” uses within the resource area and prohibit conflicts in others. Since no part of the proposed development will occur in the Deer Migration Priority Area, as it is reserved as a migration corridor, there is no purpose in also imposing a conservation easement upon that portion of the subject property. The Hearings Officer concludes that DCC 18.113.120 is inapplicable in this instance.

Dwelling Density – Since this section of the decision deals with restrictions in the County’s deer migration corridor, it is appropriate to address COLW’s arguments regarding dwelling density. COLW argues that Deschutes County Ordinance No. 92-040 requires dwelling density to be limited in order to allow 80% of the development area to be left as open space. COLW does not identify the location of the alleged requirement within the ordinance.

The applicant counters that COLW is misreading the ordinance and that any dwelling density limits imposed by Ordinance 92-040 apply only in “deer winter range” and not to deer migration corridors. The applicant also argues that the density limitations only apply in the rural residential zone or multiple use agriculture zones. After reviewing Ordinance 92-040, the Hearings Officer agrees that the dwelling density provisions only apply to “deer winter range” and not to deer migration areas. The explanation provided in the applicant’s December 29, 2015 letter is sufficient to rebut COLW’s argument.

**F. CHAPTER 18.128, CONDITIONAL USES**

1. 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:** Although the proposed annexation will ultimately include single-family dwellings, the subject conditional use permit does not request an individual single-family dwelling. For this reason, the County’s general conditional use criteria apply. Those criteria were adequately addressed above.

**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;**
2. **Adequacy of transportation access to the site; and**
3. **The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** In her decision on the original Caldera Springs approval, the Hearings Officer made the following findings with respect to these criteria,

*“This section of Chapter 18.128 includes general standards for the permitting of a conditional use. The referenced general standards relate to suitability, transportation, site characteristics, and compatibility. The applicant has addressed these general standards in its application under the provisions of DCC Chapter 18.113. The Hearings Officer concludes the findings addressing DCC Chapter 18.113 are adequate to assure that, in this case, DCC 18.125.015(A) is satisfied as well.”*

The Hearings Officer agrees with this conclusion and adopts the relevant findings from DCC18.113 here by this reference.

- 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).**
- 1. Site, design and operating characteristics of the use;**
  - 2. Adequacy of transportation access to the site; and**
  - 3. The natural and physical features of the site, including, but not limited to, general topography, natural hazards and natural resource values.**

**FINDING:** In her decision on the original Caldera Springs approval, the Hearings Officer made the following findings with respect to these criteria,

*“This section of Chapter 18.128 includes general standards for the permitting of a conditional use. The referenced general standards relate to suitability, transportation, site characteristics, and compatibility. The applicant has addressed these general standards in its application under the provisions of DCC Chapter 18.113. The Hearings Officer concludes the findings addressing DCC Chapter 18.113 are adequate to assure that, in this case, DCC 18.125.015(A) is satisfied as well.”*

The Hearings Officer agrees with this conclusion and adopts the relevant findings from DCC18.113 here by this reference.

#### **IV. CONCLUSION:**

Based on the above Findings of Fact and Conclusions of Law, this application is **APPROVED** subject to the following conditions:

1. 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.
2. The resort access onto Vandever Road shall be limited to construction-related traffic during development of roads and infrastructure prior to final plat approval, and thereafter a gated emergency-only access. Said access shall be gated until Vandever Road is disconnected from Highway 97 or the Spring River Road/Century Drive roundabout is constructed.

#### *PRIOR TO FINAL MASTER PLAN APPROVAL*

3. The developer shall provide to the Planning Division signed agreements for sewer and water service.
4. The developer shall submit to the Planning Division proof of a Wastewater Pollution Control Facility permit that includes the annexation property.

#### *PRIOR TO FINAL PLAT*

5. The approach apron to Vandever Road must be paved to reduce the amount of gravel and debris tracked onto Vandever Road from the property.

6. Before approval of each final plat, all the following shall be provided:
  - A. Documentation demonstrating compliance with the 2.5 to 1 ratio as defined in DCC 18.113.060(D)(2);
  - B. Documentation on all individually-owned residential units counted as overnight lodging, including all of the following:
    - 1) Designation on the plat of any individually-owned units that are going to be counted as overnight lodging;
    - 2) Deed restrictions requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
    - 3) An irrevocable provision in the resort Conditions, Covenants and Restrictions ("CC&Rs) requiring the individually-owned residential units designated as overnight lodging units to be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010;
    - 4) A provision in the resort CC&R's that all property owners within the resort recognize that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(iii) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County;
    - 5) Inclusion of language in any rental contract between the owner of an individually-owned residential unit designated as an overnight lodging unit and any central reservation and check in service or real estate property manager requiring that such unit be available for rental at least 38 weeks each year through a central reservation and check-in service operated by the resort or by a real estate property manager, as defined in ORS 696.010, and that failure to meet the conditions in DCC 18.113.060(L)(6)(b)(v) is a violation of Deschutes County Code and subject to code enforcement proceedings by the County.

*AT ALL TIMES*

7. 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.
8. Within the portions of the property subject to a Landscape Management Combining Zone, the following conditions of approval apply:
  - A. Except as necessary for construction of access roads, building pads, septic drainfields, public utility easements, parking areas, etc., the existing tree and shrub cover screening the development from the designated road, river, or stream shall be retained. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act, or agricultural use of the land. Removal of vegetation in

accordance with the approved Wildfire Management Plan is allowed as removal of hazardous vegetation.

- B. All new structures and additions to existing structures shall be finished in muted earth tones that blend with and reduce contrast with the surrounding vegetation and landscape of the building site.
  - C. No large areas, including roofs, shall be finished with white, bright or reflective materials. Roofing, including metal roofing, shall be nonreflective and of a color which blends with the surrounding vegetation and landscape.
  - D. Except as necessary to accomplish the goals of the approved Wildfire Management Plan and in locations where the developer has installed landscaped berms, the developer shall retain of existing vegetation, trees and topographic features that will reduce visual impact of structures as seen from Highway 97, South Century Drive and Vandever Road.
  - E. Structures shall not exceed 30 feet in height measured from the natural grade on the side(s) facing Highway 97, South Century Drive and Vandever Road.
  - F. New exterior lighting, including security lighting, shall be sited and shielded so that it is directed downward and is not directly visible from Highway 97, South Century Drive and Vandever Road.
  - G. No signs or other forms of outdoor advertising that are visible from a designated landscape management river or stream shall be permitted. Property protection signs (No Trespassing, No Hunting, etc.) are permitted.
9. For those portions of the property within a Wildlife Area Combining Zone, the developer shall comply with the fence standards pursuant to DCC 18.88.070.
10. Prior to development of each phase of the resort expansion, the developer shall submit to the Planning Division an erosion control plan for that phase.
11. The resort as a whole shall maintain a maximum ratio of single-family dwelling units to overnight accommodation units of 2.5:1.
12. Overnight Lodging Units (OLUs) shall be made available for overnight rental use by the general public for at least 38 weeks per calendar year through one or more central reservation and check-in services operated by the destination resort or by a real estate manager, as defined in ORS 696.010.
13. Except as otherwise specified herein, all development (including structures, site obscuring fences of over three feet in height and changes to the natural topography of the land) shall be setback from exterior property lines as follows:
- A. Three hundred fifty feet for commercial development including all associated parking areas;
  - B. Two hundred fifty feet for multi-family development and visitor oriented accommodations (except for single family residences) including all associated parking areas;
  - C. One hundred fifty feet for above grade development other than that listed in DCC 18.113.060(G)(2)(a)(i) and (ii), including any installed landscaped berms;
  - D. One hundred feet for roads;
  - E. Fifty feet for golf courses; and
  - F. Fifty feet for jogging trails and bike paths where they abut private developed lots and no setback for where they abut public roads and public lands.

- G. Notwithstanding Condition of Approval No. 11(C), above grade development other than that listed in DCC 18.113.060(G)(2)(a)(i) and (ii) shall be set back 250 feet in circumstances where state highways coincide with exterior property lines.
  - H. The setbacks identified in Condition of Approval No. 11 shall not apply to entry roadways and signs.
14. The resort shall compile, and maintain, in perpetuity, a registry of all overnight lodging units.
- A. The list shall identify each individually-owned unit that is counted as overnight lodging.
  - B. At all times, at least one entity shall be responsible for maintaining the registry and fulfilling the reporting requirements of DCC 18.113.060(L)(2) through (6).
  - C. Initially, the resort management shall be responsible for compiling and maintaining the registry.
  - D. As a resort develops, the developer shall transfer responsibility for maintaining the registry to the homeowner association(s). The terms and timing of this transfer shall be specified in the Conditions, Covenants & Restrictions (CC&Rs).
  - E. Resort management shall notify the County prior to assigning the registry to a homeowner association.
  - F. Each resort shall maintain records documenting its rental program related to overnight lodging units at a convenient location in Deschutes County, with those records accessible to the County upon 72 hour notice from the County.
  - G. As used in this section, "resort management" includes, but is not limited to, the applicant and the applicant's heirs, successors in interest, assignees other than a home owners association.
15. An annual report shall be submitted to the Planning Division by the resort management or home owners association(s) each February 1, documenting all of the following as of December 31 of the previous year:
- A. The minimum of 150 permanent units of overnight lodging have been constructed or that the resort is not yet required to have constructed the 150 units;
  - B. The number of individually-owned residential platted lots and the number of overnight-lodging units;
  - C. The ratio between the individually-owned residential platted lots and the overnight lodging units;
  - D. The following information on each individually-owned residential unit counted as overnight lodging.
  - E. Who the owner or owners have been over the last year;
  - F. How many nights out of the year the unit was available for rent;
  - G. How many nights out of the year the unit was rented out as an overnight lodging facility under DCC 18.113;
  - H. Documentation showing that these units were available for rental as required.
  - I. This information shall be public record subject to ORS 192.502(17).
16. To facilitate rental to the general public of the overnight lodging units, the resort shall set up and maintain in perpetuity a telephone reservation system.
17. The resort shall ensure that any outside property managers renting required overnight lodging units shall be required to cooperate with the provisions of this code and to annually provide rental information on any required overnight lodging units they represent to the central office as described in DCC 18.113.060(L)(2) and (3).

18. The resort shall comply with the approved Wildlife Report.
19. Each audit report required by the approved Wildlife Report shall determine the timing of the subsequent audit report, with an audit report required at least every five years. Each audit report shall be submitted to the Planning Division.
20. The Covenants, Conditions and Restrictions (CCRs) and/or Bylaws for the resort shall include a specific provision for funding of the Wildlife Report requirements and retention of a professional biologist.
21. The resort shall comply with the approved Wildfire Management Plan.
22. The homeowners association shall submit proof of Firewise Community recognition to the Planning Division annually from the date of first recognition. This requirement shall be included in the CCRs for the homeowners association.
23. The homeowners association and/or the Caldera Springs Design Review Committee shall retain a wildland fire consultant to assess ladder fuel buildup along with any necessary thinning, spot treatment of downed fuels and mowing. Prior to any fuels treatment, the wildland fire consultant shall coordinate with the retained professional biologist to ensure treatments do not compromise the goals of the Wildlife Report.
24. The Covenants, Conditions and Restrictions (CCRs) and/or Bylaws for the resort shall include a specific provision for funding of the Wildfire Management Plan requirements and retention of a wildland fire consultant.



Kenneth D. Helm, Hearings Officer

Dated this 15<sup>th</sup> day of April, 2016.

Mailed this 15<sup>th</sup> day of April, 2016.

**A DECISION BY THE HEARINGS OFFICER BECOMES FINAL TWELVE (12) DAYS AFTER THE DATE OF MAILING, UNLESS APPEALED BY A PARTY OF INTEREST.**

REVIEWED  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings Officer’s Decision in \*  
File No. 247-15-000464-CU (247-16-000240-A) \* ORDER NO. 2016-022

WHEREAS, Appellant, Central Oregon Landwatch appealed the Hearings Officer’s decision in application number 247-15-000464-CU; and

WHEREAS, Section 22.32.027 of the Deschutes County Code allows the Board of County Commissioners (Board) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The Board will hear the above-described appeal for application number 247-15-000464-CU (247-16-000140-A).

Section 2. The appeal shall be heard on the record.

Section 3. Staff shall set a hearing date and cause notice to be given to persons or parties entitled to notice pursuant to DCC 22.32.030.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DEBONE, Commissioner

REVIEWED  
\_\_\_\_\_  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Declining Review of Hearings Officer’s Decision      \*  
in File No. 247-15-000464-CU (247-16-000240-A)                      \*                      ORDER NO. 2016-022

WHEREAS, Appellant, Central Oregon Landwatch appealed the Hearings Officer’s decision in application number 247-15-000464-CU; and

WHEREAS, Section 22.32.027 of the Deschutes County Code allows the Board of County Commissioners (Board) discretion on whether to hear appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application on appeal; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY ORDERS as follows:

Section 1. The Board will not hear the above-described appeal for application number 247-15-000464-CU (247-16-000240-A).

Section 2. The appellant shall be granted a refund of some of the appeal fees, according to County procedures.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ALAN UNGER, Chair

\_\_\_\_\_  
TAMMY BANEY, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
ANTHONY DEBONE, Commissioner



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**DATE:** April 29, 2016  
**TO:** Board of County Commissioners  
**FROM:** Will Groves, Senior Planner  
**RE:** Appeal of a Hearings Officer's decision. File Nos. 247-15-000113-CU, 247-15-000114-CU, 247-15-000115-NUV, 247-15-000116-LM (247-15-000670-A)

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### BACKGROUND

In approximately 1976, applicant's predecessor constructed a small structure on the property, referred to as the "bathhouse," that had a sink, toilet, shower, and laundry facilities inside and a faucet and sink outside.

In 2009 and 2010, the applicant built several structures on the subject property, including the existing dock, freestanding decks, walkways, garage, and an addition to the "bathhouse" consisting of a bedroom and attached decking (effectively creating the bunkhouse). The applicant also placed eight cubic yards of gravel on the driveway.

In 2013, the county received code violation complaints concerning construction and use of improvements on the subject property without necessary permits and approvals: 247-13205-CE (septic system); 247-13206-CE (work without building permits); and 247-C13207-CE (work without land use approval). The applicant submitted the subject land use applications seeking after-the-fact authorization/permits.

The Hearings Officer issued a decision on December 9, 2015 finding that the proposal does not comply with all applicable regulations. Specifically, the "bathhouse" was found to have been unlawfully established while PL-5 was the active zoning code, aboveground decks were found to be not allowed in the 100-foot river setback, and the dock was found not to comply with a number of regulations. On December 22, 2015, the applicant appealed the decision to the BOCC.

The Board conducted a de novo public hearing on March 30, 2016. The written record closed on April 20, 2016. Staff has developed this memo and a decision matrix to help the Board engage with the key decision points in this matter.

## II. Key Issues

**This deliberation summary of party positions is largely composed of direct quotes. Some quotes have been edited for brevity, clarity, or issue focus.**

### **M1 - Can new above-grade decks be constructed within 100' of a river?**

**Issue Summary:** The applicant constructed two connected raised decks within 100 feet of the Deschutes River. DCC 18.96.100(B) requires, "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 from the ordinary high water mark."

**Applicant:** Applicant's decks fall under the definition of "landscaping" pursuant to the Deschutes County Code, and are not structures. Landscaping is not regulated in the Flood Plain Zone, so the decks should be allowed outright as an accessory use to the primary use of the subject property.

Applicant has also offered to lower the decks so that they are at-grade with the ground, should it be required as a condition of approval.

**Hearings Officer:** The Hearings Officer has found the inclusion of "decks" in the definition of "landscaping" does not mean that decks are not also "structures" that are subject to provisions such as the river setback in this section.

The applicant has not identified, nor has the Hearings Officer found, any provision in FP Zone or elsewhere in Title 18 that would permit the free-standing decks to be located within the 100-foot river setback simply because they are "river-dependent" – i.e., facilitating river viewing. And as the staff report correctly notes, the purpose of the 100-foot river setback is to prevent construction of structures – other than docks and piers – in close proximity to the river and potentially within riparian areas and wetlands.

**Staff Comment:** Staff believes that the decks are structures under the DCC 18.04.030 definition:

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

Staff believes that the decks have a fixed connection to the ground or are a "similar permanent fixture". To the extent they also might also fall within an expanded definition of "landscaping" the decks are not exempt them from the requirement to be set back from the river.

At one point, staff thought that placing the decks at-grade would allow them to comply with the code. This is because the definitions of "yard" and "setback" require these areas to be "unobstructed from the ground upward". However, upon further study of the relevant code quoted above, neither "yard" nor "setback" is used in these sections. Rather, permanent fixtures must be "set back" from the river, regardless of their relation to grade.

Therefore, staff believes the decks cannot be permitted within 100' of the Deschutes River.

### **M2 – Does the dock comply with river frontage standards?**

**Issue Summary:** Dock construction is subject to the provision of DCC 18.96.080(G)(4). One criterion requires that, “No individual boat dock or pier shall be allowed on any lot with less than 200 feet of river frontage.” There is significant debate in the record if the property complies with this requirement. This debate hinges on the methodology used for measuring frontage.

The river frontage is primarily a lineal feature. A straight-line measurement of the river frontage comes to approximately 175 feet.

Staff and Hearings Officers have previously admitted “nook and cranny” surveys performed by Scott Freshwaters, Surveyor, which capture the detailed frontage of a property. Mr. Freshwaters “nook and cranny” survey of the subject property broke the frontage into 63 segments measuring a total of 196.82 feet. This is largely because of the unevenness of the concrete riprap armoring the bank.

Sun Country Engineering & Surveying conducted an additional survey on September 16, 2015 with 183 segments totaling 209.5 feet of shoreline. The difference when compared to the Freshwaters survey is accounted for in a letter from Tim Weishaupt, P.E. (Exhibit DD) and is primarily attributed to ice-free conditions for the Sun Country survey.

**Applicant:** All real property is measured precisely, down to inches and degrees, and that property descriptions can in fact be variable, particularly where the land borders a body of water. The Subject Property should be measured no differently. If Applicant's property was not adjacent to the Deschutes River, but instead another parcel of dry land, the only acceptable measurement method for measuring those property lines would be the precise method employed by Mr. Weishaupt. Further, other docks approved by the County in the past have been approved using this same precise method of measurement to determine river frontage measurements.

**Hearings Officer:** I find the appropriate measurement of a lot's river frontage is not its cumulative length measured by every “nook and cranny” of the irregular shoreline as depicted on the applicant's “Shoreline Survey.” If that were the case, a property's frontage on the Deschutes River, the level of which is highly regulated and has dramatic seasonal variations, could be different depending on the time of measurement. I find it unlikely the drafters of Title 18 intended river frontage to be such a variable measurement. For these reasons, I find river frontage should be measured by means of a recognized and objective demarcation – i.e., the ordinary high water mark (OHWM), defined in Section 18.04.030 as “the highest level on the bank of shore of a lake, river or stream to which the water ordinarily recedes annually in season.” The applicant's submitted site plan depicts the OHWM on the subject property and shows it is approximately 175 feet long.

**Staff Comment:** Staff believes the intent of the river frontage standard is to provide spacing between docks and limit the overall density of docks on the Deschutes River. Because the river frontage of the property is predominantly a linear feature, Staff believes the Sun Country survey, consisting of segments that average just over 1 foot in length, circumvents the intent of the river frontage standard. The “nook and cranny” survey increases the amount of “frontage” by about 20 percent. Since most properties on the Deschutes River have river frontages complicated by wetlands or small-scale non-linear bank features, staff believes affirming this measurement technique would effectively reduce the dock spacing and density well below the intended 200 feet.

While it might be tempting to simply measure “frontage” from property line to property line, other properties on river bends may have strongly convex or concave frontages that significantly extend the river frontage of these property. Measuring these frontages with a single best-fit curve would preserve the dock-to-dock spacing and density as intended by the code.

Staff recommends the board find that the intent of the river frontage standard is provide spacing between docks and limit the overall density of docks on the Deschutes River. Staff recommends that the Board find that, as a matter of policy and code interpretation, river frontage for the purposes 18.96.080(G)(4) shall be measured as a single line or a single curve.

### **M3 – Does the dock comply with dock square footage standards?**

**Issue Summary:** Dock construction is subject to the provision of DCC 18.96.080(G)(4). One criterion requires that, “No individual boat dock or pier shall be more than 20 feet in length or more than eight feet in width. The total surface area shall not exceed 160 square feet.” This section also specifies, “No walkway shall be more than four feet in width. The length of the walkway shall be no more than the minimum required to allow access to a dock.” Two definitions are also relevant to this issue:

*"Boat dock or pier, individual" means a personal use boating structure that is built over or floats upon the water of a lake, river or stream, and that serves one property owner for mooring boats or as a landing place for marine transport, and that has a surface area of 160 square feet or less.*

*"Walkway" means a structure that is built over or floats upon the waters of a lake, river or stream and that provides access to a boat dock or pier.*

The submitted site plan shows the dock is 10.6 long, and 24.1 feet wide, for an area of 255.46 square feet.

**Applicant:** Applicant has demonstrated that while the structure referenced as the "dock" may look like it is all one structure, it is actually two distinct structures, only one of which falls under the definition of the term "dock" as it is defined in the Deschutes County Code. Pursuant to DCC 18.04.030, term "dock" is defined as " ... a structure that is over or floats upon the water... ". Only 138 square feet of the structure meets the dock definition when the water level is at the ordinary high water mark. The other portion is an at-grade walkway that provides safe access to the dock, and was built on separate weight-bearing supports, though it is directly adjacent to the dock portion, making it appear as though the two are connected.

Applicant has also offered to reduce the size of the dock and/or walkway as a condition of approval should the BOCC require it.

**Hearings Officer:** The Hearings Officer found that the property was not eligible for an individual boat dock and did not provide detailed findings on this issue.

**Staff Comment:** If the dock is viewed as a single structure, it exceeds the width and square footage allowance for an individual dock. If the dock is viewed as two structures, the “dock” portion of the structure exceeds the width allowance for an individual dock. The “walkway” exceeds the width allowance for a walkway approach to an individual dock. In either case the dock structure does not conform to applicable standards.

The applicant has offered to reduce the size of the dock as a condition of approval. Even if the Board finds that the dock complies with the river frontage standard under M3, above, staff believes that a reduction in size of the dock cannot be conditioned at this point. Such a project would involve work in the bed and banks of the Deschutes River that cannot be evaluated for compliance with DCC 18.96.080(G), 18.120.050, and/or 18.128.270 without a detailed project description and agency comments from ODFW, DSL, ACOE, and USFWS.

#### **M4 – Does the dock comply with applicable fill-removal standards?**

**Issue Summary:** Work in the Bed and Banks of the Deschutes River must comply with a variety of criteria under DCC 18.128.270. The Hearings Officer found that 18.128.270(D)(2)(e) was inadequately addressed in the Applicant's materials. This section requires, "That the essential character, quality, and density of existing vegetation will be maintained. Additional vegetation shall be required if necessary to protect aquatic life habitats, functions of the ecosystem, wildlife values, aesthetic resources and to prevent erosion."

**Applicant:** Staff was unable to locate the applicant's briefing on this issue in the record.

**Hearings Officer:** Evidence in the record is sparse concerning the character, quality and density of the vegetation that existed prior to construction. The aerial photos in the record do not provide sufficient detail to assess the vegetation, although, as discussed above, the dock was constructed at the terminus of the gravel driveway and adjacent to existing riprap. Photos of the dock under construction appear to have been taken during the winter and as such do not depict the nature of vegetation during the growing season when it likely is more abundant. For these reasons, the Hearings Officer agrees with staff's conclusion that the record is inadequate from which to find this criterion is satisfied.

**Staff Comment:** Relying on available aerial photography, Staff believes that preexisting vegetation in the dock location was sparse reeds and rushes growing among the concrete riprap. While the construction of the dock may have reduced available light to such plants, staff believes the dock construction did not change the essential character, quality, and density of existing vegetation at the site. Comments from ODWF and USWFS do not recommend additional vegetation to protect aquatic life habitats, functions of the ecosystem, wildlife values, aesthetic resources and to prevent erosion. Staff recommends the Board find the applicant has complied with this criterion.

#### **M5 – Was the bathhouse lawfully established?**

**Issue Summary:** The applicant has requested verification of the Bath House as a non-conforming use under DCC 18.120.010(B). In order to qualify as a non-conforming use, the Bath House must have been lawfully established when it was constructed. This means that it needed to comply with any applicable zoning code, PL-5 in this case, and building codes effective in 1976.

The Hearings Officer found that the Bath House was not one of the authorized uses allowed in the RR-1 zone under PL-5 and that the structure should have obtained building permits at that time.

DCC 18.120.010(F)(3) requires that the preponderance of the evidence demonstrate that the use was lawfully established.

**Applicant:** The HO misinterpreted PL-5 to only authorize two "accessory uses in the RR-1 Zone - "not more than one private garage" and "home occupation." PL-5, RR-1 zone, does not authorize accessory uses. It places limitations on specific accessory uses. If the Bath House structure does not meet the description of any of the accessory uses listed under Section 3.160, then it was unregulated by those provisions, and there were no limitations on that particular accessory use in the RR-1 Zone.

The Hearings Officer also erred when she denied the verification of the Bath House as a non-conforming use because the structure may have "potentially" required a building permit when it was constructed, due to its size. Applicant argues that it is not appropriate for the Hearings Officer to make concrete findings based on unconfirmed recollections of third party standards that are not the laws of the State of Oregon or Deschutes County, and that it is not appropriate to make concrete findings based on the potential that a structure may have required a building permit, particularly when there is substantial evidence in the actual Record that proves otherwise.

Applicant has submitted undisputed evidence to the Record in the form of letters from the prior owner of the property, who also constructed the original Bath House. In his letter dated October 1, 2009, attached as Exhibit C to applicant's original Application dated March 6, 2016 ("Application"), prior owner James Cate states that he checked with the County about building permits for the Bath House in 1976, and was told that they were not necessary, as long as the septic system to serve the Bath House was approved. There has been no evidence to the contrary of Mr. Cate's written testimony submitted to date, nor has his testimony been challenged or disputed in any way. Mr. Cate's first-hand account of the circumstances of the legal construction of the Bath House and connected septic system is substantial evidence in the Record, and is undisputed.

**Hearings Officer:** Hearings Officer Green denied applicant's request for verification of the Bath House as a nonconforming use because the Bath House was not lawfully established at the time it was constructed in 1976. Specifically, she found that the construction of the Bath House was not legal under the applicable zoning code in 1976, PL-5, Rural Recreational Residential Zone ("RR-1"), because the Bath House did not conform to any of the accessory use limitations listed under 3.160 of PL-5. She also found that the Bath House structure "potentially" required a building permit when it was constructed.

**Staff Comment:** Staff believes that Recreation Vehicle use of the property was an unregulated use in 1976. This is because it is not mentioned in PL-5 and the County issued a septic permit to support that use on the property in 1976.

Could the Bath House have been constructed in 1976 as an accessory structure to the RV use of the property? Staff believes that this is unclear. Staff is unaware of other similar structures from this time period. However, Mr. Cate testified that he confirmed with the County that permits were not required to construct the structure and connect it to the approved septic system and this testimony is unrebutted. Staff believes that the preponderance of the evidence suggests that the Bath House was lawfully established as an accessory to the RV use of the property in 1976. Since overnight occupancy of structures on the property has not been lawfully established, staff recommends a condition of any approval requiring:

- 1) *Overnight occupancy of structures on the property is prohibited unless such use is otherwise lawfully established.*

The applicant has not asked to change the extent or nature of RV camping on the property nor have they asked to establish the RV use of the property as a non-conforming use. As such, RV use of the property should be subject to DCC 18.116.095, Recreational Vehicle as a Temporary Residence on an Individual Lot. Staff recommends a condition of any approval requiring:

- 2) *Any recreational vehicle use of the property shall be conducted in accordance with DCC 18.116.095.*

**Alternatively**, the Board could find, consistent with the Hearings Officer, that the Bath House was not a lawful use under PL-5. In this context, testimony by a prior owner of the property suggesting that the County did not enforce then-applicable requirements is legally insufficient to deem establishment of the Bath House lawful.

#### **M6 – Did the HO make a procedural error by referring to PL-5?**

**Issue Summary:** The Hearings Officer needs to make a decision based on information available on the record. The applicant objects that the Hearings Officer, in part, relied on the text of PL-5, which was not introduced to the record during the open record period.

The Hearings Officer has long held that she may take notice of County Ordinances and Land Use decisions without these materials being formally introduced to the record.

**Applicant:** At the time the Record Period closed for the Hearings Officer's proceedings for the instant applications, on October 13, 2015, neither PL-5 nor the Uniform Building Code were a part of the Record for the instant applications, and the Record was not re-opened. Applicant was not notified of the Record change, so had no chance to respond to the new evidence. The Hearings Officer unfairly raised and then relied upon the new arguments and evidence to make her Decision, without allowing Applicant to consider and respond to arguments raised for the first time by the Hearings Officer. This is a violation of the DCC.

**Staff Comment:** To the extent Hearings Officer may have improperly taken notice of PL-5, that zoning code is properly before the Board and that defect, if any, is cured. The Uniform Building Code in effect in 1976 has not been introduced into the record and cannot be (and is not being) relied upon as part of this record.

#### **M7 – Can the bathhouse's expansion within the river setback be permitted?**

**Issue Summary:** Under DCC 18.96.100(B) and 18.84.090(C), new structures and additions must be set back 100 feet from the Ordinary High Water Mark of the Deschutes River. The Bath House expansion occurred, in part, in the 100-foot river setback. To the extent the Board finds that the Bath House was lawfully established, it is unclear how the how that can expansion can be approved under the non-conforming use code.

Expansions of non-conforming structures are allowed in the "...front, side or rear yard setback area..." under DCC 18.120.010(A)(3). Both Staff and the HO concur that the river setback is not a "...front, side or rear yard setback area..." and that expansions in the river setback are governed by 18.120.030(D).

Expansion of "...an existing residential dwelling which is within 100 feet from the ordinary high water mark along a stream..." is allowed under 18.120.030(D). It is undisputed in the record

that neither the Bath House nor the Bunk House is a dwelling eligible for expansion under 18.120.030(D).

**Applicant:** The Bath House is a lawfully established nonconforming use that was not subject to any setback provisions when it was constructed in 1976, and that the new addition "does not project into the required setback area at any point." Therefore, the addition of the Bunk House to the backside of the Bath House is permitted as an alteration or expansion of a non-conforming use, which is not subject to river setback provisions.

**Hearings Officer:** Referring to 18.120.010(A)(3): "...this paragraph is not applicable because it does not expressly refer to encroachment into the river setback, but rather only to the front, rear and side setbacks – none of which is co-existent with the river setback."

Referring to 18.120.030(D): "The staff report states, and the Hearings Officer agrees, that this exception "provides the only pathway to expand structures in the 100-foot river setback and is only afforded to residential dwellings." Because I have found neither the original bathhouse nor the bunkhouse is a dwelling, I find this exception is not available."

**Staff Comment:** Staff and the Hearings Officer read the non-conforming structure code to disallow structural expansions in the 100-foot river setback generally, but allow a specific exception for dwellings under 18.120.030(D). Staff is concerned that the applicant's proposed reading of the non-conforming use code is both textually implausible and would set a policy weakening the significant riverfront/riparian protections that come from the 100-foot river setback. A text amendment is the appropriate venue for evaluating this sort of policy change.

**M8 – Has the applicant demonstrated that the expansion will have no adverse impact on the neighborhood with regard to wastewater?**

**Issue Summary:** DCC 18.120.010(E)(2) requires a finding that a non-conforming use alteration will have no greater adverse impact on the neighborhood. The HO declined to evaluate potential wastewater impacts, finding that this was subject to DEQ regulation.

Todd Cleveland, Deschutes County Environmental Soils Supervisor, has testified that the existing system is contaminating ground water and that increased use of the existing system would increase the contamination. Mr. Cleveland has also testified that the existing system should have been decommissioned in 1992, following an evaluation for residential development of the property. He also testified that other nearby, similarly situated, septic systems have typically degraded over time and fail to prevent groundwater contamination.

**Applicant:** There is proof that the on-site septic system was permitted when built and has been used since that time. If the 1992 denial had intended to decommission the entire existing system, it should have said so. The letter states absolutely nothing about entirely decommissioning the existing system on the property, or denial of anything more than the specific request to expand the existing system.

The Applicant has argued that the RV use of the septic system was a permitted use and that the connection of the Bath House to the system is presumed lawful through Mr. Cate's un rebutted testimony.

The septic system is used infrequently, and only during the 2-3 months out of the year that

applicant visits the property. The addition of the bedroom to the Bath House does not "change the nature or extent of the use of the property" or on-site septic system or cause further adverse impacts to the surrounding neighborhood.

**Hearings Officer:** The Hearings Officer found that the issue of the on-site septic system was not before her, and declined to make findings on the issue.

The HO found the status and use of the septic system on the subject property – and in particular whether or not it has been or can be approved for use in connection with the bunkhouse -- must be evaluated and authorized by the Environmental Soils Division pursuant to the applicable DEQ regulations. In other words, the Environmental Soils Division must determine whether the addition of a bedroom to the bathhouse would result in an increase in flow to the septic system.

**Deschutes County Environmental Soils:** There is "no indication of prior use" in the history of the on-site septic system, and that the 1992 denial for a request to expand the use of the existing septic system for a year-round expanded residence was also a notice that the entire existing system was to be decommissioned.

**Staff Comment:** Staff believes that the applicant has confused this issue by incorrectly assuming that the septic system is a non-conforming land use subject to DCC 18.120. Staff recommends that the Board find that the lawfulness of the installation, alteration, or continued use of the system is not subject to Title 18 (except regarding some locational requirements), and falls under DEQ regulation.

However, staff also believes that Hearings Officer incorrectly concluded any adverse impacts stemming from changes to the use of the system are not subject to DCC 18.120.010(E)(2). The proposed alteration of the non-conforming use includes the addition of living and sleeping areas to the Bath House. If this addition results in unmitigated adverse wastewater impacts, this application should be denied for failure to comply with 18.120.010(E)(2).

Increased use: The applicant has added a bedroom and neighbors have testified that guests arriving in a passenger vehicle have stayed at the site. This results in use of the septic system that is not associated with the RV use of the property. The addition of the bedroom has the potential to increase the quantity of wastewater beyond the historic RV-only use of the property.

Adverse impact: Given the shallow groundwater in the vicinity, there is no septic system that could completely avoid contamination of the groundwater (See Mr. Cleveland's testimony). Increased use will result in increased contamination unless the septic treatment technology is enhanced, if this enhancement is even feasible.

The applicant has not proposed use restrictions that would ensure there would be no increased wastewater discharge. The applicant has not proposed to enhance the wastewater treatment system to offset any increases in groundwater contamination. Therefore, staff believes the applicant has failed to demonstrate that the alteration of the Bath House to include a bedroom will not adversely impact the neighborhood by increasing groundwater contamination. Staff recommends the following conditions of any decision to ensure the use will not increase groundwater contamination:

- 1) *Overnight occupancy of structures on the property is prohibited unless such use is otherwise lawfully established.*

- 2) *Any recreational vehicle use of the property shall be conducted in accordance with DCC 18.116.095.*

#### Attachments

1. Decision matrix.

DREIFUSS DELIBERATION MATRIX

	Issue	Information in Record	Staff Comment	Board Options
1.	<b>Can new above-grade decks be constructed within 100' of a river?</b>	<p><b>HO:</b> The inclusion of “decks” in the definition of “landscaping” does not mean that decks are not also “structures” that are subject to provisions such as the river setback in this section.</p> <p><b>Applicant:</b> Applicant's decks fall under the definition of "landscaping" and are not structures. Landscaping is not regulated in the Flood Plain Zone, so the decks should be allowed outright as an accessory use to the primary use of the subject property.</p>	<p><b>Staff Comment:</b> Decks are structures under the DCC 18.04.030 definition. Staff believes the decks cannot be permitted within 100' of the Deschutes River.</p> <p>Sample motion for BOCC: <b>“Move that the Board adopt the Hearings Officer’s findings on this issue.”</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Find that decks are “landscaping” that is exempt from setbacks.</p>
2.	<b>Does the dock comply with river frontage standards?</b>	<p><b>HO:</b> I find the appropriate measurement of a lot’s river frontage is not its cumulative length measured by every “nook and cranny” of the irregular shoreline as depicted on the applicant’s “Shoreline Survey.” If that were the case, a property’s frontage on the Deschutes River, the level of which is highly regulated and has dramatic seasonal variations, could be different depending on the time of measurement. I find it unlikely the drafters of Title 18 intended river frontage to be such a variable measurement. For these reasons, I find river frontage should be measured by means of a recognized and objective demarcation – i.e., the ordinary high water mark (OHWM).</p> <p><b>Applicant:</b> .All real property is measured precisely, down to inches and degrees, and that property descriptions can in fact be variable, particularly where the land borders a body of water. Other docks approved by the County in the past have been approved using this same precise method of measurement to determine river frontage measurements.</p>	<p><b>Staff Comment:</b> Staff recommends the board find that the intent of the river frontage standard is provide spacing between docks and limit the overall density of docks on the Deschutes River. Staff recommends that the Board find that, as a matter of policy and code interpretation, river frontage for the purposes 18.96.080(G)(4) shall be measured as a single line or a single curve.</p> <p>Sample motion for BOCC: <b>“Move that the Board find that the intent of the river frontage standard is to provide spacing between docks and limit the overall density of docks on the Deschutes River. As a matter of policy and code interpretation, river frontage for the purposes of 18.96.080(G)(4) shall be measured as a single line or a single curve.”</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Adopt Staff’s recommendation.</p> <p>Find that real property is measured precisely down to inches and degrees, and that property descriptions can be variable</p>
3.	<b>Does the dock comply with dock square footage standards?</b>	<p><b>HO:</b> The Hearings Officer found that the property was not eligible for an individual boat dock and did not provide detailed findings on this issue.</p> <p><b>Applicant:</b> Applicant has demonstrated that while the structure referenced as the "dock" may look like it is all one structure, it is actually two distinct structures, only one of which falls under the definition of the term "dock" as it is defined in the Deschutes County Code. The other portion is an at-grade walkway that provides safe access to the dock, and was built on separate weight-bearing supports, though it is directly adjacent to the dock portion, making it appear as though the two are connected.</p>	<p><b>Staff Comment:</b> If the dock is viewed as a single structure, it exceeds the width and square footage allowance for an individual dock. If the dock is viewed as two structures, the “dock” portion of the structure exceeds the width allowance for an individual dock. The “walkway” exceeds the width allowance for a walkway approach to an individual dock. In any case the dock structure does not conform to applicable standards.</p> <p>Sample motion for BOCC: <b>“Move that the Board find that the dock/walkway does not comply with required dimensional standards for docks or walkways.”</b></p>	<p>Adopt Staff’s recommendation.</p> <p>Provide a novel interpretation.</p>

	Issue	Information in Record	Staff Comment	Board Options
4.	<b>Does the dock comply with applicable fill-removal standards?</b>	<p><b>HO:</b> Evidence in the record is sparse concerning the character, quality and density of the vegetation that existed prior to construction. The Hearings Officer agrees with staff's conclusion that the record is inadequate from which to find this criterion is satisfied.</p> <p><b>Applicant:</b> Evidence placed in the Record satisfies this criterion, and proves there was no existing vegetation disturbed when Applicant's dock was constructed over bank impacted from existing non-conforming riprap, and that the dock is in a location where another dock had been located as recently as December 2008.</p>	<p><b>Staff Comment:</b> Relying on available aerial photography, Staff believes that preexisting vegetation in the dock location was sparse reeds and rushes growing among the concrete riprap. While the construction of the dock may have reduced available light to such plants, staff believes the dock construction did not change the essential character, quality, and density of existing vegetation at the site. Staff recommends the Board find the applicant has complied with this criterion.</p> <p>Sample motion for BOCC: <b>"Move that the Board find that the applicant's project complies with 18.128.270(D)(2)(e)."</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Adopt Staff's recommendation.</p>
5.	<b>Was the bathhouse lawfully established?</b>	<p><b>HO:</b> The Bath House was not lawfully established at the time it was constructed in 1976. Construction of the Bath House was not legal under the applicable zoning code in 1976, PL-5, Rural Recreational Residential Zone ("RR-1"), because the Bath House did not conform to any of the accessory use limitations listed under 3.160 of PL-5. The Bath House structure "potentially" required a building permit when it was constructed.</p> <p><b>Applicant:</b> PL-5, RR-1 zone, does not authorize accessory uses. It places limitations on specific accessory uses. If the Bath House structure does not meet the description of any of the accessory uses listed under Section 3.160, then it was unregulated by those provisions, and there were no limitations on that particular accessory use in the RR-1 Zone.</p> <p>The Hearings Officer also erred when she denied the verification of the Bath House as a non-conforming use because the structure may have "potentially" required a building permit when it was constructed, due to its size. Applicant argues that it is not appropriate for the Hearings Officer to make concrete findings based on unconfirmed recollections.</p> <p>Undisputed evidence from prior owner James Cate states that he checked with the County about building permits for the Bath House in 1976, and was told that they were not necessary, as long as the septic system to serve the Bath House was approved. Mr. Cate's first-hand account of the circumstances of the legal construction of the Bath House and connected septic system is substantial evidence in the Record, and is undisputed.</p>	<p><b>Staff Comment:</b> Staff believes that Recreation Vehicle use of the property was an unregulated use in 1976. This is because it is not mentioned in PL-5 and the County issued a septic permit to support that use on the property in 1976.</p> <p>Could the Bath House have been constructed in 1976 as an accessory structure to the RV use of the property? Staff believes that this is unclear. Staff is unaware of other similar structures from this time period. Mr. Cate's testimony is unrebutted. Staff believes that the preponderance of the evidence suggests that the Bath House was lawfully established as an accessory to the RV use of the property in 1976.</p> <p>Sample motion for BOCC: <b>"Move that the Board find that the preponderance of the evidence demonstrates that the Bath House was lawfully established as an accessory to the RV use of the property in 1976. The Board finds that the conditions of approval recommended by staff under topic M5 in the deliberation memorandum shall be imposed as conditions of approval to limit use of the Bath House to the verified nonconforming use."</b></p> <p>Alternative Sample motion for BOCC: <b>"Move that the Board find, consistent with the Hearings Officer, that the Bath House was not a lawful use under PL-5."</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Adopt Staff's recommendation.</p>

	Issue	Information in Record	Staff Comment	Board Options
6.	<p><b>Did the HO make a procedural error by referring to PL-5?</b></p>	<p><b>HO:</b> Did not directly address issue.</p> <p><b>Applicant:</b> Neither PL-5 nor the Uniform Building Code were a part of the Record before the HO. Applicant was not notified of the Record change, so had no chance to respond to the new evidence. The Hearings Officer unfairly raised and then relied upon the new arguments and evidence to make her Decision, without allowing Applicant to consider and respond to arguments raised for the first time by the Hearings Officer. This is a violation of the DCC.</p>	<p><b>Staff Comment:</b> To the extent Hearings Officer may have improperly taken notice of PL-5, that zoning code is properly before the Board and that defect, if any, is cured. The Uniform Building Code in effect in 1976 has not been introduced into the record and cannot be (and is not being) relied upon as part of this record.</p> <p>Sample motion for BOCC: <b>“Move that the Board find that PL-5 code is properly before the Board and that a procedural defect, if any, is cured. The Uniform Building Code in effect in 1976 is not being relied upon as part of this record.”</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Find that any procedural defect has been cured.</p>
7.	<p><b>Can the bathhouse’s expansion within the river setback be permitted?</b></p> <p><b>(Only required if the Bath House is found to be lawful under M5)</b></p>	<p><b>HO:</b> Referring to 18.120.010(A)(3): “...this paragraph is not applicable because it does not expressly refer to encroachment into the river setback, but rather only to the front, rear and side setbacks – none of which is co-existent with the river setback.”</p> <p>Referring to 18.120.030(D): “The staff report states, and the Hearings Officer agrees, that this exception “provides the only pathway to expand structures in the 100-foot river setback and is only afforded to residential dwellings.” Because I have found neither the original bathhouse nor the bunkhouse is a dwelling, I find this exception is not available.”</p> <p><b>Applicant:</b> The Bath House is a lawfully established nonconforming use that was not subject to any setback provisions when it was constructed in 1976, and that the new addition "does not project into the required setback area at any point." Therefore, the addition of the Bunk House to the backside of the Bath House is permitted as an alteration or expansion of a non-conforming use, which is not subject to river setback provisions.</p>	<p><b>Staff Comment:</b> Staff and the Hearings Officer read the non-conforming structure code to disallow structural expansions in the 100-foot river setback generally, but allow a specific exception for dwellings under 18.120.030(D). The applicant’s proposed reading of the non-conforming use code is both textually implausible and would set a policy weakening the significant riverfront/riparian protections that come from the 100-foot river setback. .</p> <p>Sample motion for BOCC: <b>“Move that the Board adopt the Hearings Officer’s findings on this issue.”</b></p> <p>Alternative Sample motion for BOCC: <b>“Move that the Board find that non-conforming non-residential additions in the river setback are subject to DCC 18.120.010(A)(3).”</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Find that non-conforming non-residential additions in the river setback are subject to DCC 18.120.010(A)(3).</p>

	Issue	Information in Record	Staff Comment	Board Options
8.	<p><b>Has the applicant demonstrated that the expansion will have no adverse impact on the neighborhood with regard to wastewater?</b></p> <p><b>(Only required if the Bath House is found to be lawful under M5)</b></p>	<p><b>HO:</b> The HO found the status and use of the septic system on the subject property – and in particular whether or not it has been or can be approved for use in connection with the bunkhouse -- must be evaluated and authorized by the Environmental Soils Division pursuant to the applicable DEQ regulations.</p> <p><b>Applicant:</b> There is proof that the on-site septic system was permitted when built and has been used since that time. If the 1992 denial had intended to decommission the entire existing system, it should have said so. The letter states absolutely nothing about entirely decommissioning the existing system on the property, or denial of anything more than the specific request to expand the existing system.</p> <p>The Applicant has argued that the RV use of the septic system was a permitted use and that the connection of the Bath House to the system is presumed lawful through Mr. Cate’s unrebutted testimony.</p> <p>The septic system is used infrequently, and only during the 2-3 months out of the year that applicant visits the property. The addition of the bedroom to the Bath House does not "change the nature or extent of the use of the property" or on-site septic system or cause further adverse impacts to the surrounding neighborhood.</p> <p><b>Deschutes County Environmental Soils:</b> There is "no indication of prior use" in the history of the on-site septic system, and the 1992 denial for a request to expand the use of the existing septic system for a year-round expanded residence was also a notice that the entire existing system was to be decommissioned. Given the shallow groundwater in the vicinity, there is no septic system that could completely avoid contamination of the groundwater. Increased use will result in increased contamination unless the septic treatment technology is enhanced, if this enhancement is even feasible.</p>	<p><b>Staff Comment:</b> Staff believes that the applicant has confused this issue by incorrectly assuming that the septic system is a non-conforming land use subject to DCC 18.120. Staff recommends that the Board find that the lawfulness of the installation, alteration, or continued use of the system is not subject to Title 18 (except regarding some locational requirements), and falls under DEQ regulation.</p> <p>However, staff also believes that Hearings Officer incorrectly concluded any adverse impacts stemming from changes to the use of the system are not subject to DCC 18.120.010(E)(2). The proposed alteration of the non-conforming use includes the addition of living and sleeping areas to the Bath House. If this addition results in unmitigated adverse wastewater impacts, this application should be denied for failure to comply with 18.120.010(E)(2).</p> <p>Staff believes the applicant has failed to demonstrate that the alteration of the Bath House to include a bedroom will not adversely impact the neighborhood by increasing groundwater contamination. Staff recommends the following conditions of any decision to ensure the use will not increase groundwater contamination:</p> <p>Sample motion for BOCC: <b>“Move that the Board find that the applicant has not demonstrated the addition of living and sleeping areas to the Bath House will not adversely impact the neighborhood by increasing groundwater contamination. The Board finds that the conditions of approval recommended by staff under topic M8 in the deliberation memorandum shall be imposed as conditions of approval to prevent increased groundwater contamination.”</b></p>	<p>Adopt HO decision findings, with or without modification.</p> <p>Adopt Staff’s recommendation.</p> <p>Concur with the Applicant that the addition of living and sleeping areas to the Bath House will not adversely impact the neighborhood.</p>



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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### MEMORANDUM

**DATE:** April 28, 2016

**TO:** Board of County Commissioners

**FROM:** Will Groves, Senior Planner

**RE:** Elizabeth A. Dickson's appeal of a Hearings Officer's decision. File Nos. 247-15-000113-CU, 247-15-000114-CU, 247-15-000115-NUV, 247-15-000116-LM (247-15-000670-A)

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### BACKGROUND

In approximately 1976, Applicant's predecessor constructed a small structure on the property, referred to as the "bathhouse," that had a sink, toilet, shower, and laundry facilities inside and a faucet and sink outside.

In 2009 and 2010, the applicant built several structures on the subject property, including the existing dock, free-standing decks, walkways, garage, and an addition to the "bathhouse" consisting of a bedroom and attached decking, creating the bunkhouse. The applicant also placed eight cubic yards of gravel on the driveway.

In 2013, the county received code violation complaints concerning construction and use of improvements on the subject property without necessary permits and approvals: 247-13205-CE (septic system); 247-13206-CE (work without building permits); and 247-C13207-CE (work without land use approval). The applicant submitted the subject land use applications to permit the work performed after-the-fact.

The Hearings Officer issued a decision on December 9, 2015 finding that the proposal does not comply with all applicable regulations. Specifically, the "bathhouse" was found to have been unlawfully established while PL-5 was the active zoning code, aboveground decks were found to be not allowed in the 100-foot river setback, and the dock was found not to comply with a number of regulations. On December 22, 2015, the applicant appealed the decision to the BOCC.

The Board conducted a de novo public hearing on May 30, 2016. The written record closed on April 20, 2016. Staff has developed this memo and a decision matrix to help the Board engage with the key decision points in this matter.

## II. Key Issues

**This deliberation summary of party positions is largely composed of direct quotes. Some quotes have been edited for brevity, clarity, or issue focus.**

### **M1 - Can new above-grade decks be constructed within 100' of a river?**

**Issue Summary:** The applicant constructed two connected raised decks within 100 feet of the Deschutes River. DCC 18.96.100(B) requires, "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 from the ordinary high water mark."

**Applicant:** Applicant's landscaping decks fall under the definition of "landscaping" pursuant to the Deschutes County Code, and are not structures. Landscaping is not regulated in the Flood Plain Zone, so the landscaping decks should be allowed outright as an accessory use to the primary use of the subject property.

Applicant has also offered to lower the decks so that they are at-grade with the ground, should it be required as a condition of approval.

**Hearings Officer:** The Hearings Officer has found the inclusion of "decks" in the definition of "landscaping" does not mean that decks are not also "structures" that are subject to provisions such as the river setback in this section.

The applicant has not identified, nor has the Hearings Officer found, any provision in FP Zone or elsewhere in Title 18 that would permit the free-standing decks to be located within the 100-foot river setback simply because they are "river-dependent" – i.e., facilitating river viewing. And as the staff report correctly notes, the purpose of the 100-foot river setback is to prevent construction of structures – other than docks and piers – in close proximity to the river and potentially within riparian areas and wetlands.

**Staff Comment:** Staff believes that the decks are structures under the DCC 18.04.030 definition:

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

Staff believes that the decks have a fixed connection to the ground or are a "similar permanent fixture". To the extent they also might also fall within the definition of "landscaping" does not exempt them from the requirement to be set back from the river.

Staff thought that making the decks at-grade would allow them to comply with the code. This is because the definitions of "yard" and "setback" require these areas to be "unobstructed from the ground upward". However, upon careful reading of the relevant code quoted above, neither "yard" nor "setback" is used in these sections. Rather, permanent fixtures must be "set back" from the river, regardless of their relation to grade.

Therefore, staff believes the decks cannot be permitted within 100' of the Deschutes River.

## **M2 – Does the dock comply with river frontage standards?**

**Issue Summary:** Dock construction is subject to the provision of DCC 18.96.080(G)(4). One criterion requires that, “No individual boat dock or pier shall be allowed on any lot with less than 200 feet of river frontage.” There is significant debate in the record if the property complies with this requirement. This debate hinges on the methodology used for measuring frontage.

The river is frontage is primarily a lineal feature. A straight-line measurement of the river frontage comes to approximately 175 feet.

Staff and Hearings Officers have previously admitted “nook and cranny” surveys performed by Scott Freshwaters, Surveyor, which capture the detailed frontage of a property. Mr. Freshwaters “nook and cranny” survey of the subject property broke the frontage into 63 segments measuring a total of 196.82 feet. This is largely because of the unevenness of the concrete rip-rap armoring the bank.

Sun Country Engineering & Surveying conducted an additional survey on September 16, 2015 with 183 segments totaling 209.5 feet of shoreline. The difference when compared to the Freshwaters survey is accounted for in a letter from Tim Weishaupt, P.E. (Exhibit DD) and is primarily attributed to ice-free conditions for the Sun Country survey.

**Applicant:** All real property is measured precisely, down to inches and degrees, and that property descriptions can in fact be variable, particularly where the land borders a body of water. The Subject Property should be measured no differently. If Applicant's property was not adjacent to the Deschutes River, but instead another parcel of dry land, the only acceptable measurement method for measuring those property lines would be the precise method employed by Mr. Weishaupt. Further, other docks approved by the County in the past have been approved using this same precise method of measurement to determine river frontage measurements.

**Hearings Officer:** I find the appropriate measurement of a lot's river frontage is not its cumulative length measured by every “nook and cranny” of the irregular shoreline as depicted on the applicant's “Shoreline Survey.” If that were the case, a property's frontage on the Deschutes River, the level of which is highly regulated and has dramatic seasonal variations, could be different depending on the time of measurement. I find it unlikely the drafters of Title 18 intended river frontage to be such a variable measurement. For these reasons, I find river frontage should be measured by means of a recognized and objective demarcation – i.e., the ordinary high water mark (OHWM), defined in Section 18.04.030 as “the highest level on the bank of shore of a lake, river or stream to which the water ordinarily recedes annually in season.” The applicant's submitted site plan depicts the OHWM on the subject property and shows it is approximately 175 feet long.

**Staff Comment:** Staff believes the intent of the river frontage standard is to provide spacing between docks and limit the overall density of docks on the Deschutes River. Because the river frontage of the property is predominantly a linear feature, Staff believes the Sun Country survey, consisting of segments that average just over 1 foot in length, circumvents the intent of the river frontage standard. The “nook and cranny” survey increases the amount of “frontage” by about 20 percent. Since most properties on the Deschutes River have river frontages complicated by wetlands or small-scale non-linear bank features, staff believes affirming this measurement technique would effectively reduce the dock spacing and density well below the intended 200 feet.

While it might be tempting to simply measure “frontage” from property line to property line, other properties on river bends may have strongly convex or concave frontages that significantly extend the river frontage of these property. Measuring these frontages with a single best-fit curve would preserve the dock-to-dock spacing and density as intended by the code.

Staff recommends the board find that the intent of the river frontage standard is provide spacing between docks and limit the overall density of docks on the Deschutes River. Staff recommends that the Board find that, as a matter of policy, river frontage for the purposes 18.96.080(G)(4) shall be measured as a single line or a single best-fit curve.

### **M3 – Does the dock comply with dock square footage standards?**

**Issue Summary:** Dock construction is subject to the provision of DCC 18.96.080(G)(4). One criterion requires that, “No individual boat dock or pier shall be more than 20 feet in length or more than eight feet in width. The total surface area shall not exceed 160 square feet.” This section also specifies, “No walkway shall be more than four feet in width. The length of the walkway shall be no more than the minimum required to allow access to a dock.” Two definitions are also relevant to this issue:

*"Boat dock or pier, individual" means a personal use boating structure that is built over or floats upon the water of a lake, river or stream, and that serves one property owner for mooring boats or as a landing place for marine transport, and that has a surface area of 160 square feet or less.*

*"Walkway" means a structure that is built over or floats upon the waters of a lake, river or stream and that provides access to a boat dock or pier.*

The submitted site plan shows the dock is 10.6 long, and 24.1 feet wide, for an area of 255.46 square feet.

**Applicant:** Applicant has demonstrated that while the structure referenced as the "dock" may look like it is all one structure, it is actually two distinct structures, only one of which falls under the definition of the term "dock" as it is defined in the Deschutes County Code. Pursuant to DCC 18.04.030, term "dock" is defined as " ... a structure that is over or floats upon the water... ". Only 138 square feet of the structure meets the dock definition when the water level is at the ordinary high water mark. The other portion is an at-grade walkway that provides safe access to the dock, and was built on separate weight-bearing supports, though it is directly adjacent to the dock portion, making it appear as though the two are connected.

Applicant has also offered to reduce the size of the dock and/or walkway as a condition of approval should the BOCC require it.

**Hearings Officer:** The Hearings Officer found that the property was not eligible for an individual boat dock and did not provide detailed findings on this issue.

**Staff Comment:** If the dock is viewed as a single structure, it exceeds the width and square footage allowance for an individual dock. If the dock is viewed as two structures the “dock” portion of the structure exceeds the width allowance for an individual dock. The “walkway” exceeds the width allowance for a walkway approach to an individual dock. In either case the dock structure does not conform to applicable standards.

The Applicant has offered to reduce the size of the dock as a condition of approval. Even if the Board has found the dock complies with the river frontage standard under M3, above, staff believes that a reduction in size of the dock cannot be conditioned at this point. This is because such a project would involve work in the bed and banks of the Deschutes River that cannot be evaluated for compliance with DCC 18.96.080(G), 18.120.050, and/or 18.128.270 without a detailed project description and agency comments from ODFW, DSL, ACOE, and USFWS.

#### **M4 – Does the dock comply with applicable fill-removal standards?**

**Issue Summary:** Work in the Bed and Banks of the Deschutes River must comply with a variety of criteria under DCC 18.128.270. The Hearings Officer found that 18.128.270(D)(2)(e) inadequately addressed in the Applicant's materials. This section requires, "That the essential character, quality, and density of existing vegetation will be maintained. Additional vegetation shall be required if necessary to protect aquatic life habitats, functions of the ecosystem, wildlife values, aesthetic resources and to prevent erosion."

**Applicant:** Staff was unable to locate the Applicant's briefing on this issue in the record.

**Hearings Officer:** Evidence in the record is sparse concerning the character, quality and density of the vegetation that existed prior to construction. The aerial photos in the record do not provide sufficient detail to assess the vegetation, although, as discussed above, the dock was constructed at the terminus of the gravel driveway and adjacent to existing riprap. Photos of the dock under construction appear to have been taken during the winter and as such do not depict the nature of vegetation during the growing season when it likely is more abundant. For these reasons, the Hearings Officer agrees with staff's conclusion that the record is inadequate from which to find this criterion is satisfied.

**Staff Comment:** Relying on available aerial photography, Staff believes that preexisting vegetation in the dock location was sparse reeds and rushes growing among the concrete riprap. While the construction of the dock may have reduced available light to such plants, Staff believes the dock construction did not change the essential character, quality, and density of existing vegetation at the site. Comments from ODWF and USWFS do not not recommend additional vegetation to protect aquatic life habitats, functions of the ecosystem, wildlife values, aesthetic resources and to prevent erosion. Staff recommends the Board find the applicant has complied with this criterion.

#### **M5 – Was the bathhouse lawfully established?**

**Issue Summary:** The applicant has requested verification of the Bath House as a non-conforming use under DCC 18.120.010(B). In order to qualify as a non-conforming use, the Bath House must have been lawfully established when it was constructed. This means that it needed to comply with any applicable zoning code, PL-5 in this case, and building codes effective in 1976.

The Hearings Officer found that the Bath House was not one of the authorized uses allowed in the RR-1 zone under PL-5 and that the structure should have obtained building permits at that time.

DCC 18.120.010(F)(3) requires that the preponderance of the evidence demonstrate that the use was lawfully established.

**Applicant:** The HO misinterpreted PL-5 to only authorize two "accessory uses in the RR-1 Zone - "not more than one private garage" and "home occupation." PL-5, RR-1 zone, does not authorize accessory uses. It places limitations on specific accessory uses. If the Bath House structure does not meet the description of any of the accessory uses listed under Section 3.160, then it was unregulated by those provisions, and there were no limitations on that particular accessory use in the RR-1 Zone.

The Hearings Officer also erred when she denied the verification of the Bath House as a non-conforming use on the grounds that the structure may have "potentially" required a building permit when it was constructed, due to its size. Applicant argues that it is not appropriate for the Hearings Officer to make concrete findings based on unconfirmed recollections of third party standards that are not the laws of the State of Oregon or Deschutes County, and that it is not appropriate to make concrete findings based on the potential that a structure may have required a building permit, particularly when there is substantial evidence in the actual Record that proves otherwise.

Applicant has submitted undisputed evidence to the Record in the form of letters from the prior owner of the property, who also constructed the original Bath House. In his letter dated October 1, 2009, attached as Exhibit C to Applicant's original Application dated March 6, 2016 ("Application"), prior owner James Cate states that he checked with the County about building permits for the Bath House in 1976, and was told that they were not necessary, as long as the septic system to serve the Bath House was approved. There has been no evidence to the contrary of Mr. Cate's written testimony submitted to date, nor has his testimony been challenged or disputed in any way. Mr. Cate's first-hand account of the circumstances of the legal construction of the Bath House and connected septic system is substantial evidence in the Record, and is undisputed.

**Hearings Officer:** Hearings Officer Green denied Applicant's request for verification of the Bath House as a nonconforming use because the Bath House was not lawfully established at the time it was constructed in 1976. Specifically, she found that the construction of the Bath House was not legal under the applicable zoning code in 1976, PL-5, Rural Recreational Residential Zone ("RR-1"), because the Bath House did not conform to any of the accessory use limitations listed under 3.160 of PL-5. She also found that the Bath House structure "potentially" required a building permit when it was constructed.

**Staff Comment:** Staff believes that Recreation Vehicle use of the property was an unregulated use in 1976. This is because it is not mentioned in PL-5 and the County issued a septic permit to support that use on the property in 1976.

Could the Bath House have been constructed in 1976 as an accessory structure to the RV use of the property? Staff believes that this is unclear. Staff is unaware of no other similar structures from this time period. However, Mr. Cate testified that he confirmed with the County that permits were not required to construct the structure and connect it the approved septic system and this testimony is unrebutted. Staff believes that the preponderance of the evidence suggests that the Bath House was lawfully established as an accessory to the RV use of the property in 1976. Since overnight occupancy of structures on the property has not been lawfully established, staff recommends a condition of any approval requiring:

- 1) *Overnight occupancy of structures on the property is prohibited unless such use is otherwise lawfully established.*

The applicant has not asked to change the extent or nature of RV camping on the property nor have they asked to establish the RV use of the property as a non-conforming use. As such, RV use of the property should be subject to DCC 18.116.095, Recreational Vehicle as a Temporary Residence on an Individual Lot. Staff recommends a condition of any approval requiring:

- 2) *Any recreational vehicle use of the property shall be conducted in accordance with DCC 18.116.095.*

**Alternatively**, the Board could conclude, following the Hearings Officer, the Bath House was not a lawful use under PL-5 and testimony by a prior owner of the property suggesting that the County was not enforcing applicable requirements does not make the establishment of the Bath House lawful.

### **M6 – Did the HO make a procedural error by referring to PL-5?**

**Issue Summary:** The Hearings Officer needs to make a decision based on information available on the record. The applicant objects that the Hearings Officer, in part, relied on the text of PL-5, which was not introduced to the record during the open record period.

The Hearings Officer has long held that she may take notice of County Ordinances and Land Use decisions without these materials being formally introduced to the record.

**Applicant:** At the time the Record Period closed for the Hearings Officer's proceedings for the instant applications, on October 13, 2015, neither PL-5 nor the Uniform Building Code were a part of the Record for the instant applications, and the Record was not re-opened. Applicant was not notified of the Record change, so had no chance to respond to the new evidence. The Hearings Officer unfairly raised and then relied upon the new arguments and evidence to make her Decision, without allowing Applicant to consider and respond to arguments raised for the first time by the Hearings Officer herself. This is a violation of the DCC.

**Staff Comment:** To the extent Hearings Officer may have improperly taken notice of PL-5, that zoning code is properly before the Board and that defect, if any, is cured. The Uniform Building Code in effect in 1976 has not been introduced into the record and cannot be (and is not being) relied upon as part of this record.

### **M7 – Can the bathhouse's expansion within the river setback be permitted?**

**Issue Summary:** Under DCC 18.96.100(B) and 18.84.090(C), new structures and additions must be set back 100 feet from the Ordinary High Water Mark of the Deschutes River. The Bath House expansion occurred, in part, in the 100-foot river setback. To the extent the Board finds that the Bath House was lawfully established, it is unclear how the how that can expansion can be approved under the non-conforming use code.

Expansions of non-conforming structures are allowed in the "...front, side or rear yard setback area..." under DCC 18.120.010(A)(3). Both Staff and the HO concur that the river setback is not a "...front, side or rear yard setback area..." and that expansions in the river setback are governed by 18.120.030(D).

Expansion of "...an existing residential dwelling which is within 100 feet from the ordinary high water mark along a stream..." is allowed under 18.120.030(D). It is undisputed in the record

that neither the Bath House nor the Bunk House is a dwelling eligible for expansion under 18.120.030(D).

**Applicant:** The Bath House is a lawfully established nonconforming use that was not subject to any setback provisions when it was constructed in 1976, and that the new addition "does not project into the required setback area at any point." Therefore, the addition of the Bunk House to the backside of the Bath House is permitted as an alteration or expansion of a non-conforming use, which is not subject to river setback provisions.

**Hearings Officer:** Referring to 18.120.010(A)(3): "...this paragraph is not applicable because it does not expressly refer to encroachment into the river setback, but rather only to the front, rear and side setbacks – none of which is co-existent with the river setback."

Referring to 18.120.030(D): "The staff report states, and the Hearings Officer agrees, that this exception "provides the only pathway to expand structures in the 100-foot river setback and is only afforded to residential dwellings." Because I have found neither the original bathhouse nor the bunkhouse is a dwelling, I find this exception is not available."

**Staff Comment:** Staff and the Hearings Officer read the non-conforming structure code to intentionally disallow structural expansions in the 100-foot river setback generally, but to make a specific exception for dwellings under 18.120.030(D). Staff is concerned that the Applicant's proposed reading of the non-conforming use code is both textually implausible and would set a policy weakening the significant riverfront/riparian protects that come from the 100-foot river setback. A text amendment is the appropriate venue for evaluating this sort of policy change.

**M8 – Has the applicant demonstrated that the expansion will have no adverse impact on the neighborhood with regard to wastewater?**

**Issue Summary:** DCC 18.120.010(E)(2) requires a finding that a non-conforming use alteration will have no greater adverse impact on the neighborhood. The HO declined to evaluate potential wastewater impacts, finding that this was subject to DEQ regulation.

Todd Cleveland, Deschutes County Environmental Soils Supervisor, has testified that the existing system is almost certainly contaminating ground water and that increased use of the existing system would increase the contamination. Mr. Cleveland has also testified that the existing system should have been decommissioned in 1992, following an evaluation for residential development of the property. He also testified that other nearby, similarly situated, septic systems have typically degraded over time and fail to prevent groundwater contamination.

**Applicant:** There is proof that the on-site septic system was permitted when built and has been used since that time. If the 1992 denial had intended to decommission the entire existing system, it should have said so. The letter states absolutely nothing about entirely decommissioning the existing system on the property, or denial of anything more than the specific request to expand the existing system.

The Applicant has argued that the RV use of the septic system was a permitted use and that the connection of the Bath House to the system is presumed lawful through Mr. Cate's un rebutted testimony.

The septic system is used infrequently, and only during the 2-3 months out of the year that

Applicant visits the property. The addition of the bedroom to the Bath House does not "change the nature or extent of the use of the property" or on-site septic system or cause further adverse impacts to the surrounding neighborhood.

**Hearings Officer:** The Hearings Officer found that the issue of the on-site septic system was not before her, and declined to make findings on the issue.

The HO found the status and use of the septic system on the subject property – and in particular whether or not it has been or can be approved for use in connection with the bunkhouse -- must be evaluated and authorized by the Environmental Soils Division pursuant to the applicable DEQ regulations. In other words, the Environmental Soils Division must determine whether the addition of a bedroom to the bathhouse would result in an increase in flow to the septic system.

**Deschutes County Environmental Soils:** There is "no indication of prior use" in the history of the on-site septic system, and that the 1992 denial for a request to expand the use of the existing septic system for a year-round expanded residence was also a notice that the entire existing system was to be decommissioned.

**Staff Comment:** Staff believes that the Applicant has confused this issue by incorrectly assuming that the septic system is a non-conforming land use subject to DCC 18.120. Staff recommends that the Board find that the lawfulness of the installation, alteration, or continued use of the system is not subject to Title 18 (except regarding some locational requirements, which falls under DEQ regulation.

However, staff also believes that Hearings Officer incorrectly concluded any adverse impacts stemming from changes to the use of the system are not subject to DCC 18.120.010(E)(2). The proposed alteration of the non-conforming use includes the addition of living and sleeping areas to the Bath House. If this addition results in unmitigated adverse wastewater impacts, this application should be denied for failure to comply with 18.120.010(E)(2).

Increased use: The applicant has added a bedroom and neighbors have testified that guests arriving in a passenger vehicle have stayed at the site. This results in use of the septic system that is not associated with the RV use of the property. The addition of the bedroom has the potential to increase the quantity of wastewater beyond the historic RV-only use of the property.

Adverse impact: Given the shallow groundwater in the vicinity, there is no septic system that could completely avoid contamination of the groundwater (See Mr. Cleveland's testimony). Increased use will result in increased contamination unless the septic treatment technology is enhanced, if this enhancement is even feasible.

The applicant has not proposed use restrictions that would ensure there would be no increased wastewater discharge. The applicant has not proposed to enhance the wastewater treatment system to offset any increases in groundwater contamination. Therefore, staff believes the applicant has failed to demonstrate that the alteration of the Bath House to include a bedroom will not adversely impact the neighborhood by increasing groundwater contamination. Staff recommends the following conditions of any decision to ensure the use will not increase groundwater contamination:

- 3) *Overnight occupancy of structures on the property is prohibited unless such use is otherwise lawfully established.*

- 4) *Any recreational vehicle use of the property shall be conducted in accordance with DCC 18.116.095.*

If the dock has to go, do we specify how (timing)?

If the Bathhouse has to go do we specify how (timing)?

#### Attachments

1. Decision matrix.



## Community Development Department

Planning, Building Safety, Environmental Soils, Code Enforcement  
PO Box 6005, Bend, Oregon 97708-6005  
117 NW Lafayette Avenue  
[www.deschutes.org/cd](http://www.deschutes.org/cd)

**For Immediate Release**

**May 11, 2016**

**Contact: Nick Lelack  
Community Development Director  
541-385-1708**

### **County Commissioners Vote to Rescind Marijuana Opt-Out**

After lengthy deliberations, the Board of County Commissioners unanimously decided Wednesday to rescind their decision to opt-out of the growing, processing and sale of marijuana in unincorporated Deschutes County.

Now, County staff will draft and the Board will adopt new land use rules to regulate how marijuana can be grown, processed and sold in rural Deschutes County. Land use and development permit applications for medical and marijuana uses will be accepted after the new rules are in effect.

"We deeply appreciate the time and energy that our planning commissioners, marijuana advisory committee members and so many county residents have invested in an effort to help us address this topic," said Deschutes County Chair, Alan Unger. "We've spent the past six months listening to folks on both sides of this issue as we worked to assess what appropriate regulations would look like for our unique region."

#### **Next Steps:**

- The Board will review draft marijuana land use regulations on Wednesday, May 25<sup>th</sup>. The draft regulations will be available online on Thursday, May 19 after 5 p.m.
- At their 10 a.m. business meeting on May 25<sup>th</sup>, the Commissioners will have the opportunity to review and revise the draft regulations. If the Board supports the regulations as drafted, or only have minimal changes, they will conduct the first reading of the new rules.
- The required second reading of the new regulations would occur at least two weeks later on Wednesday, June 8 or the following week.
- The new regulations will take effect 90 days after their second reading. At that time, the County will require existing medical marijuana growers to fully comply (unless exempt by state law) with all new regulations within six months of the date that the new regulations are adopted. However, existing medical growers will need to comply with lighting

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standards that are outlined in new regulations as soon as the new regulations go into effect.

For additional information, please visit: [www.deschutes.org/marijuana](http://www.deschutes.org/marijuana).

To watch the Board's deliberations on this topic, please visit:  
<http://www.deschutes.org/bcc/page/meetings-and-hearings-information>.

**# # #**



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005  
(541)388-6575 FAX (541)385-1764  
<http://www.co.deschutes.or.us/cdd/>

### MEMORANDUM

**TO:** Deschutes County Board of Commissioners

**FROM:** Nick Lelack, Director

**DATE:** May 10, 2016

**SUBJECT:** Planning Commission Appointments

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The purpose of this work session agenda item is for the Board to deliberate toward appointing (2) new members to the Deschutes County Planning Commission. The positions are for the Bend Area seat and At-Large seat. These appointments would be through June 30, 2016, and then reappointed for full terms from July 1, 2016 through June 30, 2020.

The Board previously decided to appoint current At-Large member Hugh Palcic to fill the remainder of former-South County Commissioner James E. Criss' seat through June 30, 2017, though that appointment has not yet occurred. The Board indicated its interest in making all Planning Commission appointments at the same time.

Eligible candidates for the Bend Area and At-Large seats include unless otherwise noted:

Rowan Hollitz  
Larry Fulkerson  
Jim Beeger  
Robert Ray (At-Large only)  
Ty Rawlins  
Paul Dickinson  
Lisa Seales  
David Olsen  
Dr. Leslie Hudson

If possible, the appointments will be made prior to the Planning Commission meeting on Thursday, May 26 in order for the new commissioners to participate in the second public hearing and recommendation on the draft Planning Division Annual Report and Work Plan FY 2016-17.

## **Lobbyist Interviews: May 13<sup>th</sup> & 20<sup>th</sup>**

### **Sample Questions**

#### **Scope, Capacity, and Accessibility**

- What is the primary focus of your business? Does your firm provide other services in addition to lobbying (campaign management, public relations, fundraising)?
- How many lobbyists does your firm employ? On average, how many clients are assigned to each?
- How would the lobbyist(s) assigned to Deschutes County divide their time between Central Oregon and Salem?
- How do you see your firm interacting with Deschutes County elected officials and staff.

#### **Clients**

- How many active clients do you expect to serve next session? Do you anticipate being available to take on additional clients throughout the session?
- Do you represent out-of-state or national clients?

#### **Approach**

- What are your firm's areas of expertise or specialization?
- Describe your access to House and Senate leadership.
- Describe your most recent experience pro-actively influencing legislative outcomes.
- How will you use your influence to move the County agenda forward?
- What activities does your firm engage in during the interim?

#### **Political Philosophy**

- Does your firm have a reputation for being primarily Republican, Democrat, or Independent-leaning?
- Does your firm make contributions to or organize fundraising events for political candidates.
- Describe your assessment of the politics during the 2016 session and how you view the 2017 session.
- How will you achieve success within the current political makeup of the legislature? How might you alter your approach if the majority party changes during future elections?

#### **Other**

- Has your firm been accused of or investigated for any ethics violations of any kind — however small?

# STATE OF THE COUNTY JUNE 2016

*Presentation to: Bend Chamber of Commerce*



# DESCHUTES COUNTY

*Enhancing the lives of citizens by delivering quality services in a cost-effective manner.*

## ■ Our 2017 Goals and Objectives:

- **SAFE COMMUNITIES**
- **HEALTHY PEOPLE**
- **RESILIENT ECONOMY**
- **NATURAL RESOURCE STEWARDSHIP**
- **QUALITY CUSTOMER SERVICE**
- **EFFECTIVE ASSET MANAGEMENT**



# SAFE COMMUNITIES

*Protect the community through planning, preparedness and delivery of coordinated services.*

## ■ ACCOMPLISHMENTS:

- Continued collaborative efforts with partners
  - 9-1-1: Collaboration with Bend Fire & Rescue - PulsePoint
  - 9-1-1: Collaboration with local emergency managers - Deschutes Alerts
  
- Emergency/Disaster Prep and Planning
  - Fire/Fuels Reduction
  - Joint Training Exercises



# SAFE COMMUNITIES

*Protect the community through planning, preparedness and delivery of coordinated services.*

## ■ OPPORTUNITIES:

### ■ 9-1-1- Radio Communication System:

- Complete construction and deploy a new county-wide radio and data communications system

### ■ Marijuana Legalization

- Regulation and enforcement
- Education through Public Health



# HEALTHY PEOPLE

*Enhance and protect the health and well-being of the community through advocacy, prevention, education and delivery of coordinated services.*

## ■ ACCOMPLISHMENTS:

- Increased number of veterans served
- Public Health accreditation



# HEALTHY PEOPLE

*Enhance and protect the health and well-being of the community through advocacy, prevention, education and delivery of coordinated services.*

## ■ OPPORTUNITIES:

- Facilitate County adoption of Bend UGB amendments
- Assessment of Crisis Intervention Center



# RESILIENT ECONOMY

*Promote policies and actions that sustain and stimulate economic vitality.*

## ■ ACCOMPLISHMENTS:

- Completion of Skyliners Road project
  
- FY '16 Business Loans to Bend businesses - \$75,123
  - i3d Manufacturing, 12 jobs
  - Kollektive Technology, Inc., 25 jobs
  - Zamp Solar, 21 jobs



# RESILIENT ECONOMY

*Promote policies and actions that sustain and stimulate economic vitality.*

## ■ OPPORTUNITIES:

- Assessment of Sports Complex at Fair & Expo Center
- Coordinate with City to adopt the Bend Airport Master Plan
- Explore partnership with ODOT to address traffic safety and capacity needs
  - Potential median on Hwy 97



# NATURAL RESOURCE STEWARDSHIP

*Promote environmental stewardship through assessment, advocacy and collaboration.*

## ■ ACCOMPLISHMENTS:

- Fire Protection: Launch of CO Cohesive Wildland Fire Strategy
- Partnership with OSU Cascades: Demo Landfill Environmental Assessment
- Water Conservation



# NATURAL RESOURCE STEWARDSHIP

*Promote environmental stewardship through assessment, advocacy and collaboration.*

- *Promote environmental stewardship through assessment, advocacy and collaboration.*
- **CHALLENGES/OPPORTUNITIES:**
  - Continue to seek out state and federal funding for fuels reduction projects



# QUALITY CUSTOMER SERVICE

*Provide internal and external services that are innovative and efficient.*

## ■ ACCOMPLISHMENTS:

- Knott Landfill Expanded Hours/Open on Sundays
- New Ballot Drop Site at the Old Mill
- Increased Voter Registration



# QUALITY CUSTOMER SERVICE

*Provide internal and external services that are innovative and efficient.*

## ■ OPPORTUNITIES:

- Meeting service demands for access to public and behavioral health
- Reduce wait times for and increase awareness of Veterans' Services



# EFFECTIVE ASSET MANAGEMENT

*Preserve and enhance capital and fiscal assets.*

## ■ ACCOMPLISHMENTS

- Law Library transition to Deschutes Public Library
- 9-1-1 Radio Project
- Partnership with State / J Bar J for alternative detention facility



# EFFECTIVE ASSET MANAGEMENT

*Preserve and enhance capital and fiscal assets.*

## ■ OPPORTUNITIES

- New Finance/Human Resources System
  
- Maintain customer service levels by strategically expanding to accommodate the region's rapid growth
  - Expand Jail Staff
  - Community Development





Deschutes County Board of Commissioners  
1300 NW Wall St., Bend, OR 97703-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **WORK SESSION AGENDA**

### **DESCHUTES COUNTY BOARD OF COMMISSIONERS**

**1:30 P.M., WEDNESDAY, MAY 11, 2016**

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*Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be addressed at the meeting. This notice does not limit the ability of the Board to address additional subjects. Meetings are subject to cancellation without notice. This meeting is open to the public and interested citizens are invited to attend.*

*Work Sessions allow the Board to discuss items in a less formal setting. Citizen comment is not allowed, although it may be permitted at the Board's discretion. If allowed, citizen comments regarding matters that are or have been the subject of a public hearing process will NOT be included in the official record of that hearing. Work Sessions are not normally video or audio recorded, but written minutes are taken for the record.*

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1. Approval of Emergency Management Performance Grant Application – *Nathan Garibay*
  2. Economic Development Loan Program Discussion – *Judith Ure*
  3. Consideration of Discretionary Grant Request for J Bar J – *Judith Ure*
- 

*Meeting dates, times and discussion items are subject to change. All meetings are conducted in the Board of Commissioners' meeting rooms at 1300 NW Wall St., Bend, unless otherwise indicated. If you have questions regarding a meeting, please call 388-6572.*

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4. Discussion of Whether to Hear an Appeal – Caldera Springs Resort – *Anthony Raguine*

5. Preparation for Deliberations: Dreifuss Land Use Case – *Will Groves*

6. Other Items

**NOTE: The Board is conducting deliberations on land use issues related to marijuana production, processing and related items on Monday, May 9 at 1:30 p.m. They may choose to continue that discussion at this meeting, if appropriate and if time allows.**

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

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*At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories. Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.*

7. Adjourn

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*Meeting dates, times and discussion items are subject to change. All meetings are conducted in the Board of Commissioners' meeting rooms at 1300 NW Wall St., Bend, unless otherwise indicated. If you have questions regarding a meeting, please call 388-6572.*

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